

2011-2012

**HOUSE
FINANCE**

MINUTES

2011-12 HOUSE COMMITTEE ON FINANCE

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Rep. Kelly Alexander	Marjorie Conner	733-5778	404	119
Rep. Marcus Brandon	Cecil Brockman	733-5825	1209	116
Rep. Bill Brawley	Brian Lehrschall	733-5800	1313	78
Rep. Becky Carney	Ann Jordan	733-5827	1221	91
Rep. Jeff Collins	Marissa Farrell	733-5802	1006	65
Rep. Tricia Cotham	Rosa Kelley	715-0706	403	105
Rep. Bill Faison	Lavada Vitalis	715-3019	405	84
Rep. Dale Folwell	Paige Fitzgerald	733-5787	301F	99
Rep. Joe Hackney	Emily Reynolds	733-0057	612	69
Rep. Larry Hall	Lisa Ray	733-5872	1015	107
Rep. Dewey Hill	Gennie Thurlow	733-5830	1309	22
Rep. Julia C. Howard	Ernie Parker	733-5904	1106	2
Rep. Jonathan Jordan	Brian Mullis	733-7727	418C	79
Rep. David Lewis	Grace Rogers	715-3015	534	20
Rep. Paul Luebke	Joyce Harris	733-7663	513	33
Rep. Danny McComas	Judy Lowe	733-5786	506	6
Rep. Darrell McCormick	Anne Murtha	733-5654	2119	64
Rep. William McGee	Jayne Nelson	733-5747	634	53
Rep. Frank McGuirt	Susanna Davis	715-3007	514	60
Rep. Tim Moffitt	Melissa Carter	715-3012	1025	85
Rep. Tim Moore	Nancy Garriss	733-4838	1326	8
Rep. Johnathan Rhyne	Susan Beaupied	733-5782	2208	19
Rep. Deborah Ross	Margie Penven	733-5773	1023	96
Rep. Ruth Samuelson	Susan Phillips	715-3009	419B	55
Rep. Paul Stam	Christin Danchi	733-2962	2301	54
Rep. Edgar Starnes	Pattie Fleming	733-5931	419A	5
Rep. Mitchell Setzer	Margaret Herring	733-4948	1206	13
Rep. Mike Stone	Kathy Voss	715-3026	1008	97
Rep. William Wainwright	Blinda Edwards	733-5995	613	12
Rep. Harry Warren	Shara Graham	733-5784	533	74
Rep. Jennifer Weiss	Cindy Douglas	715-3010	1109	103
Rep. Larry Womble	Dorothy McLean	733-5777	510	57

Staff: Cindy Avrette, Trina Griffin, Heather Fennell, Greg Roney & Judy Collier (Research)
 Martha Walston, Rodney Bizzell, Barry Boardman, Sandra Johnson
 Jonathan Tart & Brian Silvka (Fiscal Research)
 Ryan Blackledge & Dan Ettefagh (Bill Drafting)
 Renee Weaver, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY

**COMMITTEE NAME
2011-2012 SESSION**



Rep. Julia C. Howard
Senior Chair



Rep. Edgar Starnes
Co-Chair



Rep. Mitchell Setzer
Co-Chair



Rep. Dale Folwell
Co-Chair



Rep. David Lewis
Vice chair



Rep. Danny McComas
Vice chair



Rep. William Wainwright
Vice chair



Rep. Marcus Brandon



Rep. Bill Brawley



Rep. Becky Carney



Rep. Jeff Collins



Rep. Tricia Cotham



Rep. Bill Faison



Rep. Pryor Gibson



Rep. Joe Hackney



Rep. Larry Hall



Rep. Dewey Hill



Rep. Jonathan Jordan



Rep. Paul Luebke



Rep. Darrell McCormick



Rep. William McGee



Rep. Tim Moffitt

NORTH CAROLINA GENERAL ASSEMBLY

**COMMITTEE NAME
2011-2012 SESSION**



Rep. Tim Moore



Rep. Johnathan Rhyne



Rep. Deborah Ross



Rep. Ruth Samuelson



Rep. Paul Stam



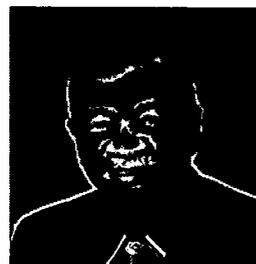
Rep. Mike Stone



Rep. Harry Warren



Rep. Jennifer Weiss



Rep. Larry Womble

ATTENDANCE

2011 FINANCE

(Name of Committee)

DATES	2/2/2011	2/3/2011	2/9/2011	2/10/2011	2/16/2011	2/23/2011	2/24/2011	3/2/2011	3/3/2011	3/8/2011	3/9/2011	3/10/2011	3/16/2011	3/17/2011	3/23/2011
Rep. Julia C. Howard, Senior Chair	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. Edgar Starnes, Co-Chair	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. Mitchell Setzer, Co-Chair			X		X	X	X	X	X	X	X			X	X
Rep. Dale Folwell, Co-Chair	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. David Lewis, Vice Chair									X		X		X		X
Rep. Danny McComas, Vice Chair	X			X	X	X	X	X	X	X	X		X	X	X
Rep. William Wainwright, Vice Chair			X			X	X	X	X		X	X	X	X	X
Rep. Kelly Alexander	X	X	X	X	X	X		X			X	X	X	X	X
Rep. Marcus Brandon	X	X	X	X		X	X	X	X				X	X	
Rep. Bill Brawley	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. Becky Carney	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. Jeff Collins	X	X	X	X	X	X	X	X	X	X	X	X		X	X
Rep. Tricia Cotham	X	X				X	X	X	X		X			X	X
Rep. Bill Faison			X			X	X	X	X		X	X	X	X	X
Rep. Pryor Gibson (resigned 3/3/11)		X		X	X		X	X	X						
Rep. Joe Hackney	X			X		X	X	X	X	X	X	X	X	X	X
Rep. Larry Hall	X	X		X	X	X	X	X		X	X	X		X	X
Rep. Dewey Hill	X	X	X			X	X	X	X	X	X		X	X	X
Rep. Jonathan Jordan	X	X	X	X	X	X	X	X	X	X	X			X	X
Rep. Paul Luebke	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. Darrell McCormick	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. William McGee	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. Frank McGuirt (appointed 3/7/11)										X	X	X	X	X	X
Rep. Tim Moffitt	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. Tim Moore		X		X	X		X	X	X	X	X		X	X	X
Rep. Johnathan Rhyne	X				X		X	X			X		X	X	X

DATES	2/2/2011	2/3/2011	2/9/2011	2/10/2011	2/16/2011	2/23/2011	2/24/2011	3/2/2011	3/3/2011	3/8/2011	3/9/2011	3/10/2011	3/16/2011	3/17/2011	3/23/2011
Rep. Deborah Ross	X	X		X		X	X	X	X	X	X		X	X	X
Rep. Ruth Samuelson	X	X		X	X	X	X	X	X	X	X	X	X	X	X
Rep. Paul Stam							X	X	X		X	X		X	X
Rep. Mike Stone	X	X	X		X	X	X	X	X	X	X		X	X	X
Rep. Harry Warren	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. Jennifer Weiss	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rep. Larry Womble	X		X	X	X	X	X	X	X	X	X		X	X	

ATTENDANCE

2011 FINANCE

(Name of Committee)

DATES	6/1/2011	6/2/2011	6/3/2011	6/8/2011	6/9/2011	6/14/2011	6/14/2011	6/15/2011	6/16/2011	6/17/2011					
Rep. Julia C. Howard, Senior Chair	X	X	X	X	X	X	X	X	X	X					
Rep. Edgar Starnes, Co-Chair	X	X	X	X	X	X	X	X	X	X					
Rep. Mitchell Setzer, Co-Chair	X	X	X	X	X	X	X	X	X	X					
Rep. Dale Folwell, Co-Chair	X	X	X	X		X				X					
Rep. David Lewis, Vice Chair	X	X	X	X		X	X	X	X						
Rep. Danny McComas, Vice Chair	X	X		X		X	X								
Rep. William Wainwright, Vice Chair	X	X		X	X	X		X							
Rep. Kelly Alexander		X	X	X	X	X	X		X	X					
Rep. Marcus Brandon		X	X		X	X	X	X		X					
Rep. Bill Brawley	X	X	X	X	X	X	X	X	X	X					
Rep. Becky Carney	X	X	X	X	X	X	X	X	X	X					
Rep. Jeff Collins	X	X	X	X	X	X	X	X	X	X					
Rep. Tricia Cotham	X	X	X	X			X		X						
Rep. Bill Faison	X	X	X	X	X		X		X						
Rep. Joe Hackney	X	X	X	X	X	X	X	X	X	X					
Rep. Larry Hall		X	X	X	X	X	X		X	X					
Rep. Dewey Hill		X	X	X	X	X	X	X							
Rep. Jonathan Jordan	X	X	X	X	X	X	X	X	X						
Rep. Paul Luebke	X	X	X	X	X	X	X	X	X	X					
Rep. Darrell McCormick	X	X	X	X	X	X	X	X		X					
Rep. William McGee	X	X	X	X	X		X	X	X	X					
Rep. Frank McGuirt (appointed 3/7/11)	X	X	X	X	X	X	X	X	X	X					
Rep. Tim Moffitt	X	X	X	X	X		X	X	X	X					
Rep. Tim Moore	X	X	X	X		X	X			X					
Rep. Johnathan Rhyne	X	X	X	X					X	X					
Rep. Deborah Ross		X	X	X	X	X	X	X	X	X					

DATES	6/1/2011	6/2/2011	6/3/2011	6/8/2011	6/9/2011	6/14/2011	6/14/2011	6/15/2011	6/16/2011	6/17/2011					
Rep. Ruth Samuelson	X	X	X	X	X	X	X	X	X	X					
Rep. Paul Stam	X	X	X	X	X	X	X	X		X					
Rep. Mike Stone	X	X	X	X	X	X	X	X	X	X					
Rep. Harry Warren	X	X	X		X	X	X	X		X					
Rep. Jennifer Weiss	X	X	X	X	X	X	X	X		X					
Rep. Larry Womble	X	X	X	X	X	X	X	X		X					

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Through House Committee on
Finance

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2011-2012 Biennium

Bill	Introducer	Short Title	Latest Action	In Date	Out Date
0005	LaRoque	KINSTON ANNEXATION REPEALED.	*H Re-ref Com On Finance	02-10-11	02-24-11
	: Crawford	2011 BUDGET TECHNICAL CORRECTIONS.	*H Pres. To Gov. 6/20/2011	02-15-11	03-01-11
0026=	McGrady	HENDERSON COUNTY FIRE DISTRICTS.	*HR Ch. SL 2011-50	02-21-11	03-16-11
0030	T. Moore	ALLOW WAGE GARNISHMENT TO SATISFY JUDGMENTS.	*H Ref to Judiciary II. If fav, re-ref to Finance	04-14-11	05-23-11
0037	R. Brown	LEXINGTON ANNEXATIONS REPEALED.	*H Ref To Com On Rules and Operations of the Senate	02-10-11	02-24-11
0043=	Carney	INCREASE PROPERTY TAX APPEALS EFFICIENCY.	*H Re-ref Com On Finance	02-21-11	
0045=	Gillespie	ACCELERATE CLEANUP OF INDUSTRIAL PROPERTIES.	*HR Ch. SL 2011-186	02-21-11	03-03-11
0045=	Gillespie	ACCELERATE CLEANUP OF INDUSTRIAL PROPERTIES.	*HR Ch. SL 2011-186	03-08-11	03-10-11
0049=	T. Moore	LAURA'S LAW.	*HR Ch. SL 2011-191	02-24-11	03-09-11
0053=	Barnhart	HOSPITAL MEDICAID ASSESSMENT/PAYMENT PROGRAM.	H Ref To Com On Finance	02-09-11	
0056	Collins	LOCAL ANNEXATIONS SUBJECT TO 60% PETITION.	*HR Ch. SL 2011-177	03-17-11	03-24-11
0068	Iler	TAX CERTIFICATION - ADD COUNTIES.	*HR Ch. SL 2011-45	02-21-11	03-09-11
0072	Crawford	COMMUNITY COLLEGE INVESTMENT FLEXIBILITY.	*H Ref to Education/ Higher Education. If fav, re-ref to Finance	03-22-11	05-18-11
0088=	Howard	REPEAL LAND TRANSFER TAX.	HR Ch. SL 2011-18	02-16-11	03-03-11
0093	Howard	SALES & USE TAX COLLECTION.	*HR Ch. SL 2011-293	02-16-11	06-09-11
0096	Stevens	ALLEGHANY/JACKSON/ GROVER OT.	*HR Ch. SL 2011-170	02-28-11	06-03-11
0097=	Horn	UNION FIRE FEE SUNSET REPEALED.	H Ref to State and Local Government. If fav, re-ref to Finance	03-24-11	05-18-11
0122=	Howard	REV LAWS TECH, CLARIFY., & ADMIN. CHNGS.	*H Ref To Com On Finance	02-17-11	06-09-11
0122=	Howard	REV LAWS TECH, CLARIFY., & ADMIN. CHNGS.	*H Ref To Com On Finance	06-18-11	
0123=	Howard	BUSINESS ENTITY CHANGES.	*HR Ch. SL 2011-9	02-17-11	02-23-11
0124=	Howard	IRC UPDATE.	*HR Ch. SL 2011-5	02-17-11	02-24-11
0129=	Avila	LEVEL PLAYING FIELD/ LOCAL GOV'T COMPETITION.	*HR Ch. SL 2011-84	03-02-11	03-23-11
0134	McElraft	COMM. COLLEGES/OPT OUT OF FED'L LOAN	*HR Ch. SL 2011-178	03-07-11	06-06-11

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Bill	Introducer	Short Title	Latest Action	In Date	Out Date
		PROG-2.			
0137	Owens	TWO-THIRDS BONDS ACT OF 2011.	H Ref To Com On Finance	02-21-11	
	T. Moore	TECH CORR: ELIGIBILITY OF INDUST FACILITIES.	H Ref To Com On Finance	02-21-11	
0160	Dollar	CHECK-OFF DONATION: BREAST CANCER SCREENING.	*H Re-ref Com On Rules and Operations of the Senate	03-01-11	04-21-11
0166	McGee	PURPLE HEART MOTORCYCLE SPECIAL PLATES.	H Re-ref Com On Finance	03-29-11	
0167	Iler	EXTEND ASSESSMENT REFUND PERIOD.	*HR Ch. SL 2011-205	03-07-11	04-13-11
0168	Sanderson	FARMS EXEMPT FROM CITY ANNEXATION & ETJ.	*H Pres. To Gov. 6/20/2011	03-21-11	04-07-11
0171	L. Brown	MUNICIPAL SELF-ANNEXATIONS.	*HR Ch. SL 2011-57	03-07-11	03-16-11
0179=	Daughtry	EXPAND CHARITABLE PROPERTY TAX EXEMPTION.	H Ref To Com On Finance	02-28-11	
0180	McComas	WILMINGTON ANNEXATION SUSPENSION.	H Ref To Com On Rules and Operations of the Senate	03-17-11	03-24-11
0182=	Starnes	CLARIFY REFUNDS OF TAX OVERPAYMENTS.	H Ref To Com On Finance	02-28-11	
0196	Sager	GOLDSBORO DEANNEXATION.	H Re-ref Com On Finance	03-24-11	
0200	Brubaker	APPROPRIATIONS ACT OF 2011.	*HR Ch. SL 2011-145	04-20-11	04-26-11
0202	Horn	PARKING FINE INCREASE FOR THE CITY OF MONROE.	H Re-ref Com On Finance	03-24-11	
0204	Tolson	EDGEcombe CO. TOURISM DEVELOPMENT AUTHORITY.	H Ref To Com On State and Local Government	03-24-11	04-20-11
0206=	Ross	MODIFY PROPERTY TAX BASE EXCLUSIONS.	HR Ch. SL 2011-123	03-03-11	05-19-11
0213=	Ingle	ALAMANCE/ORANGE 9% BOUNDARY.	H Re-ref Com On Finance	05-05-11	
0214=	Ingle	ALAMANCE/ORANGE BOUNDARY.	*H Re-ref Com On Finance	05-09-11	
0224	Boles	FOXfire VILLAGE ASSESSMENT VALIDATED.	H Ref to State and Local Government. If fav, re-ref to Finance	03-17-11	04-20-11
0231	Brisson	FAYETTEVILLE'S GATES FOUR ANNEXATION REPEAL.	H Re-ref Com On Finance	03-17-11	
0236	Moffitt	BILTMORE LAKE ANNEXATION REPEALED.	H Ref To Com On Rules and Operations of the Senate	03-17-11	03-24-11
0242	Stone	NAT. GAS/BOND/FEE/	*HR Ch. SL 2011-276	04-19-11	05-26-11

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Bill	Introducer	Short Title	Latest Action	In Date	Out Date
		LANDOWNER PROTECT'N/ STUDY.			
	Jackson	CERTIFICATES UNDER SEAL IN INDIGENT CASES/FEE.	HR Ch. SL 2011-285	03-16-11	04-13-11
0246	Adams	MODIFY HOMESTEAD PROPERTY TAX EXCLUSION.	H Ref To Com On Finance	03-08-11	
0248	Rhyne	ESTABLISH TAX MODERNIZATION COMMISSION.	H Ref To Com On Finance	03-09-11	
0266=	Weiss	LOCAL ENERGY EFFICIENCY.	*HR Ch. SL 2011-150	04-07-11	04-20-11
0285	Killian	ACTIVE NATIONAL GUARD SPECIAL PLATE NO COST.	*H Re-ref Com On Finance	03-29-11	
0289	Gillespie	AUTHORIZE VARIOUS SPECIAL PLATES.	*H Pres. To Gov. 6/ 20/2011	05-18-11	06-07-11
0292	Wilkins	INCORPORATE ROUGEMONT.	*HR Ch. SL 2011-114	04-21-11	05-18-11
0296	Bell	SAMPSON-DELINQUENT TAXPAYERS.	*H Ref To Com On State and Local Government	03-31-11	04-13-11
0298=	Dockham	INSURANCE AMENDMENTS.- AB	*HR Ch. SL 2011-196	04-27-11	05-19-11
0299=	Dockham	SURPLUS LINES/PREMIUM TAX.-AB	*H Re-ref Com On Finance	04-27-11	
0302	Earle	CHARITABLE LICENSING EXEMPTION CLARIFICATION.	*H Ref To Com On Mental Health & Youth Services	03-22-11	04-13-11
0311	Fisher	HOUSEHOLD GOODS CARRIERS/ID MARKINGS.	*HR Ch. SL 2011-244	04-12-11	05-02-11
0313	Hastings	REPEAL SAVINGS BOND PAYROLL SAVINGS PROGRAM.-AB	HR Ch. SL 2011-210	03-30-11	04-07-11
0315	Pridgen	TAXPAYER INFORMATION ACT.	H Ref To Com On Finance	03-14-11	
0318	McGee	STATE TREASURER'S INVESTMENTS.-AB	*HR Ch. SL 2011-211	03-14-11	05-04-11
0326	Moffitt	BUNCOMBE INVOLUNTARY ANNEXATION MORATORIUM.	H Re-ref Com On Finance	04-07-11	
0340	Steen	UTILITIES COMMISSION/ CRIMINAL RECORDS CHECK.	*H Ref To Com On Judiciary II	05-19-11	06-01-11
0344	Stam	TAX CREDITS FOR CHILDREN WITH DISABILITIES.	*H Pres. To Gov. 6/ 20/2011	04-26-11	06-03-11
0350=	McGrady	PROPERTY TAX UNIFORMITY FOR CONSERVATION LAND.	*HR Ch. SL 2011-274	03-15-11	06-01-11
0352	Steen	DELAY KANNAPOLIS ANNEXATION.	HR Ch. SL 2011-124	04-21-11	05-05-11
0355	Justice	SIMPLIFY TAXATION OF CERTAIN HOA PROPERTY.	H Ref To Com On Finance	03-16-11	
0358	Hackney	APEX/CARY ANNEXATION INTO CHATHAM RESTRICTED.	*HR Ch. SL 2011-151	03-24-11	04-04-11
0362	Owens	PASQUOTANK HUNTING.	*HR Ch. SL 2011-152	03-31-11	04-05-11

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Bill	Introducer	Short Title	Latest Action		In Date	Out Date
0367=	Bradley	ROANOKE RAPIDS DEANNEXATION.	HR Ch.	SL 2011-158	04-21-11	05-18-11
=	Johnson	STATE HISTORIC SITES SPECIAL FUND.	H	Ref To Com On Finance	03-16-11	
0369=	Bryant	ROANOKE RAPIDS LOCAL OPTION SALES TAX.	H	Re-ref Com On Finance	04-14-11	
0376	McGee	RETIREMENT TECHNICAL CORRECTIONS.-AB	*HR Ch.	SL 2011-294	06-03-11	06-08-11
0384	Howard	REGISTER OF DEEDS/ FEES.	*HR Ch.	SL 2011-296	03-17-11	06-02-11
0391=	Avila	DEPT. OF ADMIN/ PROCUREMENT MODERNIZATION.-AB	H	Ref To Com On Commerce	06-08-11	06-09-11
0397	Lewis	DHHS PENALTIES AND REMEDIES REVISION.-AB	*HR Ch.	SL 2011-249	04-20-11	05-02-11
0399	McElraft	CAP MOTOR FUEL EXCISE TAX RATE.	H	Ref To Com On Finance	03-21-11	
0400	McElraft	TAXPAYER TRANSPARENCY ACT.	H	Ref To Com On Finance	03-21-11	
0402	Carney	ARTS NC SPECIAL PLATE.	H	Re-ref Com On Finance	05-17-11	
0406	Jordan	VOLUNTARY AGRICULTURE DISTRICTS.	HR Ch.	SL 2011-219	03-21-11	04-13-11
0406	Jordan	VOLUNTARY AGRICULTURE DISTRICTS.	HR Ch.	SL 2011-219	05-10-11	05-10-11
0409	Jeffus	GUILFORD TECH. MAY LEASE PROPERTY.	*HR Ch.	SL 2011-153	04-21-11	06-07-11
0411	Howard	IREDELL CORRECTIONAL FACILITY/DOT STORAGE.	*H	Pres. To Gov. 6/17/2011	05-09-11	05-24-11
0414	Hager	AMEND RUTHERFORD COUNTY OCCUPANCY TAX.	HR Ch.	SL 2011-115	04-21-11	05-11-11
(	McGrady	EXTEND TIME FOR SITE OF LOW/MOD. INC. HOUSING.	H	Pres. To Gov. 6/20/2011	04-20-11	06-01-11
0418	L. Brown	WINSTON-SALEM DEANNEXATION.	HF	Reptd Unfav	04-07-11	06-09-11
0447=	West	FONTANA DAM INCORPORATED.	H	Re-ref Com On Finance	04-14-11	
0449=	Setzer	INCREASE IN REM FORECLOSURE FEE.	H	Ref To Com On Finance	03-24-11	
0453	Dockham	ALLOW SALARY PROTECTION INSURANCE.	H	Pres. To Gov. 6/20/2011	05-10-11	05-18-11
0469	Graham	ADDL. LUMBERTON & ST. PAULS OCCUP. TAX.	*HR Ch.	SL 2011-137	04-14-11	06-03-11
0473	Cleveland	EQUAL TAX TREATMENT OF GOV'T RETIREE BENEFITS.	*H	Re-ref Com On Finance	06-03-11	
0476	Gillespie	PROTECT GALAX & VENUS FLYTRAP/WRC RULE FINES.	*H	Ref to Agriculture/ Environment/ Natural Resources. If fav, re-ref to Finance	04-06-11	06-01-11
0486	Guice	TRYON DEANNEXATION.	HR Ch.	SL 2011-159	04-21-11	05-18-11
0491	R. Brown	REPEAL STATE CAPITAL	*H	Ref To Com On	03-29-11	05-26-11

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Bill	Introducer	Short Title	Latest Action	In Date	Out Date
		FACILITIES FINANCE ACT.	Finance		
	M. Alexander	CONTINUOUS ALCOHOL MONITORING LAW CHANGES.	*H Ref To Com On Rules and Operations of the Senate	05-25-11	06-08-11
0508	Earle	MODIFY MECKLENBURG COUNTY LOCAL TAXES.	*HR Ch. SL 2011-160	04-14-11	06-09-11
0512=	Torbett	RENDERING ACT AMENDMENTS.	*H Conf Com Appointed	05-19-11	06-09-11
0516	Stevens	MOUNT AIRY CHARTER AMENDMENTS.	HR Ch. SL 2011-140	04-21-11	05-12-11
0518	Wilkins	AUTHORIZE ADD'L PERSON COUNTY OCCUPANCY TAX.	*HR Ch. SL 2011-161	04-14-11	06-01-11
0532	West	GRAHAM COUNTY/CEMETERY TAX BY GENERAL LAW.	HR Ch. SL 2011-116	04-14-11	05-05-11
0537	Randleman	WILKES FIRE TAX DIST. BOUNDARIES.	*HR Ch. SL 2011-86	04-14-11	04-20-11
0545	Boles	AMEND MOORE COUNTY OCCUPANCY TAX.	*HR Ch. SL 2011-113	04-12-11	04-20-11
0552	Moffitt	GREATER ASHEVILLE REG. AIRPORT AUTHORITY.	*H Ref to State and Local Government. If fav, re-ref to Finance	04-21-11	06-02-11
0557	Steen	EXEMPT ROWAN COUNTY/LOCAL MATCH/HCCBG FUNDS.	H Re-ref Com On Finance	05-19-11	
0565	McElraft	MOREHEAD CITY/BEAUFORT BOUNDARY.	HR Ch. SL 2011-179	04-21-11	05-11-11
' =	Sager	PREPAID WIRELESS/POINT OF SALE COLLECTION.	*HR Ch. SL 2011-122	05-18-11	06-02-11
0572	Justice	ACCOUNTABILITY FOR PUBLICLY FUNDED NONPROFITS.	*H Ref To Com On Finance	03-31-11	04-13-11
0573	Avila	RALEIGH/WAKE FOREST BOUNDARY.	*HR Ch. SL 2011-162	05-12-11	05-18-11
0581	Pierce	AMEND LUMBERTON FIREMEN'S PENSION FUND.	HR Ch. SL 2011-143	06-07-11	06-09-11
0591	Ingle	LDP/IGNITION INTERLOCK CHANGES.	*H Re-ref Com On Rules, Calendar, and Operations of the House	06-01-11	06-13-11
0592	Collins	STUDY COUNTY PUBLIC-PRIVATE PARTNERSHIPS.	H Re-ref Com On Rules, Calendar, and Operations of the House	06-07-11	06-08-11
0593	Collins	ALLOW COUNTY GRANTS FOR BROADBAND.	*HR Ch. SL 2011-163	06-01-11	06-08-11
0596	Hastings	TRANSFER SURPLUS PROP. TO RETIREMENT SYSTEM.	*H Pres. To Gov. 6/20/2011	04-05-11	05-19-11
0604	Iler	EXEMPT MILITARY	H Ref To Com On	04-05-11	

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Bill	Introducer	Short Title	Latest Action	In Date	Out Date
		RETIREMENT FROM INCOME TAX.	Finance		
	McElraft	EXPAND SETOFF DEBT COLLECTION ACT.	*H Ref to State and Local Government. If fav, re-ref to Finance	04-21-11	05-18-11
0617	Dockham	PORTABLE ELECTRONICS INSURANCE COVERAGE.	*HR Ch. SL 2011-225	05-18-11	06-03-11
0619	Howard	FORCED COMBINATIONS.	*H Pres. To Gov. 6/20/2011	05-03-11	05-26-11
0619	Howard	FORCED COMBINATIONS.	*H Pres. To Gov. 6/20/2011	06-16-11	06-17-11
0628=	Jeffus	DEVELOPMENT READY JOBS STUDY.	H Re-ref Com On Rules, Calendar, and Operations of the House	04-06-11	05-17-11
0634	Samuelson	ARTHRITIS FOUNDATION SPECIAL PLATE.	H Re-ref Com On Finance	05-17-11	
0662	Cook	ELECTRONIC MONITORING FEE.	*H Pres. To Gov. 6/20/2011	04-07-11	06-01-11
0668	Wilkins	INCREASE DEDUCTION: VOLUNTEER RESCUE WORKERS.	H Ref To Com On Finance	04-07-11	
0679=	Lewis	STRENGTHENING RESIDENTIAL PLACEMENT.	H Re-ref Com On Rules, Calendar, and Operations of the House	05-23-11	06-13-11
0692	Hurley	INCREASE PAYMENT OF UNCLAIMED PROPERTY CLAIMS.	*HR Ch. SL 2011-230	04-07-11	04-13-11
0694=	Frye	ASU WIND DEMONSTRATION PROJECT.	*H Re-ref Com On Finance	05-31-11	
0700	Graham	NATIVE AMERICAN LICENSE PLATE FEE INCREASE.	H Ref To Com On Finance	04-07-11	
0730	Fisher	LOCAL BDS OF EDUCATION/403(B) OPTION.	*H Pres. To Gov. 6/17/2011	05-31-11	06-02-11
0734	H. Warren	REQUIRE PHOTO ID/FOOD STAMPS PROGRAM.	*H Re-ref Com On Finance	04-20-11	
0751	McComas	VARIOUS ECONOMIC DEVELOPMENT INCENTIVES.	*HR Ch. SL 2011-302	04-07-11	06-14-11
0761	McComas	IGNITION INTERLOCK SYSTEMS/RECORD CHECKS.	*H Pres. To Gov. 6/20/2011	06-07-11	06-15-11
0791=	Parmon	AMEND COS. ART LAW/ GRANDFR. NATURAL HAIR CARE.	*H Re-ref Com On Finance	06-15-11	
0796	Moffitt	SALE OF ALCOHOLIC BEVERAGES.	*H Conf Com Appointed	04-07-11	04-13-11
0799	Martin	LICENSURE BY ENDORSEMENT/MILITARY/ SPOUSES.	*H Ref to Commerce. If fav, re-ref to Finance	05-19-11	06-03-11
0818	McElraft	MODIFY DISABLED VET PROPERTY TAX EXEMPTION.	H Ref To Com On Finance	04-07-11	

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0830	Moffitt	TAX AMNESTY PROGRAM.	H	Ref To Com On Finance	04-07-11	
=	Howard	GLOBAL TRANSPARK GOV. REFORM & LOAN REPAYMENT.	*H	Ref To Com On Rules and Operations of the Senate	06-07-11	06-08-11
0844	Dollar	MOUNTAINS-TO-SEA TRAIL SPECIAL PLATE.	H	Re-ref Com On Finance	05-17-11	
0845	LaRoque	ANNEXATION REFORM ACT OF 2011.	*H	Pres. To Gov. 6/20/2011	05-03-11	05-11-11
0864	Crawford	MODIFY BUTNER TAX REMITTANCE.	*H	Re-ref Com On Finance	05-12-11	
0865	Steen	ELIMINATE PASSENGER RAIL FARE SUBSIDY.	H	Re-ref Com On Rules, Calendar, and Operations of the House	04-18-11	06-09-11
0867=	Starnes	REMOTE RETAILER CLICK-THROUGH STUDY.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04-21-11	06-09-11
0869	Cook	AURORA FOSSIL MUSEUM SPECIAL PLATE.	H	Re-ref Com On Finance	05-17-11	
0877	Stevens	CHECK OFF DONATION: GOVERNMENT FUNDING.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	05-23-11	06-09-11
0881	Horn	STIMULATE ECONOMY & MANUFACTURING.	H	Ref To Com On Finance	05-04-11	
0882	Crawford	REGISTER/TITLE OFF-ROAD ATVS & MOTORCYCLES.	*H	Re-ref Com On Finance	06-15-11	
(	Moffitt	INCREASE CHARITABLE CONTRIBUTION DEDUCTION.	*H	Ref To Com On Finance	05-04-11	06-14-11
0887	Moffitt	ZONING/TEMP. FAMILY HEALTH CARE STRUCTURES.	*H	Re-ref Com On Finance	06-02-11	06-09-11
0888	Folwell	SALES TAX FAIRNESS ACT.	H	Ref To Com On Finance	05-05-11	
0889	Collins	AMEND LOCKSMITH LICENSING ACT/ INCREASE FEES.	H	Ref To Com On Finance	05-05-11	
0893	Holloway	SMALL BUSINESS INCOME TAX EXEMPTION.	H	Ref To Com On Finance	05-05-11	
0895	Crawford	BUTNER FIRE & POLICE DISTRICT MODIFICATIONS.	*HR	Ch. SL 2011-260	05-05-11	06-07-11
0896	Brubaker	FACILITATE ELECTRONIC LISTING.	*HR	Ch. SL 2011-238	05-05-11	06-02-11
0899	Torbett	PARITY IN TAX PAID BY SMALL BUSINESSES.	H	Ref To Com On Finance	05-05-11	
0903	Justice	PORT ENHANCEMENT ZONES.	*H	Re-ref Com On Finance	06-03-11	
0911	LaRoque	INCREASE CRIMINAL COURT COSTS/VICTIM'S COMP.	*H	Re-ref Com On Appropriations Subcommittee on	05-05-11	06-15-11

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Bill	Introducer	Short Title	Latest Action	In Date	Out Date
			Justice and Public Safety		
	Barnhart	STATEWIDE EXPANSION OF 1915(B)/(C) WAIVER.	*HR Ch. SL 2011-264	05-31-11	05-31-11
0917	Hamilton	MODIFY LOCAL SALES TAX CITY DISTRIBUTION.	H Re-ref Com On Rules, Calendar, and Operations of the House	05-05-11	05-10-11
0921	McComas	PRECONSTRUCTION GRANT DEVELOPMENT FUND.	H Re-ref Com On Commerce and Job Development	05-05-11	05-17-11
0008	Richard Stevens	NO CAP ON NUMBER OF CHARTER SCHOOLS.	*HR Ch. SL 2011-164	03-16-11	04-07-11
0019=	Tommy Tucker	UNION FIRE FEE SUNSET REPEALED.	HR Ch. SL 2011-105	05-23-11	05-26-11
0027	Andrew C. Brock	LOCAL ANNEXATIONS SUBJECT TO 60% PETITION.	*HR Ch. SL 2011-173	06-16-11	06-16-11
0029=	Rick Gunn	TAX CERTIFICATION - ALAMANCE COUNTY.	HR Ch. SL 2011-33	03-24-11	04-07-11
0032=	Peter S. Brunste	HOSPITAL MEDICAID ASSESSMENT/PAYMENT PROGRAM.	*HR Ch. SL 2011-11	03-02-11	03-03-11
0051	Stan Bingham	CHARITABLE SOLICITATIONS/CLARIFY EXEMPTION.	HR Ch. SL 2011-27	03-15-11	03-24-11
0055=	Daniel G. Clodfe	INCREASE PROPERTY TAX APPEALS EFFICIENCY.	*HR Ch. SL 2011-1	02-21-11	02-23-11
0075	Fletcher L. Hart	PROMOTE ELECTRICITY DEMAND REDUCTION.	*HR Ch. SL 2011-55	03-21-11	04-07-11
0075	Fletcher L. Hart	PROMOTE ELECTRICITY DEMAND REDUCTION.	*HR Ch. SL 2011-55	04-13-11	04-14-11
0075	Fletcher L. Hart	TC: ELIGIBILITY: INDUS FACIL/FIX UWHARRIE COM.	*HR Ch. SL 2011-3	03-01-11	03-03-11
0094=	Fletcher L. Hart	ALLOCATION OF RENEWABLE ENERGY TAX CREDIT.	*H Re-ref Com On Finance	06-15-11	
0097=	Bob Rucho	CLARIFY REFUNDS OF TAX OVERPAYMENTS.	HR Ch. SL 2011-4	03-01-11	03-03-11
0099	Debbie A. Clary	REFORM UI TAX STRUCTURE/EXPEDITE ANALYSIS.	*HR Ch. SL 2011-10	03-01-11	03-16-11
0107	Peter S. Brunste	TAX OF IMPROVED PROP. IN ROADWAY CORRIDORS.	*HR Ch. SL 2011-30	03-28-11	03-31-11
0118	Jean Preston	DOWNTOWN SERVICE DISTRICT DEFINITION.	*H Pres. To Gov. 6/ 20/2011	05-05-11	06-07-11
0126	Harry Brown	DRIVERS LICENSE/ MILITARY ID VALIDITY.	H Ref To Com On Finance	05-12-11	
0137=	Richard Stevens	ESTABLISH FORGIVABLE LOAN FUND.	*HR Ch. SL 2011-74	04-06-11	04-26-11
0145	Stan White	SOUTHERN SHORES CANAL DREDGING/MAINTENANCE.	*HR Ch. SL 2011-108	05-19-11	06-01-11
0155=	Josh Stein	LOCAL STORMWATER UTILITY FEES.	*HR Ch. SL 2011-109	03-31-11	06-03-11
0183	Harry Brown	SELECTIVE VEGETATION	*H Ratified	06-08-11	06-09-11

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Bill	Introducer	Short Title	Latest Action	In Date	Out Date
		REMOVAL/STATE HIGHWAYS .			
(	= Rick Gunn	ALAMANCE/ORANGE 9% BOUNDARY.	HR Ch. SL 2011-87	05-18-11	05-19-11
0201=	Rick Gunn	ALAMANCE/ORANGE BOUNDARY.	*HR Ch. SL 2011-88	05-18-11	05-19-11
0227=	Ralph Hise	HAYWOOD COMMUNITY COLLEGE LEASES.	*H Re-ref Com On Finance	06-14-11	
0237	Thom Goolsby	INCORPORATE CASTLE HAYNE.	*HR Ch. SL 2011-166	06-07-11	06-14-11
0247	Fletcher L. Hart	ELIMINATE MEANS TEST FROM 529 DEDUCTION.	HR Ch. SL 2011-106	05-09-11	05-18-11
0267=	Daniel G. Clodfe	REV LAWS TECH, CLARIFY., & ADMIN. CHNGS.	*H Pres. To Gov. 6/20/2011	06-16-11	06-16-11
0269	Eleanor Kinnaird	HILLSBOROUGH OCCUPANCY TAX.	HR Ch. SL 2011-69	03-22-11	05-05-11
0281	Josh Stein	MUNICIPAL SERVICE DISTRICT/STREETS.	*HR Ch. SL 2011-72	04-05-11	04-20-11
0288	Jean Preston	ATLANTIC BEACH/BEAUFORT/PARKING.	*HR Ch. SL 2011-79	04-07-11	05-11-11
0295=	Tommy Tucker	MARSHVILLE CHARTER CONSOLIDATION.	HR Ch. SL 2011-70	04-21-11	05-05-11
0297=	Floyd B. McKissi	DURHAM/SMALL BUSINESS ENTERPRISE.	HR Ch. SL 2011-168	05-19-11	06-13-11
0309	Brent Jackson	CONSERVATION EASEMENTS STEWARDSHIP FUNDS.	HR Ch. SL 2011-209	06-07-11	06-14-11
0321=	Tom Apodaca	SURPLUS LINES/PREMIUM TAX.-AB	*HR Ch. SL 2011-120	05-18-11	06-01-11
0340=	Fletcher L. Hart	STATE HISTORIC SITES SPECIAL FUND.	*HR Ch. SL 2011-213	04-04-11	06-14-11
0343	Linda Garrou	ENCOURAGE INVEST TO RETAIN ART 3A INSTALLMENT.	H Re-ref Com On Finance	05-12-11	05-17-11
0345	Linda Garrou	ENCOURAGE INVEST TO RETAIN ART 3A INSTALLMENT.	H Re-ref Com On Finance	06-13-11	
0378	Thom Goolsby	ENERGY CROPS FOR BIOFUELS FEEDSTOCKS.	*HR Ch. SL 2011-198	05-31-11	06-09-11
0385	Fletcher L. Hart	SMALL BUSINESS ASSIST. RECORDS/TAX PAYMENTS.	*HR Ch. SL 2011-297	06-09-11	06-14-11
0407	Fletcher L. Hart	TRUSTS AND ESTATE PLANNING CHANGES.	*H Pres. To Gov. 6/20/2011	06-15-11	06-15-11
0409=	Fletcher L. Hart	GLOBAL TRANSPARK GOV. REFORM & LOAN REPAYMENT.	*H Pres. To Gov. 6/20/2011	06-13-11	06-14-11
0415	William R. Purce	ELIMINATE COST/REDUCED-PRICE SCH BREAKFAST.	*H Pres. To Gov. 6/20/2011	06-09-11	06-16-11
0426	Daniel G. Clodfe	MODIFY/CLARIFY PUBLIC FINANCE STATUTES.	*H Ref To Com On Finance	05-25-11	
0431=	Jim Davis	FONTANA DAM INCORPORATED.	HR Ch. SL 2011-110	06-01-11	06-03-11
0432	Fletcher L. Hart	REVISE PROBATE CODE.	*H Pres. To Gov. 6/20/2011	06-15-11	06-15-11

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				20/2011		
0436	Fletcher L. Hart	EXTEND SUNSETS.	*H	Pres. To Gov. 6/	06-15-11	06-16-11
	Tom Apodaca	REWRITE LANDSCAPE CONTRACTOR LAWS.	*H	Ref To Com On Finance	06-13-11	
0463	Eric Mansfield	ACCOUNTABILITY FOR TAXPAYER INVESTMENT ACT.	*H	Ref To Com On Finance	05-02-11	
0484=	Brent Jackson	REPS CREDITS AT CLEANFIELDS PARKS.	*HR	Ch. SL 2011-279	05-26-11	06-06-11
0532=	Debbie A. Clary	ESC/JOBS REFORM.	*H	Pres. To Gov. 6/	06-07-11	06-14-11
				20/2011		
0537=	Fletcher L. Hart	INCREASE IN REM FORECLOSURE FEE.	H	Pres. To Gov. 6/	05-23-11	06-15-11
				20/2011		
0556	Floyd B. McKissi	PUBLIC DISCLOSURE CHARITABLE SOLICITATIONS.	H	Pres. To Gov. 6/	06-13-11	06-16-11
				20/2011		
0572	Jim Davis	OMNIBUS COUNTY BILL.	*H	Ref To Com On Finance	06-16-11	
0581	Tom Apodaca	CLARIFY MOTOR VEHICLE LAWS.	H	Pres. To Gov. 6/	05-24-11	06-06-11
				20/2011		
0590	Don Vaughan	TERMINAL RENTAL ADJUSTMENT CLAUSES.	HR	Ch. SL 2011-223	05-24-11	06-07-11
0599=	Stan Bingham	RENDERING ACT AMENDMENTS.	*H	Ref To Com On Finance	06-13-11	
0669	Bob Atwater	DIX PROPERTY-MENTAL HEALTH TRUST FUND.	*H	Ref To Com On Finance	05-12-11	
0670	Fletcher L. Hart	REVISE MEMBERSHIP/ HEARING AID FITTERS BOARD.	*H	Pres. To Gov. 6/	06-15-11	06-15-11
				20/2011		
0682	Neal Hunt	TAX DEDUCTION FOR SHARING HEALTH CARE COSTS.	H	Ref To Com On Finance	06-16-11	
0730	Daniel G. Clodfe	TAXPAYER ACTION IF NO DOR DETERMINATION.	*H	Ref To Com On Finance	05-31-11	
0743	Thom Goolsby	ENCOURAGE VOLUNTEER HEALTH CARE PROVIDERS.	*H	Pres. To Gov. 6/	06-14-11	06-16-11
				20/2011		

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North Carolina General Assembly

House Finance Subcommittee on Occupancy Tax

Minutes

April 19, 2011

The House Finance Subcommittee on Occupancy Tax met on Tuesday, April 19, 2011 at 9:00 am in Room 425 of the Legislative Office Building. The following members were present: Chairperson McGee; and Representatives Carney, Cotham, Moffitt, and Warren. Also present were Sergeant-at-Arms Young Bae, Todd Batchelor and Reggie Sills. Staff persons present included Dan Ettefagh, Trina Griffin, and Brian Silvka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson McGee called the meeting to order at 9:00 am and recognized the two (2) pages present: (1) Alexis Barfield of New Hanover County sponsored by Representative Hamilton; and (2) Cooper Blackwell of Edgecombe County sponsored by Representative Farmer-Butterfield.

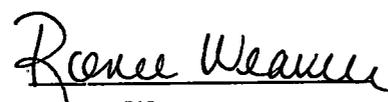
The first bill considered by the Committee was **HB 204 Edgecombe Co. Tourism Development Authority** (see **attachment 3**). The Chair recognized Representative Tolson to explain the bill. The Chair recognized Representative Cotham who moved that HB 204 be given a favorable report and be re-referred to the Finance Committee. The motion carried.

The next bill considered by the Committee was **HB 545 Amend Moore County Occupancy Tax** (see **attachment 4**). Chairperson McGee recognized Representative Boles to explain the bill. The Chair then recognized Representative Cotham who moved that HB 545 be given a favorable report and be re-referred to the Finance Committee. The motion carried.

There being no further business presently before the Committee, Chairperson McGee adjourned the meeting at 9:09 am.

Respectfully submitted,


Representative William "Bill" McGee
Presiding Chair


Renee Weaver
Clerk, Finance Committee on
Occupancy Tax

AGENDA***House Finance Subcommittee on Occupancy Tax*****Tuesday, April 19, 2011****9:00 am****Room 425 LOB****Chaired by: Representative Bill McGee**

Call to Order**Introduction of Pages****Bills:****HB 204 Edgecombe Co. Tourism Development Authority***Representative Tolson***HB 545 Amend Moore County Occupancy Tax***Representative Boles***Adjournment**

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Finance Sub-Occ. Occupancy Tax

DATE: 4-19-11 Room: 425

*Name: Alexis Barfield

County: New Hanover

Sponsor: Susi Hamilton

*Name: Cooper Blackwell

County: Edgecombe

Sponsor: Jean Farmer-Butterfield

*Name: _____

County: _____

Sponsor: _____

*Name: _____

County: _____

Sponsor: _____

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

Name: Young Bae

4. Name: _____

2. Name: Rc

5. Name: _____

3. Name: _____

6. Name: _____

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE Sub-ON OCCUPANCY JDX

DATE: 4-19-2011

Room: 425

House Sgt-At Arms:

1. Name: Young BAE

2. Name: Reggie Sills

3. Name: Todd Batchelor

4. Name: _____

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 204

Short Title: Edgecombe Co. Tourism Development Authority. (Local)

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

Referred to: Government, if favorable, Finance.

March 2, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE EDGECOMBE COUNTY TOURISM DEVELOPMENT
3 AUTHORITY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Tourism Development Authority. – (a) The Board of Commissioners
6 of Edgecombe County may by resolution create the Edgecombe County Tourism Development
7 Authority, which shall be a public authority under the Local Government Budget and Fiscal
8 Control Act. The resolution shall provide for the membership of the Authority, including the
9 members' terms of office, and for the filling of vacancies on the Authority. At least one-third of
10 the members shall be individuals who are affiliated with businesses in the county, and at least
11 one-half of the members shall be individuals who are currently active in the promotion of travel
12 and tourism in the county. The resolution shall provide that the Authority shall be composed of
13 the following nine members:

- 14 (1) An Edgecombe County Commissioner appointed by the board of
15 commissioners.
- 16 (2) A member of the Tarboro Town Council appointed by the town council.
- 17 (3) Three owners or operators of motels, hotels, or other taxable
18 accommodations in Edgecombe County, one of whom shall be appointed by
19 the Tarboro Town Council, one by the Edgecombe County Board of
20 Commissioners, and one by the Edgecombe County Chamber of Commerce.
- 21 (4) Two individuals involved in the tourist business who have demonstrated an
22 interest in tourist development and do not own or operate hotels, motels, or
23 other taxable tourist accommodations, appointed as follows: one by the
24 Tarboro Town Council and one by the Edgecombe County Board of
25 Commissioners.
- 26 (5) An individual who is interested in the tourism business, has demonstrated an
27 interest in tourism development, and is appointed by the Edgecombe County
28 Board of Commissioners.
- 29 (6) An individual who is interested in the tourism business, has demonstrated an
30 interest in tourism development, and is appointed by the Tarboro Town
31 Council.

32 The Edgecombe County Board of Commissioners shall designate one member of the Authority
33 as chair and shall determine the compensation, if any, to be paid to members of the Authority.



1 The Authority shall meet at the call of the chair and shall adopt rules of procedure to
2 govern its meetings. The Finance Officer for Edgecombe County shall be the ex officio finance
3 officer of the Authority.

4 **SECTION 1.(b) Duties.** – The Authority shall promote travel, tourism, and
5 conventions in the county, sponsor tourist-related events and activities in the county, and
6 finance tourist-related capital projects in the county.

7 **SECTION 1.(c) Reports.** – The Authority shall report quarterly and at the close of
8 the fiscal year to the board of county commissioners on its receipts and expenditures for the
9 preceding quarter and for the year in such detail as the board may require.

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

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: April 18, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 204: Edgecombe Co. Tourism Development Authority

2011-2012 General Assembly

Committee:	House Finance Subcommittee on Occupancy Tax	Date:	April 19, 2011
Introduced by:	Rep. Tolson	Prepared by:	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 204 authorizes the creation of the Edgecombe County Tourism Development Authority to promote travel, tourism, and conventions; sponsor tourist-related events and activities; and finance tourist-related capital projects within the county.*

BILL ANALYSIS: House Bill 204 would authorize the Edgecombe County Board of Commissioners to create the Edgecombe County Tourism Development Authority for the purposes outlined above. The resolution creating the Authority must designate one member as chair and determine the compensation, if any, to be paid to Authority members. The Authority will meet at the call of the chair, adopt rules to govern meetings, will be a public authority under the Local Government Budget and Fiscal Control Act (Article 3, Chapter 159), and the Edgecombe County Finance Officer will serve as the ex officio finance officer of the Authority. The resolution creating the Edgecombe County Tourism Development Authority must specify terms of office, filling of vacancies, and the following nine member composition:

- One member that is an Edgecombe County Commissioner (appointed by the board of commissioners).
- One member of the Tarboro Town Council (appointed by the town council).
- Three members that are owners or operators of motels, hotels, or other taxable accommodations in Edgecombe County (one appointed by the Tarboro Town Council, one by the Edgecombe County Board of Commissioners, and one by the Edgecombe County Chamber of Commerce).
- Two members that are involved in the tourist business, have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations (one appointed by the Tarboro Town Council and one by the Edgecombe County Board of Commissioners).
- One member interested in the tourism business that has demonstrated an interest in tourism development (appointed by the Edgecombe County Board of Commissioners).
- One member interested in the tourism business that has demonstrated an interest in tourism development (appointed by the Tarboro Town Council).

At least one-third of the members must be individuals affiliated with businesses in the county and at least one-half of the members must be currently active in the promotion of travel and tourism in the county.

The Authority must report to the board of county commissioners on a quarterly basis and at the close of the fiscal year. The reports must include receipts and expenditures for the preceding quarter and the year in the detail prescribed by the board.

EFFECTIVE DATE: This bill would become effective when it becomes law

BACKGROUND: Approximately $\frac{3}{4}$ of the counties in NC have Tourism Development Authorities or a tourism initiative run by a government entity or by some other entity. Approximately $\frac{1}{4}$ of the counties, including Edgecombe, do not have an officially designated tourism development entity.

The Edgecombe County Sustainable Tourism Plan (2008) recommended creation of a Tourism Development Authority. Edgecombe County is not currently authorized to levy an occupancy tax.

Theresa Matula, analyst for House Government, substantially contributed to this summary.

H204-SMSV-24(e1) v1



HOUSE BILL 545: Amend Moore County Occupancy Tax

2011-2012 General Assembly

Committee:	House Finance Subcommittee on Occupancy Tax	Date:	April 19, 2011
Introduced by:	Rep. Boles	Prepared by:	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 545 recodifies the previously authorized Moore County Occupancy Tax to make it consistent with the current House Finance Occupancy Tax Guidelines. This change would allow the county to use up to one-third of the net proceeds for tourism-related expenditures.*

CURRENT LAW: In 1987, the General Assembly authorized Moore County to levy a room occupancy tax of 3% of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp or other similar place within the county that is subject to the sales tax imposed under G.S. 105-164. The net proceeds must be remitted to the county Tourism Development Authority and must be used to further the development of travel and tourism through advertising and promotion.

The Moore County Tourism Development Authority is made up of 9 members:

- A county commissioner.
- 5 hotel operators, 2 of which operate the largest hotels by rental unit count.
- The Executive Vice President of the Sandhills Area Chamber of Commerce.
- 2 individuals interested in the tourist business but who do not operate a hotel.

BILL ANALYSIS: House Bill 545 recodifies the existing law authorizing a room occupancy tax in Moore County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," "promote travel and tourism" and "tourism-related expenditures". The bill also makes the Moore County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

By conforming to the House Finance occupancy tax guidelines, Moore County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

EFFECTIVE DATE: House Bill 545 would become effective when it becomes law.

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

H545-SMSV-23(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 545

Short Title: Amend Moore County Occupancy Tax. (Local)

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

Referred to: Government, if favorable, Finance.

March 31, 2011

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A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MOORE COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 188 of the 1987 Session Laws, as amended by S.L. 2007-527, is rewritten and recodified as Sections 2 and 3 of this act. This act does not affect the rights or liabilities of the county, a taxpayer, or another person arising under the law rewritten and recodified by this act before the effective date of this act, nor does it affect the right to any refund or credit of a tax that accrued under the law rewritten and recodified by this act before the effective date of this act.

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

SECTION 2.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

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

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Moore County Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the



1 county or to attract tourists or business travelers to the county. The term
2 includes tourism-related capital expenditures.

3 **SECTION 2.(d)** Distribution and Use of Tax Revenue. – Moore County shall, on a
4 quarterly basis, remit to the Moore County Tourism Development Authority the net proceeds of
5 the occupancy tax. The Authority shall use at least two-thirds of the funds remitted to it under
6 this subsection to promote travel and tourism in Moore County and shall use the remainder for
7 tourism-related expenditures.

8 **SECTION 3.** Tourism Development Authority. – (a) Appointment and
9 Membership. – When the Board of Commissioners adopts a resolution levying a room
10 occupancy tax under this act, it shall also adopt a resolution creating the Moore County
11 Tourism Development Authority, which shall be a public authority under the Local
12 Government Budget and Fiscal Control Act and shall be composed of the following members:

- 13 (1) A county commissioner appointed by the Board of County Commissioners.
- 14 (2) Five owners or operators of hotels, motels, or other taxable tourist
15 accommodations, two of which own or operate the largest hotels, motels, or
16 other accommodations in the county by rental unit count and three of which
17 own or operate other hotels, motels, or other accommodations by rental unit
18 count, who shall be appointed by the Board of County Commissioners,
- 19 (3) The Executive Vice-President of the Sandhills Area Chamber of Commerce.
- 20 (4) Two individuals interested in the tourist business who have demonstrated an
21 interest in tourist development but do not own or operate a hotel, motel, or
22 other taxable tourist accommodation, who shall be appointed by the Board of
23 County Commissioners.

24 All members of the Authority shall serve without compensation. Vacancies in the
25 Authority shall be filled in the same manner as the initial appointments. Members appointed to
26 fill vacancies shall serve for the remainder of the unexpired term for which they are appointed
27 to fill. Members shall serve terms as provided in the rules of procedure and bylaws of the
28 Authority.

29 The Board of Commissioners shall designate one member of the Authority as chair.
30 The Authority shall meet at the call of the chair and shall adopt rules of procedure and bylaws
31 to govern its meetings. The Finance Officer for Moore County shall be the ex officio finance
32 officer of the Authority.

33 **SECTION 3.(b)** Duties. – The Authority shall expend the net proceeds of the tax
34 levied under this act for the purposes provided in Section 2 of this act. The Authority shall
35 promote travel, tourism, and conventions in the county, sponsor tourist-related events and
36 activities in the county, and finance tourist-related capital projects in the county.

37 **SECTION 3.(c)** Reports. – The Authority shall report quarterly and at the close of
38 the fiscal year to the Moore County Board of Commissioners on its receipts and expenditures
39 for the preceding quarter and for the year in such detail as the Board of Commissioners may
40 require.

41 **SECTION 4.** Administrative provisions. – G.S. 153A-155(g) reads as rewritten:

42 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
43 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
44 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
45 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
46 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
47 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell,
48 Montgomery, Moore, Nash, New Hanover, New Hanover County District U, Northampton,
49 Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan,
50 Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson
51 Counties, to Surry County District S, to Watauga County District U, to Wilkes County District

1 K, to Yadkin County District Y, and to the Township of Averagesboro in Harnett County and the
2 Ocracoke Township Taxing District."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 545 (First Edition)

SHORT TITLE: Amend Moore County Occupancy Tax.

SPONSOR(S): Representative Boles

FISCAL IMPACT					
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	**No Fiscal Impact**				
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Moore County				
EFFECTIVE DATE:	This act is effective when it becomes law				

BILL SUMMARY:

House Bill 545 recodifies the existing law authorizing a room occupancy tax in Moore County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," promote travel and tourism" and tourism-related expenditures". The bill also makes the Moore County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

By conforming to the House Finance occupancy tax guidelines, Moore County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

ASSUMPTIONS AND METHODOLOGY:

There is no fiscal impact due to these changes.

SOURCES OF DATA: Committee Counsel's Bill Summary

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: April 19, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 545: Amend Moore County Occupancy Tax

2011-2012 General Assembly

Committee:	House Finance Subcommittee on Occupancy Tax	Date:	April 19, 2011
Introduced by:	Rep. Boles	Prepared by:	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 545 recodifies the previously authorized Moore County Occupancy Tax to make it consistent with the current House Finance Occupancy Tax Guidelines. This change would allow the county to use up to one-third of the net proceeds for tourism-related expenditures.*

CURRENT LAW: In 1987, the General Assembly authorized Moore County to levy a room occupancy tax of 3% of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp or other similar place within the county that is subject to the sales tax imposed under G.S. 105-164. The net proceeds must be remitted to the county Tourism Development Authority and must be used to further the development of travel and tourism through advertising and promotion.

The Moore County Tourism Development Authority is made up of 9 members:

- A county commissioner.
- 5 hotel operators, 2 of which operate the largest hotels by rental unit count.
- The Executive Vice President of the Sandhills Area Chamber of Commerce.
- 2 individuals interested in the tourist business but who do not operate a hotel.

BILL ANALYSIS: House Bill 545 recodifies the existing law authorizing a room occupancy tax in Moore County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," "promote travel and tourism" and "tourism-related expenditures". The bill also makes the Moore County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

By conforming to the House Finance occupancy tax guidelines, Moore County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

EFFECTIVE DATE: House Bill 545 would become effective when it becomes law.

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

H545-SMSV-23(e1) v1



North Carolina General Assembly

House Finance Subcommittee on Occupancy Tax

Minutes

April 27, 2011

The House Finance Subcommittee on Occupancy Tax met on Wednesday, April 26, 2011 at 9:00 am in Room 425 of the Legislative Office Building. The following members were present: Chairperson McGee; and Representatives Carney, Moffitt, and Warren. Also present were Sergeant-at-Arms Wayne Davis and Bill MacRae. Staff persons present included Trina Griffin and Brian Slivka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson McGee called the meeting to order at 9:11 am.

The first bill considered by the Committee was **SB 269 Hillsborough Occupancy Tax** (see **attachment 3**). The Chair recognized Senator Kinnaird to explain the bill. The Chair recognized Representative Carney who moved that SB 269 be given a favorable report and be re-referred to the Finance Committee. The motion carried.

The next bill considered by the Committee was **HB 518 Authorize Add'l Person County Occupancy Tax** (see **attachment 4**). The Chair recognized Representative Moffitt who made a motion to adopt the proposed committee substitute for purposes of discussion. The motion carried. Chairperson McGee recognized Representative Wilkins to explain the bill. The Chair then recognized Representative Carney who moved that HB 518 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill and be re-referred to the Finance Committee. The motion carried.

HB 414 Amend Rutherford County Occupancy Tax was the next bill heard by the Committee (see **attachment 5**). The Chair recognized Representative Hager to explain the bill. Chairperson McGee then recognized Representative Moffitt who moved for a favorable report and be re-referred to the Finance Committee. The motion carried.

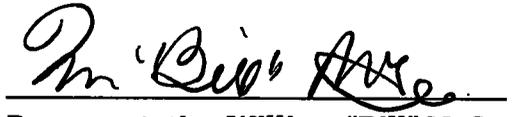
The next bill considered by the Committee was **HB 469 Additional Lumberton Occupancy** (see **attachment 6**). Chairperson McGee recognized Representative Carney who moved to adopt the proposed committee substitute for the purpose of discussion. The Chair recognized Representatives Graham and Pierce to explain the bill. Representative Carney was then

recognized and she moved that HB 469 be given a favorable report as to the proposed committee substitute, unfavorable to the original bill and be re-referred to the Finance Committee . The motion carried.

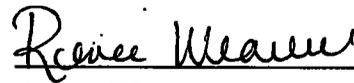
The last bill to be considered by the Committee was **HB 96 Additional Alleghany Occupancy Tax** (see attachment 7). The Chair recognized staff member Trina Griffin of the Research Division to explain the bill. Chairperson McGee then recognized Representative Warren who moved that HB 96 be given a favorable report to a proposed committee substitute that would add a provision setting up a Tourism Development Authority, unfavorable report to the original bill and be re-referred to the Finance Committee. The motion carried.

There being no further business presently before the Committee, Chairperson McGee adjourned the meeting at 9:37 am.

Respectfully submitted,



Representative William "Bill" McGee
Presiding Chair



Renee Weaver
Clerk, Finance Committee on
Occupancy Tax

AGENDA

#1

House Finance Subcommittee on Occupancy Tax

Wednesday, April 27, 2011

9:00 am

Room 425 LOB

Chaired by: Representative Bill McGee

Call to Order

Introduction of Pages

Bills:

HB 96 Additional Alleghany Occupancy Tax

Representative Stevens

HB 414 Amend Rutherford County Occupancy Tax

Representative Hager

HB 469 Additional Lumberton Occupancy Tax

Representatives Graham, Pierce, Pridgen

HB 518 Authorize Add'l Person County Occupancy Tax

Representative Wilkins

SB 269 Hillsborough Occupancy Tax

Senator Kinnaird

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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1

SENATE BILL 269

Short Title: Hillsborough Occupancy Tax. (Local)

Sponsors: Senator Kinnaird.

Referred to: Finance.

March 9, 2011

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1.1. Occupancy tax. – (a) Authorization and Scope. – The Town Board of the Town of Hillsborough may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Hillsborough shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Hillsborough Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Hillsborough and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Hillsborough Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.



1 **SECTION 1.2.** Tourism Development Authority. – (a) Appointment and
2 Membership. – When the Town Board adopts a resolution levying a room occupancy tax under
3 this act, it shall also adopt a resolution creating the Hillsborough Tourism Development
4 Authority, which shall be a public authority under the Local Government Budget and Fiscal
5 Control Act. The resolution shall provide for the membership of the Authority, including the
6 members' terms of office, and for the filling of vacancies on the Authority. At least one-third
7 of the members shall be individuals who are affiliated with businesses that collect the tax in the
8 town, and at least one-half of the members shall be individuals who are currently active in the
9 promotion of the travel and tourism in the town. The Town Board shall designate one member
10 of the Authority as chair and shall determine the compensation, if any, to be paid to members
11 of the Authority. The Authority shall meet at the call of the chair and shall adopt rules of
12 procedure to govern its meetings. The finance officer for the Town of Hillsborough shall be the
13 ex officio finance officer of the Authority.

14 **SECTION 1.2.(b)** Duties. – The Tourism Development Authority shall expend the
15 net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.
16 The Authority shall promote travel, tourism, and conventions in the town, sponsor
17 tourist-related events and activities in the town, and finance tourist-related capital projects in
18 the town.

19 **SECTION 1.2.(c)** Reports. – The Tourism Development Authority shall report
20 quarterly and at the close of each fiscal year to the Hillsborough Town Board on its receipts
21 and expenditures for the preceding quarter and for the year in such detail as the Town Board
22 may require.

23 **SECTION 2.** G.S. 160A-215(g) reads as rewritten:

24 "(g) Applicability. – Subsection (c) of this section applies to all cities that levy an
25 occupancy tax. To the extent subsection (c) conflicts with any provision of a local act,
26 subsection (c) supersedes that provision. The remainder of this section applies only to Beech
27 Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia,
28 Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir,
29 Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville,
30 Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of
31 Ahoskie, Beech Mountain, Benson, Bermuda Run, Blowing Rock, Boiling Springs, Boone,
32 Burgaw, Carolina Beach, Carrboro, Cooleemee, Cramerton, Dallas, Dobson, Elkin, Franklin,
33 Hillsborough, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mocksville, Mooresville,
34 Murfreesboro, North Topsail Beach, Pembroke, Pilot Mountain, Ranlo, Selma, Smithfield, St.
35 Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and
36 Yanceyville, and to the municipalities in Avery and Brunswick Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 269 (First Edition)

SHORT TITLE: Hillsborough Occupancy Tax.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES

Town of Hillsborough \$46,385 \$49,327 \$52,164 \$54,371 \$56,230

EXPENDITURES

POSITIONS (cumulative):

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

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

BILL SUMMARY:

Senate Bill 269 authorizes the Town Board of the Town of Hillsborough to levy a room occupancy tax of up to 3%. It provides that the tax must be levied, administered, collected, and repealed as provided in GS 160A-215 (uniform provisions for room occupancy taxes). The bill requires the Hillsborough Tourism Development Authority (TDA) to use at least two-thirds of the occupancy tax proceeds to promote travel and tourism in the town and the remainder for tourism-related expenditures. It mandates that at least one-third of the members of the TDA be affiliated with businesses that collect the tax in the town, and at least one-half of the members be currently active in the town's travel and tourism promotion. Senate Bill 269 makes conforming change to GS 160A-215(g).

ASSUMPTIONS AND METHODOLOGY:

The Town of Hillsborough currently has 208 rooms that would be subject to the proposed 3% local room occupancy tax. According to the town, Orange County estimates that approximately \$50,000 from the current 3% county occupancy tax is derived from hotel rooms in Hillsborough.

Orange County reported \$935,220 in occupancy tax collections for taxable year 2009. Chapel Hill, the only municipality in Orange County that currently levies a room occupancy tax, reported \$891,857 for collections during that same year. Both Orange County and Chapel Hill levy a 3% occupancy tax. It's assumed that the \$43,363 difference was collected from hotels in the town of Hillsborough. This amount was then grown using the leisure and hospitality portion of North Carolina's gross state product as projected by Moody's Economy.com.

SOURCES OF DATA:

Moody's Economy.com; North Carolina Department of State Treasurer; Town of Hillsborough

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 14, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 269: Hillsborough Occupancy Tax

2011-2012 General Assembly

Committee:	House Finance Subcommittee on Occupancy Tax	Date:	April 27, 2011
Introduced by:	Sen. Kinnaird	Prepared by:	Trina Griffin Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 269 authorizes the Town of Hillsborough, located in Orange County, to levy a 3% room occupancy tax. At least two-thirds of the proceeds would be used to promote travel and tourism and the remainder would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

CURRENT LAW: Currently, the Town of Hillsborough does not have authority to levy a room occupancy tax. Orange County has had authority to levy a room occupancy tax of up to 3% since 1991.¹ The other municipalities in Orange County, Carrboro and Chapel Hill, have had authority to levy a room occupancy tax of up to 3% since 2001 and 1987 respectively.²

BILL ANALYSIS: Senate Bill 269 authorizes the Town of Hillsborough to levy a room occupancy tax of up to three percent (3%). Once levied, the total occupancy tax rate for the town would be up to six percent (6%) when the county tax is included. The proceeds of the tax levied by the town must be remitted to a Tourism Development Authority (TDA), to be created by the town's governing body when the tax is first levied. The TDA must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines recognized by the House Finance Committee and set out in the chart below.

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

EFFECTIVE DATE: Senate Bill 269 is effective when it becomes law.

¹ S.L. 1991-392. Orange County's occupancy tax does not conform to the occupancy tax guidelines.

² S.L. 2001-439 and S.L. 1987-460. Chapel Hill's occupancy tax does not conform to the occupancy tax guidelines; Carrboro's occupancy tax does conform to the guidelines.

Senate Bill 269

Page 2

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,³ which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes that scrutinizes occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

Cindy Avrette, counsel to Senate Finance, substantially contributed to this summary.

S269-SMSV-29(e1) v2

³ G.S. 153A-155 and G.S. 160A-215.
Research Division

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 518
PROPOSED COMMITTEE SUBSTITUTE H518-CSSVx-8 [v.1]

4/26/2011 8:15:28 PM

Short Title: Authorize Add'l Person County Occupancy Tax. (Local)

Sponsors:

Referred to:

March 30, 2011

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A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN ADDITIONAL ONE PERCENT OCCUPANCY TAX FOR PERSON COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 14 of S.L. 1997-364 reads as rewritten:

"Section 14. Person County occupancy tax. (a) Authorization and scope. — The Person County Board of Commissioners may levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).

This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a) Authorization of Additional Tax. — In addition to the tax authorized by subsection (a) of this section, the Person County Board of Commissioners may levy an additional room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Person County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. — Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. — Person County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Person Tourism Development Authority. ~~Of the net proceeds that accrue during the first four years that a tax is levied under this section, the Authority may use up to two thirds only for the following tourism related expenditures: (i) constructing or operating the Person County Historical Museum, (ii) developing Lake Mayo for fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the lake from outside the county, and (iii) supporting the May Festival and other festivals designed to attract tourists from outside the county. The Authority shall use the remaining net proceeds that accrue during the first four years that a tax is levied under this section only to promote travel and tourism in Person County.~~



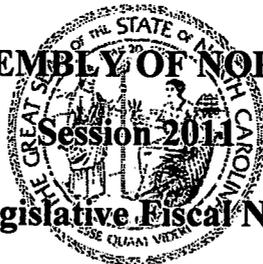
1 ~~Of the net proceeds that accrue after this four year period, the~~ The Authority shall use at
2 least two-thirds of the funds remitted to it under this subsection to promote travel and tourism
3 in Person County and shall use the remainder for tourism-related expenditures.

4 The following definitions apply in this subsection:

- 5 (1) Net proceeds. – Gross proceeds less the cost to the county of administering
6 and collecting the tax, as determined by the finance officer, not to exceed
7 three percent (3%) of the gross proceeds.
- 8 (2) Promote travel and tourism. – To advertise or market an area or activity,
9 publish and distribute pamphlets and other materials, conduct market
10 research, or engage in similar promotional activities that attract tourists or
11 business travelers to the area; the term includes administrative expenses
12 incurred by the Authority in engaging in the listed activities.
- 13 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
14 Authority, are designed to increase the use of lodging facilities, meeting
15 facilities, and convention facilities in a county or to attract tourists or
16 business travelers to the county. The term includes tourism-related capital
17 expenditures."

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

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 518 (First Edition)

SHORT TITLE: Authorize Add'l Person County Occupancy Tax.

SPONSOR(S): Representative Wilkins

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	\$33,446	\$35,637	\$37,659	\$39,245	\$40,579
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Person County					
EFFECTIVE DATE: This act is effective when it becomes law					

BILL SUMMARY:

House Bill 518 amends Section 14 of SL 1997-364 to allow Person County to levy an additional room occupancy tax of up to (1%) one percent of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to the state's sales tax under GS 105-164.4(a)(3). It prohibits Person County from levying the additional tax unless it levies the (5%) five percent occupancy tax previously authorized. The bill specifies that proceeds from the additional (1%) one percent tax are earmarked for operating the Person County Museum of History.

ASSUMPTIONS AND METHODOLOGY:

Person County currently collects a (5%) five percent room occupancy tax. According to the North Carolina Department of State Treasurer, the county collected \$152,669 in occupancy tax revenue for Tax Year 2010. Assuming that an additional (1%) one percent would generate (1/5) one-fifth of current collections, and forecasting based on the leisure and hospitality portion of North Carolina Gross State Product, it's estimated that an additional (1%) one percent occupancy tax would yield Person County \$33,446 in FY11-12.

SOURCES OF DATA: North Carolina Department of State Treasurer; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: April 26, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 518: Authorize Add'l Person County Occupancy Tax

2011-2012 General Assembly

Committee:	House Finance Subcommittee on Occupancy Tax	Date:	April 27, 2011
Introduced by:	Rep. Wilkins	Prepared by:	Trina Griffin
Analysis of:	PCS to First Edition H518-CSSVx-8		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 518 would authorize Person County to levy an additional 1% room occupancy tax, and it deletes unnecessary language relating to how the proceeds of the existing 5% tax were to be spent during the first four years of levy.*

CURRENT LAW: In 1997, the General Assembly authorized Person County to levy a room occupancy tax of up to 5%. The net proceeds are required to be distributed to the Person County Tourism Development Authority. The legislation provided that during the first four years of levy, the net proceeds were to be used as follows:

- Up to 2/3 may be used only for the following tourism-related expenditures:
 - Constructing or operating the Person County Museum of History.
 - Developing Lake Mayo for fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the lake from outside the county.
 - Supporting the May Festival and other festivals designed to attract tourists from outside the county.
- The remainder must be used to promote travel and tourism in Person County.

After the first four years, at least two-thirds of the funds must be used for tourism promotion and the remainder for tourism-related expenditures.

BILL ANALYSIS: The PCS would authorize Person County to levy an additional 1% room occupancy tax. It also deletes language referring to the use of the proceeds during the first four years of the levy of the existing 5% tax since that time period has expired. The net proceeds of the additional 1% would be used in the same manner as the existing 5%, which is in accordance with the House Finance guidelines for occupancy tax: at least two-thirds for tourism promotion and the remainder for tourism-related expenditures.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,¹ which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements

¹ G.S. 153A-155 and G.S. 160A-215.
Research Division

House PCS 518

Page 2

adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term “net proceeds”, “promote travel and tourism”, and “tourism related expenditures” are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H518-SMSV-31(CSSVx-8) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

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HOUSE BILL 414

Short Title: Amend Rutherford County Occupancy Tax. (Local)

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

Referred to: Government, if favorable, Finance.

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RUTHERFORD COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 5 and 6 of Chapter 577 of the 1991 Session Laws, as amended by S.L. 2007-527, are rewritten and recodified as Sections 2 and 3 of this act. This act does not affect the rights or liabilities of the county, a taxpayer, or another person arising under the law rewritten and recodified by this act before the effective date of this act, nor does it affect the right to any refund or credit of a tax that accrued under the law rewritten and recodified by this act before the effective date of this act.

SECTION 2. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of Rutherford County may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

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

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Rutherford County Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention



1 facilities in the county or to attract tourists or business travelers to the
2 county. The term includes tourism-related capital expenditures.

3 **SECTION 2.(d)** Distribution and Use of Tax Revenue. – Rutherford County shall,
4 on a quarterly basis, remit to the Rutherford County Tourism Development Authority the net
5 proceeds of the occupancy tax. Alternatively, Rutherford County may, at the request and on
6 behalf of the Authority, establish a separate fund to account for the management of all receipts
7 and disbursements of the Authority. In addition to the management of this separate fund, the
8 county may also provide services, including, but not limited to, finance, human resources,
9 legal, and information technology. Service fees will be assessed by the county for the indirect
10 costs related to these services. The Authority shall use at least two-thirds of the funds remitted
11 to it under this subsection to promote travel and tourism in Rutherford County and shall use the
12 remainder for tourism-related expenditures.

13 **SECTION 3.** Tourism Development Authority. – (a) Appointment and
14 Membership. – When the Board of Commissioners adopts a resolution levying a room
15 occupancy tax under this act, it shall also adopt a resolution creating the Rutherford County
16 Tourism Development Authority, which shall be a public authority under the Local
17 Government Budget and Fiscal Control Act. The resolution adopted by the Board of
18 Commissioners shall provide for the membership of the Authority, including the members'
19 terms of office, and for the filling of vacancies on the Authority. At least one-third of the
20 members shall be individuals who are affiliated with businesses that collect the tax in the
21 county, and at least one-half of the members shall be individuals who are currently active in the
22 promotion of travel and tourism in the county. The Board of Commissioners shall designate
23 one member of the Authority as chair and shall determine the compensation, if any, to be paid
24 to members of the Authority.

25 The Authority shall meet at the call of the chair and shall adopt rules of procedure to
26 govern its meetings. The Finance Officer for Rutherford County shall be the ex officio finance
27 officer of the Authority.

28 **SECTION 3.(b)** Duties. – The Authority shall expend the net proceeds of the tax
29 levied under this act for the purposes provided in Section 2 of this act. The Authority shall
30 promote travel, tourism, and conventions in the county, sponsor tourist-related events and
31 activities in the county, and finance tourist-related capital projects in the county.

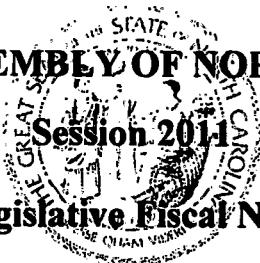
32 **SECTION 3.(c)** Reports. – The Authority shall report quarterly and at the close of
33 the fiscal year to the Rutherford County Board of Commissioners on its receipts and
34 expenditures for the preceding quarter and for the year in such detail as the Board of
35 Commissioners may require.

36 **SECTION 4.** Administrative provisions. – G.S. 153A-155(g) reads as rewritten:

37 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
38 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
39 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
40 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
41 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
42 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell,
43 Montgomery, Nash, New Hanover, New Hanover County District U, Northampton,
44 Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan,
45 Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and
46 Wilson Counties, to Surry County District S, to Watauga County District U, to Wilkes County
47 District K, to Yadkin County District Y, and to the Township of Averagesboro in Harnett County
48 and the Ocracoke Township Taxing District."

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

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 414 (First Edition)

SHORT TITLE: Amend Rutherford County Occupancy Tax.

SPONSOR(S): Representative Hager

FISCAL IMPACT					
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	**No Fiscal Impact**				
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Rutherford County				
EFFECTIVE DATE:	This act is effective when it becomes law.				

BILL SUMMARY:

House Bill 414 recodifies the existing law authorizing a room occupancy tax in Rutherford County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," promote travel and tourism" and "tourism-related expenditures". The bill also makes the Rutherford County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

By conforming to the House Finance occupancy tax guidelines, Rutherford County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

ASSUMPTIONS AND METHODOLOGY:

There is no fiscal impact due to these changes.

SOURCES OF DATA: Committee Counsel

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

**Lynn Muchmore, Director
Fiscal Research Division**

DATE: April 26, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 414: Amend Rutherford County Occupancy Tax

2011-2012 General Assembly

Committee:	House Finance Subcommittee on Occupancy Tax	Date:	April 27, 2011
Introduced by:	Rep. Hager	Prepared by:	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 414 recodifies the previously authorized Rutherford County occupancy tax to make it more uniform with current occupancy tax guidelines. By doing so, Rutherford County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.*

The bill would also allow the county, upon request of the TDA, to manage the TDA's receipts and disbursements and provide other related services. The county could charge service fees for the indirect costs related to these services.

CURRENT LAW: In 1991, the General Assembly authorized Rutherford County to levy an occupancy tax of up to 6%. The county must remit the net proceeds to the Rutherford Tourism Development Authority, and the net proceeds must be used only to promote travel, tourism, retirement, and conventions in the county.

BILL ANALYSIS: House Bill 414 would recodify the existing law authorizing a room occupancy tax in Rutherford County to more closely conform to the uniform guidelines currently used for occupancy taxes. The tax rate would remain the same. By conforming to the guidelines, Rutherford County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law. The bill also makes the Rutherford County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

The bill would also allow Rutherford County, at the request of the TDA, to establish a separate fund to account for the management of all receipts and disbursements of the TDA rather than remitting the proceeds directly to the TDA. In addition to management of the separate fund, the county may provide finance, human resources, legal, information technology and other services. The county would be authorized to assess service fees for the indirect costs related to these services.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,¹ which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the

¹ G.S. 153A-155 and G.S. 160A-215.
Research Division

House Bill 414

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legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term “net proceeds”, “promote travel and tourism”, and “tourism related expenditures” are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H414-SMSV-30(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 469
PROPOSED COMMITTEE SUBSTITUTE H469-CSSVx-9 [v.1]

4/26/2011 9:24:50 PM

Short Title: Addl. Lumberton & St. Pauls Occup. Tax. (Local)

Sponsors:

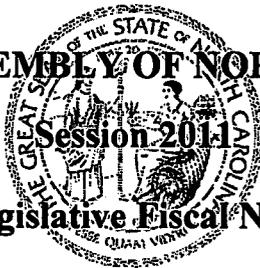
Referred to:

March 28, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE AUTHORIZATION TO LEVY AN OCCUPANCY TAX IN
3 THE CITY OF LUMBERTON AND THE TOWN OF ST. PAULS.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. Section 2 of S.L. 1997-361, as amended by S.L. 2007-332, is
6 amended by adding a new subsection to read:
7 "(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection
8 (a) of this section, the Lumberton City Council may levy an additional room occupancy tax of
9 up to three percent (3%) of the gross receipts derived from the rental of accommodations
10 taxable under subsection (a) of this section. The levy, collection, administration, and repeal of
11 the tax authorized by this subsection shall be in accordance with the provisions of this section.
12 The City of Lumberton may not levy a tax under this subsection unless it also levies the tax
13 authorized under subsection (a) of this section."
14 SECTION 2. Section 1 of S.L. 1998-112, as amended by S.L. 2006-34, is amended
15 by adding a new subsection to read:
16 "(a2) Authorization of Second Additional Tax. – In addition to the tax authorized by
17 subsections (a) and (a1) of this section, the board of commissioners of the Town of St. Pauls
18 may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts
19 derived from the rental of accommodations taxable under this section. The levy, collection,
20 administration, use, and repeal of the tax authorized by this subsection shall be in accordance
21 with the provisions of this section. St. Pauls may not levy a tax under this subsection unless it
22 also levies the tax authorized under subsections (a) and (a1) of this section."
23 SECTION 3. This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 469 (First Edition)

SHORT TITLE: Additional Lumberton Occupancy Tax.

SPONSOR(S): Representatives Pierce, Graham, and Pridgen

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	\$479,896	\$ 511,344	\$ 540,352	\$ 563,104	\$ 582,252
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Lumberton					
EFFECTIVE DATE: This act is effective when it becomes law.					

BILL SUMMARY:

House Bill 469 amends Section 2 of Part IX of SL 1983-908, as amended, to authorize the Lumberton City Council to levy an additional room occupancy tax of up to (3%) three percent, as specified. The city may not levy the tax under subsection (a1) unless it also levies the (3%) three percent occupancy tax authorized under subsection (a) of this section.

ASSUMPTIONS AND METHODOLOGY:

The City of Lumberton currently levies a (3%) three percent room occupancy tax. House Bill 469 would allow the city to levy an additional (3%) three percent room occupancy tax. According to the North Carolina Department of State Treasurer, the City of Lumberton collected \$441,368 in occupancy tax revenues for Tax Year 2010. Assuming that doubling the tax rate would double the amount of occupancy tax collected, and growing by the leisure and hospitality portion of North Carolina's Gross State Product, it's estimated that an additional (3%) three percent occupancy tax would yield \$479,896 for FY11-12.

SOURCES OF DATA: North Carolina Department of State Treasurer; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: April 26, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



PCS FOR HOUSE BILL 469: Add'l. Lumberton & St. Pauls Occupancy Tax

2011-2012 General Assembly

Committee:	House Finance Subcommittee on Occupancy Tax	Date:	April 27, 2011
Introduced by:	Reps. Graham, Pierce, Pridgen	Prepared by:	Trina Griffin
Analysis of:	PCS to First Edition H469-CSSVx-9		Committee Counsel

SUMMARY: *House Bill 469 authorizes the City of Lumberton to levy an additional 3% occupancy tax. The Proposed Committee Substitute adds a provision that would authorize the Town of St. Pauls to levy an additional 3% occupancy tax. The provisions of both existing local acts conform to the guidelines adopted by the House Finance Committee.*

CURRENT LAW: The City of Lumberton, which is located in Robeson County, is currently authorized to levy a room occupancy tax of up to 3%. Robeson County does not have authority to levy a room occupancy tax. In 1997, the City obtained temporary authorization to levy an additional 3%, which expired on August 1, 2000. The proceeds of the existing tax must be remitted to a Tourism Development Authority, which must use at least two-thirds of the proceeds for tourism promotion and the remainder for tourism-related expenditures. The current local act conforms to the occupancy tax guidelines.

In 1998 and 2006, the General Assembly authorized the Town of St. Pauls to levy a 1% room occupancy tax and a 2% room occupancy tax, respectively. The town is located in Robeson County, which does not have authority to levy a room occupancy tax. Therefore, the current total occupancy tax rate in the town is 3%. The proceeds are remitted to the St. Pauls Tourism Development Authority, which is required to spend at least two-thirds of the proceeds on tourism promotion and the remainder on tourism-related expenditures.

BILL ANALYSIS: Section 1 of the PCS would authorize the City of Lumberton to levy an additional 3% occupancy tax to be used in the same manner as the existing 3% occupancy tax.

Section 2 of the PCS would authorize the Town of St. Pauls to levy an additional 3% occupancy tax to be used in the same manner as the existing 3% occupancy tax.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,¹ which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a

¹ G.S. 153A-155 and G.S. 160A-215.

House PCS 469

Page 2

Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term “net proceeds”, “promote travel and tourism”, and “tourism related expenditures” are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H469-SMSV-32(CSSVx-9) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 96

Short Title: Additional Alleghany Occupancy Tax. (Local)

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

Referred to: Government, if favorable, Finance.

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ALLEGHANY COUNTY TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

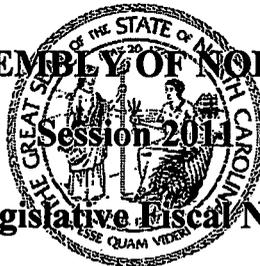
SECTION 1. Chapter 162 of the 1991 Session Laws, as amended by S.L. 2004-106, is amended by adding a new subsection to read:

"(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Alleghany County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Alleghany County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section."

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



GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 96 (First Edition)

SHORT TITLE: Additional Alleghany Occupancy Tax.

SPONSOR(S): Representative Stevens

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	\$42,669	\$45,465	\$48,044	\$50,067	\$51,770
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Alleghany County					
EFFECTIVE DATE: This act is effective when it becomes law.					

BILL SUMMARY:

House Bill 96 authorizes Alleghany County to levy an additional (3%) three percent room occupancy and tourism development tax. It amends SL 1991-162 (as amended).

ASSUMPTIONS AND METHODOLOGY:

Alleghany County currently levies a (3%) three percent room occupancy tax. According to the North Carolina Department of State Treasurer, the county collected \$37,509 in occupancy taxes for tax year 2010. Assuming the county continues to collect occupancy taxes at that level, and grown by the leisure and hospitality portion of Gross State Product, it's estimated that an additional (3%) three percent room occupancy tax would yield an additional \$42,669 in FY11-12 for the county.

SOURCES OF DATA: North Carolina Department of State Treasurer; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Sliyka

**APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division**

DATE: April 26, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 96: Additional Alleghany Occupancy Tax

2011-2012 General Assembly

Committee:	House Finance Subcommittee on Occupancy Tax	Date:	April 27, 2011
Introduced by:	Rep. Stevens	Prepared by:	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 96 would authorize Alleghany County to levy an additional occupancy tax of up to 3%.*

CURRENT LAW: In 1991, the General Assembly authorized Alleghany County to levy an occupancy tax of 3%.¹ In 2004, the legislation was amended to more closely conform to the Occupancy Tax Guidelines adopted by the House Finance Committee. At least two-thirds of the proceeds must be used to promote travel and tourism in Alleghany County, and remainder must be used for tourism-related purposes. The proceeds are remitted quarterly to the Chamber of Commerce until the annual net proceeds exceed \$100,000, at which point, the county must establish a Tourism Development Authority for the purpose of administering the proceeds.

BILL ANALYSIS: House Bill 96 would authorize the Alleghany County Board of Commissioners to levy an additional occupancy tax of up to 3% to be administered in accordance with the procedures applicable to the original 3% occupancy tax.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,² which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

¹ S.L. 1991-162, as amended by S.L. 2004-106.

² G.S. 153A-155 and G.S. 160A-215.

House Bill 96

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UNIFORM OCCUPANCY TAX PROVISIONS:
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term “net proceeds”, “promote travel and tourism”, and “tourism related expenditures” are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H96-SMSV-28(e1) v3



North Carolina General Assembly
House Finance Subcommittee on Occupancy Tax

Minutes

~
June 2, 2011

The House Finance Subcommittee on Occupancy Tax met on Thursday, June 2, 2011 at 6:10 pm immediately following Session around the desk of Representative McGee on the House floor. The following members were present: Chairperson McGee; and Representatives Carney, Cotham, Moffitt, and Warren. Also present was staff member Trina Griffin. The Agenda is attached and incorporated into these minutes as **attachment 1**.

Chairperson McGee called the meeting to order at 6:10 pm.

The bill to be considered by the Committee was **HB 96 Additional Alleghany Occupancy Tax** (see **attachment 2**). The Chair recognized staff member Trina Griffin of the Research Division to explain the proposed committee substitute. Chairperson McGee then recognized Representative Moffitt who moved that HB 96 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill and be re-referred to the Finance Committee. The motion carried.

There being no further business presently before the Committee, Chairperson McGee adjourned the meeting at 6:14 pm.

Respectfully submitted,


Representative William "Bill" McGee
Presiding Chair


Renee Weaver
Clerk, Finance Committee on
Occupancy Tax

AGENDA

House Finance Subcommittee on Occupancy Tax

**Thursday, June 2, 2011
Immediately Following Session
Chamber Desk
Chaired by: Representative Bill McGee**

Call to Order

Bill:

HB 96 Additional Alleghany Occupancy Tax
Representative Stevens

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 96
PROPOSED COMMITTEE SUBSTITUTE H96-CSSVx-13 [v.2]

6/2/2011 3:52:56 PM

Short Title: Addl. Alleghany/Jackson OT. (Local)

Sponsors:

Referred to:

February 16, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE ALLEGHANY AND JACKSON COUNTIES TO LEVY AN
3 ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM
4 DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.
5 The General Assembly of North Carolina enacts:
6 **PART I: ALLEGHANY COUNTY OCCUPANCY TAX**
7 **SECTION 1.** Chapter 162 of the 1991 Session Laws, as amended by S.L.
8 2004-106, reads as rewritten:
9 "Section 1. Occupancy tax. (a) Authorization and ~~scope~~-Scope. - The Alleghany
10 County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the
11 gross receipts derived from the rental of any room, lodging, or accommodation furnished by a
12 hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax
13 imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local
14 sales tax. This tax does not apply to accommodations furnished by a summer camp for minors,
15 or by a nonprofit charitable, educational, or religious organization.
16 (a) Authorization of Additional Tax. - In addition to the tax authorized by subsection
17 (a) of this section, the Alleghany County Board of Commissioners may levy an additional room
18 occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of
19 accommodations taxable under subsection (a) of this section. The levy, collection,
20 administration, and repeal of the tax authorized by this subsection shall be in accordance with
21 the provisions of this section. Alleghany County may not levy a tax under this subsection
22 unless it also levies the tax authorized under subsection (a) of this section.
23 (b) Repealed.
24 (c) Administration. - A tax levied under this section shall be levied, administered,
25 collected, and repealed as provided in G.S. 153A-155. The penalties provided in
26 G.S. 153A-155 apply to a tax levied under this section.
27 (d) Repealed.
28 (e) Distribution and ~~use of tax revenue~~-Use of Tax Revenue. - Except as otherwise
29 provided in this act, Alleghany County shall, on a quarterly basis, remit one hundred percent
30 (100%) of the net proceeds of the occupancy tax to the Alleghany County Chamber of
31 Commerce. The chamber of commerce shall use at least two-thirds of the funds remitted to it
32 under this subsection to promote travel and tourism in Alleghany County and shall use the
33 remainder for tourism-related expenditures. The chamber of commerce shall report quarterly
34 and at the close of the fiscal year to the Alleghany County Board of Commissioners on its



1 receipts and expenditures for the preceding quarter and for the year in such detail as the board
2 may require.

3 When the Alleghany Board of Commissioners adopts a resolution levying a room
4 occupancy tax under subsection (a1) of this act, the resolution shall require that the county
5 remit, on a quarterly basis, one hundred percent (100%) of the net proceeds of the occupancy
6 tax levied under this act to the Alleghany Tourism Development Authority. The Authority shall
7 use at least two-thirds of the funds remitted to it under this subsection to promote travel and
8 tourism in Alleghany County and shall use the remainder for tourism-related expenditures.

9 The following definitions apply in this subsection:

- 10 (1) Net proceeds. – Gross proceeds less the cost to the county of administering
11 and collecting the tax, as determined by the finance officer, not to exceed
12 three percent (3%) of the first five hundred thousand dollars (\$500,000) of
13 gross proceeds collected each year and one percent (1%) of the remaining
14 gross receipts collected each year.
- 15 (2) Promote travel and tourism. – To advertise or market an area or activity,
16 publish and distribute pamphlets and other materials, conduct market
17 research, or engage in similar promotional activities that attract tourists or
18 business travelers to the area. The term includes administrative expenses
19 incurred in engaging in the listed activities.
- 20 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
21 entity responsible for expending the net proceeds of the tax, are designed to
22 increase the use of lodging facilities, meeting facilities, or convention
23 facilities in a county or to attract tourists or business travelers to the county.
24 The term includes tourism-related capital expenditures.

25 (f) Repealed.

26 (g) Repealed.

27 **Sec. 1.1. Alleghany Tourism Development Authority. – (a) Appointment and**
28 **Membership. – When the ~~annual net proceeds of the occupancy tax exceed one hundred~~**
29 **~~thousand dollars (\$100,000), the Alleghany Board of Commissioners adopts a resolution~~**
30 **levying a room occupancy tax under subsection (a1) of section 1 of this act, it shall adopt a**
31 **resolution creating a county Tourism Development Authority, which shall be a public authority**
32 **under the Local Government Budget and Fiscal Control Act. The resolution shall provide for**
33 **the membership of the Authority, including the members' terms of office, and for the filing of**
34 **vacancies on the Authority. At least ~~one-third~~ one-third of the members must be individuals**
35 **who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~**
36 **one-half of the members must be individuals who are currently active in the promotion of travel**
37 **and tourism in the county. The board of commissioners shall designate one member of the**
38 **Authority as chair and shall determine the compensation, if any, to be paid to the members of**
39 **the Authority.**

40 The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern
41 its meetings. The Finance Officer for Alleghany County shall be the ex officio finance officer
42 of the Authority.

43 **Sec. 1.2. Duties. – If the board of commissioners establishes a Tourism Development**
44 **Authority as provided in Section 1.1 of this act, then the Authority shall expend the net**
45 **proceeds of the tax levied under this Act for the purposes provided in this Act. The Authority**
46 **shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and**
47 **activities in the county, and finance tourist-related capital projects in the county.**

48 **Sec. 1.3. Reports. – If the board of commissioners establishes a Tourism Development**
49 **Authority as provided in Section 1.1 of this act, then the Authority shall report quarterly and at**
50 **the close of the fiscal year to the Alleghany County Board of Commissioners on its receipts and**
51 **expenditures for the preceding quarter and for the year in such detail as the board may require.**

1 **Sec. 2.** This act is effective upon ratification."

2 **PART II: JACKSON COUNTY OCCUPANCY TAX**

3 **SECTION 2.1.** Chapter 969 of the 1985 Session Laws, as amended by Chapters
4 118 and 195 of the 1987 Session Laws and Section 21(k) of S.L. 2007-527, and only as it
5 applies to Jackson County, is rewritten and recodified as Part II of this act. Part II of this act
6 does not affect the rights or liabilities of the county, a taxpayer, or another person arising under
7 the law rewritten and recodified by this Part before the effective date of this Part, nor does it
8 affect the right to any refund or credit of a tax that accrued under the law rewritten and
9 recodified by this Part before the effective date of this Part.

10 **SECTION 2.2** Occupancy tax. – (a) Authorization and Scope. – The Jackson
11 County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the
12 gross receipts derived from the rental of any room, lodging, or accommodation furnished by a
13 hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax
14 imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local
15 sales tax. This tax does not apply to accommodations furnished by nonprofit charitable,
16 educational, or religious organizations when furnished in furtherance of their nonprofit
17 purpose.

18 (a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection
19 (a) of this section, the Jackson County Board of Commissioners may levy an additional room
20 occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of
21 accommodations taxable under subsection (a) of this section. The levy, collection,
22 administration, and repeal of the tax authorized by this subsection shall be in accordance with
23 the provisions of this section. Jackson County may not levy a tax under this subsection unless it
24 also levies the tax authorized under subsection (a) of this section.

25 **SECTION 2.2(b)** Administration. – A tax levied under this Part shall be levied,
26 administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in
27 G.S. 153A-155 apply to a tax levied under this Part.

28 **SECTION 2.2(c)** Definitions. – The following definitions apply in this Part:

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

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

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

44 **SECTION 2.2(d)** Distribution and Use of Tax Revenue. – Jackson County shall,
45 on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the
46 Jackson County Tourism Development Authority. The Authority shall use at least two-thirds
47 of the funds remitted to it under this subsection to promote travel and tourism in Jackson
48 County and shall use the remainder for tourism-related expenditures.

49 **SECTION 2.3.** Tourism Development Authority. – (a) Appointment and
50 Membership. – When the Board of Commissioners adopts a resolution levying a room
51 occupancy tax under this Part, it shall also adopt a resolution creating the Jackson County

1 Tourism Development Authority, which shall be a public authority under the Local
2 Government Budget and Fiscal Control Act. The resolution adopted by the Board of
3 Commissioners shall provide for the membership of the Authority, including the members'
4 terms of office, and for the filling of vacancies on the Authority. At least one-third of the
5 members shall be individuals who are affiliated with businesses that collect the tax in the
6 county, and at least one-half of the members shall be individuals who are currently active in the
7 promotion of travel and tourism in the county. The Board of Commissioners shall designate
8 one member of the Authority as chair and shall determine the compensation, if any, to be paid
9 to members of the Authority.

10 The Authority shall meet at the call of the chair and shall adopt rules of procedure to
11 govern its meetings. The Finance Officer for Jackson County shall be the ex officio finance
12 officer of the Authority.

13 **SECTION 2.3.(b) Duties.** – The Authority shall expend the net proceeds of the tax
14 levied under this Part for the purposes provided in Section 2.2 of this Part. The Authority shall
15 promote travel, tourism, and conventions in the county, sponsor tourist-related events and
16 activities in the county, and finance tourist-related capital projects in the county.

17 **SECTION 2.3.(c) Reports.** – The Authority shall report quarterly and at the close
18 of the fiscal year to the Jackson County Board of Commissioners on its receipts and
19 expenditures for the preceding quarter and for the year in such detail as the Board of
20 Commissioners may require.

21 **SECTION 2.4.** Section 3 of Chapter 969 of the 1985 Session Laws reads as
22 rewritten:

23 "Sec. 3. This act applies only to the following counties: Graham, Clay, ~~Jackson,~~
24 Durham, Macon, Polk, and Transylvania."

25 **SECTION 2.5.** Section 3 of Chapter 118 of the 1987 Session Laws reads as
26 rewritten:

27 "Sec. 3. This act applies only to the following counties: Clay, Graham, ~~Jackson,~~ and
28 Macon."

29 **SECTION 2.6.** Section 2 of Chapter 195 of the 1987 Session Laws reads as
30 rewritten:

31 "Sec. 2. This act applies only to the following counties: Clay, Graham, ~~Jackson,~~ and
32 Macon."

33 **PART III: ADMINISTRATION AND EFFECTIVE DATE**

34 **SECTION 3.** G.S. 153A-155(g) reads as rewritten:

35 "(g) **Applicability.** – Subsection (c) of this section applies to all counties and county
36 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
37 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
38 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
39 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
40 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Jackson, Madison, Martin,
41 McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton,
42 Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan,
43 Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson
44 Counties, to Surry County District S, to Watauga County District U, to Wilkes County District
45 K, to Yadkin County District Y, and to the Township of Averasboro in Harnett County and the
46 Ocracoke Township Taxing District."

47 **SECTION 4.** This act is effective when it becomes law.
48



HOUSE BILL 96: Additional Alleghany & Jackson Occupancy Tax

2011-2012 General Assembly

Committee: House Finance	Date: June 3, 2011
Introduced by: Rep. Stevens	Prepared by: Trina Griffin
Analysis of: PCS to First Edition H96-CSSVx-13	Committee Counsel

SUMMARY: *House Bill 96 would authorize Alleghany County to levy an additional occupancy tax of up to 3%.*

The Proposed Committee Substitute does two things:

- **It would require Alleghany County to establish a Tourism Development Authority upon adopting a resolution levying the additional 3% occupancy tax. Under current law, Alleghany County is only required to establish a TDA once the annual net proceeds of the occupancy tax reach \$100,000. This modification was a recommendation of the Occupancy Tax Subcommittee.**
- **It adds a provision authorizing Jackson County to levy an additional 3% occupancy tax.**

CURRENT LAW & BILL ANALYSIS:

PART I: ALLEGHANY COUNTY

In 1991, the General Assembly authorized Alleghany County to levy an occupancy tax of 3%.¹ In 2004, the legislation was amended to more closely conform to the Occupancy Tax Guidelines adopted by the House Finance Committee. At least two-thirds of the proceeds must be used to promote travel and tourism in Alleghany County, and remainder must be used for tourism-related purposes. The proceeds are remitted quarterly to the Chamber of Commerce until the annual net proceeds exceed \$100,000, at which point, the county must establish a Tourism Development Authority for the purpose of administering the proceeds. The current 3% occupancy tax generates less than \$40,000 annually.

House Bill 96 would authorize the Alleghany County Board of Commissioners to levy an additional occupancy tax of up to 3%.

The PCS adds a provision requiring Alleghany County to establish a Tourism Development Authority upon adopting a resolution levying the additional 3% occupancy tax, as recommended by the Occupancy Tax Subcommittee. Once the additional tax is levied and the TDA is created, all net proceeds of the occupancy tax, including both the original 3% and the additional 3%, must be remitted to the TDA. The TDA must use at least two-thirds of the total funds remitted to it for tourism promotion and the remainder for tourism-related expenditures.

PART II: JACKSON COUNTY

In 1985, the General Assembly authorized several western counties, including Jackson, to levy an occupancy tax of 3%. The net proceeds of the tax are placed in a special Travel and Tourism Fund and be used only to promote travel and tourism in the county. The county has discretionary authority to establish a tourism development authority to administer the funds.

¹ S.L. 1991-162, as amended by S.L. 2004-106.
Research Division

House PCS 96

Page 2

The PCS for HB House Bill 96 rewrites and recodifies the existing law authorizing the 3% room occupancy tax in Jackson County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," "promote travel and tourism" and "tourism-related expenditures." The bill also makes the Jackson County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155. By conforming to the House Finance occupancy tax guidelines, Jackson County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

The PCS also authorizes Jackson County to levy an additional 3% occupancy tax with the same conditions and requirements that apply to the first 3%.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,² which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H96-SMSV-59(CSSVxf-13) v2

² G.S. 153A-155 and G.S. 160A-215.
Research Division



North Carolina General Assembly
House Committee on Finance

Minutes

February 2, 2011

The House Committee on Finance met on Wednesday, February 2, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes and Folwell; Vice-Chair McComas; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, Moffitt, Rhyne, Ross, Samuelson, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms Young Bae, John Brandon, Fred Hines, and Bob Rossi. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:35 am and recognized the six (6) pages present: (1) Carolina Law of Gaston County, sponsored by Representative Torbett; (2) Octavia Tisdale of Wake County, sponsored by Representative Gill; (3) Jared Dembski of Burke County, sponsored by Representative Blackwell; (4) Harrison Jenkins of Iredell County, sponsored by Representative Setzer; (5) Erin Vasko of Gaston County, sponsored by Representative Torbett; and (6) Johanna Kern of Alamance County, sponsored by Representative Ingle.

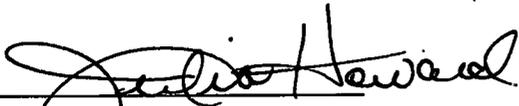
Chairwoman Howard recognized Cindy Avrette, of the Research Division, to proceed with her presentation entitled **Key Events in NC State and Local Tax History** (see **attachment 3**). Following presentation, Cindy answered questions from members.

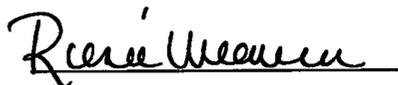
Chairwoman Howard then recognized Sandra Johnson, of the Fiscal Research Division, to proceed with her presentation entitled **General Fund Revenue Sources** (see **attachment 4**). Following presentation, Sandra answered questions from members.

Due to time, Chairwoman Howard announced that presentations would continue at a later date.

Chairwoman Howard adjourned the meeting at 9:50 am.

Respectfully submitted,


Representative Julia C. Howard
Presiding Senior Chair


Renee Weaver
Clerk, House Committee on
Finance

AGENDA
Joint House & Senate Finance Committee

Wednesday, February 2, 2011
Room 544 LOB
8:30 a.m.

Chaired by: Representative Julia Howard

House Co-Chairs

Representative Julia Howard
Representative Mitch Setzer

Representative Dale Folwell
Representative Edgar Starnes

Senate Co-Chairs

Senator Fletcher Hartsell

Senator Bob Rucho

Call to Order

Introduction of Pages

Informational Presentations

Key Events in NC State and Local Tax History
Cindy Avrette, Research Division

General Fund Revenue Sources
Sandra Johnson, Fiscal Research Division

Overview of Local Revenue Resources Sources
Rodney Bizzell, Fiscal Research Division

Committee Discussion

Adjournment

|

AGENDA

Joint House & Senate Finance Committee

Wednesday, February 2, 2011

Room 544 LOB

8:30 a.m.

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Representative Edgar Starnes

Senate Co-Chairs

Senator Fletcher Hartsell

Senator Bob Rucho

Call to Order

Introduction of Pages

Informational Presentations

③ Key Events in NC State and Local Tax History

Cindy Avette, Research Division

introduction to staff
Barry recognized for answer
only of functioning
revenue

④ General Fund Revenue Sources

Sandra Johnson, Fiscal Research Division

Adjourned

9:49 am Overview of Local Revenue Resources Sources

Rodney Bizzell, Fiscal Research Division

Committee Discussion

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE JT. FINANCE

DATE: FEB. 2, 2011 Room: 544

House Sgt-At Arms:

1. Name: FRED HINES
2. Name: JOHN BRANDON
3. Name: YOUNG BAE
4. Name: BOB ROSSI
5. Name: _____

Senate Sgt-At Arms:

1. Name: LESLIE WRIGHT
2. Name: CHESTER WHITE
3. Name: CHARLES HARPER
4. Name: _____
5. Name: _____

Pages on
separate
sheet!

House PAGES

<u>NAME</u>	<u>COUNTY</u>	<u>SPONSOR</u>
<u>Caroline Law</u>	<u>Gaston</u>	<u>Torbett</u>
<u>Octavia Tisdale</u>	<u>WAKE</u>	<u>Chill</u>
<u>Jared Dembosi</u>	<u>Burke</u>	<u>Blackwell</u>

21. FINANCE

244

FEB. 9, 2011

FRED HINEZ

JOHN BRANDON

YOUNG BAE

BOB ROZZI

~~HARRISON JEWINS~~

IREDELL

SETZER

~~Erin Vasko~~

Gaston

Torbett

~~Johanna Kern~~

Alamance

Ingle

~~Aaron Teran~~

Wake

Hunt

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
House	PAGES
Caroline LAW ✓	GASTON TORBETT
Octavia Tisdale ✓	Wake Gill
JARED Dembski ✓	BURKE Blackwell
• HARRISON JENKINS	IREDELL REP SETZER
• ERIN VASKO	GASTON REP TORBETT
• JOHANNA KERN	ALAMANCE REP INGLE
<u>Senate</u>	<u>Page</u>
• AARON TERAN ~	Wake SEN. HUNT

VISITOR REGISTRATION SHEET

House and Senate Finance Committee

Feb. 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Beasley	SEANC
TRACE COLVARD	AHHQ
Tom Stoffel	Dep. of Treasurer
Dan Brown	DST
M. Fain	UNCW
Will Colquhoun	H. U. J.
Matt Hecell	||
Jessica Bearden Laurenz	Planned Parenthood Health Systems
W. James G. M.	NCAA
A. SOHARI	DST
Jey STAM	NCAA

VISITOR REGISTRATION SHEET

House Finance

February 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	K.M.A.
Allison Waller	Char. Chamber

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

February 2, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Heather Barrett	Williams Mullen
Andy Q	NCRMP
Katherine W. Joyce	NCAFA
Lizbeth Bader	Boob Rice
Leanne Winner	NCBA
Mildred Spearman	AOC
John P. Hunt	NCRMP
Doree Carlton	WY alim
Lesly Cates	UNICAF
Lita Harris	COMMERC
Fred Bon	Bank Asso.

VISITOR REGISTRATION SHEET

House Finance

February 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Fred Boyette	Smith Moore Lathrop
John Bowdoin	AstraZeneca
Gary Harris	NC Petroleum & Convenience Mktg.
Wendy Kelly	Policy Group
Meredith Swindell	Policy Group
Doug Laster	NCSTA
Elizabeth Robinson	NCREMA
DAVID BARNES	RS
Alice Garland	NCEL
Bob [unclear]	MUP
Amy White	NC med Soc.

VISITOR REGISTRATION SHEET

House Finance

February 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Barbara J Conale	RECOG
Joni Alley	BEGINNINGS
Tore Atkins	NEAMPHA
Paul Foylman	Infocum
Jeff Jaja	All Area Chamber
Erica Nelson	NCCCP
Kari Barsness	DEUR
Pat Chantona	LA Rep Pearson
Jenny Braswell	Connectre, Inc.
Maic Boff	Smith Anderson
Mathew McCarroll	Carolinas HealthCare System

VISITOR REGISTRATION SHEET

House Finance

February 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John Peterson	NCEDA
Michael Heby	Dept of Commerce
Bo Heatly	McGuire Wood
Marianne Goff	Smith Anderson
Tim Kent	NC Beer & Wine Wholesalers Assn.
Mary Bethel	AARP - NC
Daniel Soucek	Smith
Henry Lancaster	LCA
Mr. [Signature]	[Signature]
Michelle Frasier	MFS
Doug Houny	NCPCM

VISITOR REGISTRATION SHEET

ST. FINANCE

FEB. 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

D Aumont	NC Farm Bureau
Kathy Hawkins	Duke Energy
L Reyn	NCA/HA
Joe Lanier	NELSON MULLINS
Gregg Johnson	ETOR
Andrew S. W.	P. Child & Assoc
DANIEL BAUM	THORNTON SANDERS

Panoramic View of NC's Tax System

- Origins and Development of the North Carolina System of Taxation
- Modernization Issues with the Current Tax Structure
 - Snap Shot of Today's State Revenue Sources
 - Snap Shot of Today's Local Revenue Sources
 - Presentations of the State and Local Taxes
 - General Information on Issues Related to Tax and Finance Matters

Evolution of NC's Tax System

↓
Created Tax System
1777

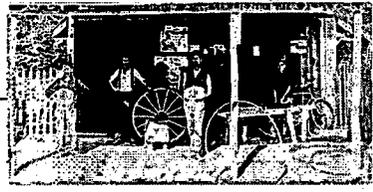
2nd act of General Assembly



Evolution of NC's Tax System

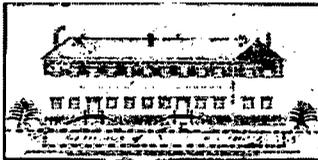
↓
1782

License taxes first enacted



Evolution of NC's Tax System

↓
Corporations taxed on capital stock –
forerunner of franchise tax
1849



Free
public
schools in
1839

Evolution of NC's Tax System

↓
Pre-1921 System of Taxation

- Property tax primary revenue source for State and local governments
- Low local assessments led to high rates
- Continued pressure to expand school year and build roads

1868-1900



Evolution of NC's Tax System

↓
Revenue Act of 1921

No State tax on property

1921

- New taxes:
- State administered PIT
 - Corporate income tax
 - Motor fuel excise tax



Evolution of NC's Tax System

10

- Emergency Revenue Act of 1933
- State assumed fiscal responsibility for schools, roads, & prisons

↓

1931-1937

Temporary sales tax of 3% on TPP enacted in 1933



Permanent sales tax enacted in 1939

Evolution of NC's Tax System

11

Local Tax Sharing

↓

1937-1986

- Excise taxes adopted
- Local tax sharing programs adopted
- Local option sales tax approved to relieve pressure on the property tax



Evolution of NC's Tax System

12

Modernization of PIT

↓ ↓ ↓

1986 1989 1991

Variable component of motor fuel tax rate

Highway use tax and Tax Fairness Act

Budget shortfall of 8.1%, State sales tax rate increased to 4%

Evolution of NC's Tax System

"Bill Lee Act" incentives

Myriad of exemptions, refunds, and credits



Tax Expenditures

- Exemption
- Exclusion
- Deduction
- Allowance
- Credit
- Refund
- Preferential rate

- Spending programs implemented through the tax code
- Key differences between tax expenditures and direct spending
 - Level of scrutiny – Not subject to the annual appropriations process
 - Appear to be tax cuts – Transfer funds through tax subsidies
- Biennial Tax Expenditure Report (2009)
 - 300+ tax expenditures
 - \$5.8+ billion

Evolution of NC's Tax System

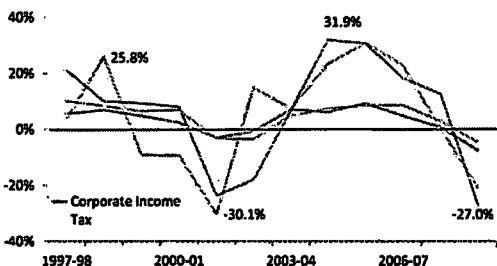
Streamlined Sales & Use Tax Agreement

2000 2002 2009



<http://www.streamlinedsalestax.org/>

Growth & Stability



Tax Reform Studies

- Fiscal Realities for the 90s
- NC's Tax Policy Commission (2000)
- Governor's Studies in 2001 & 2002
- IEI's Financing the Future (2005-2009)
- State and Local Fiscal Modernization (2006)
- Economic Development Incentives (2009)
- Joint House & Senate Finance Tax Reform Meetings (2009 & 2010)

Message of Tax Reform

Findings

- Tax structure too complicated
 - Tax bases too narrow
 - Tax rates too high
- Tax revenues too volatile
- Tax structure does not reflect current economic environment

Goals

- Simplicity
- Economic development & job growth
- Revenue stability
- Tax modernization
 - Broad bases
 - Low rates

22	Questions?
Cindy Avrette Research Division Suite 200, LOB 733-2578 Cindy.avrette@ncleg.net	

? Ruth Samuelson

Follow up ? Ruth Samuelson

? Sen. Hartsell

Sandra Johnson ans'd

? Rep Barnes

Follow up

? Sen. Purcell

Follow up

Sandra ans'd

? Rep. Jordan

? Rep. McCormick

? Rep. Hill

? Rep. Brawley

**GENERAL FUND
REVENUE SOURCES**

Sandra Johnson
Fiscal Research Division
Joint House and Senate Finance Committee

February 2, 2011

General Fund Overview

Overall Collections
Tax v. Non-Tax

Major Revenue Sources
Individual Income Tax
Sales & Use Tax

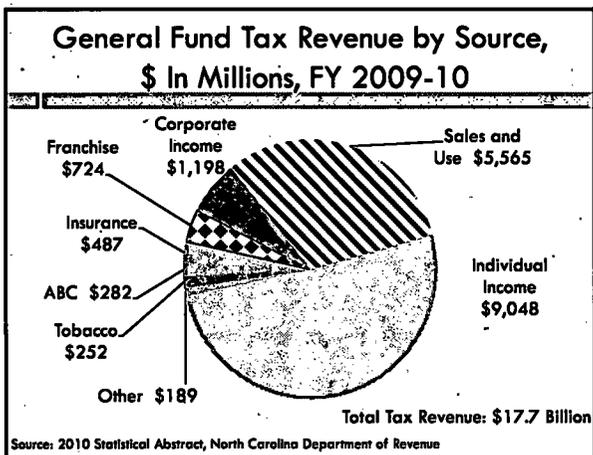
Secondary Revenue Sources
Corporate Tax
Other
Franchise, Insurance Premiums, Estate Tax

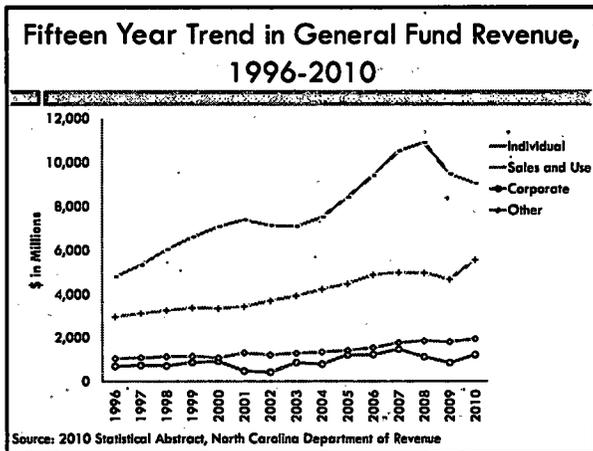
**General Fund Revenue by Source,
FY 2009-10**

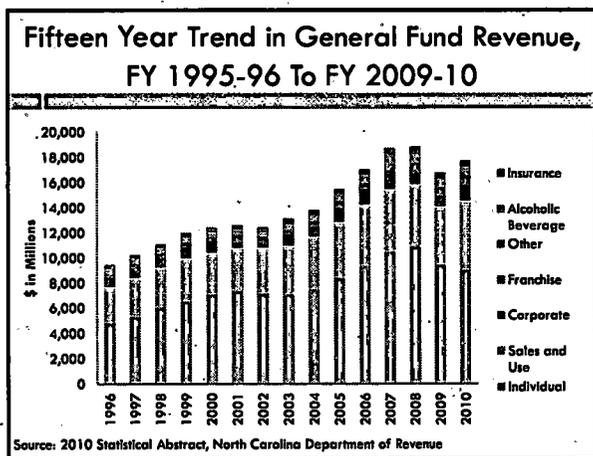
Source	Percentage
Tax Revenue	95.1%
Non-Tax Revenue	4.9%

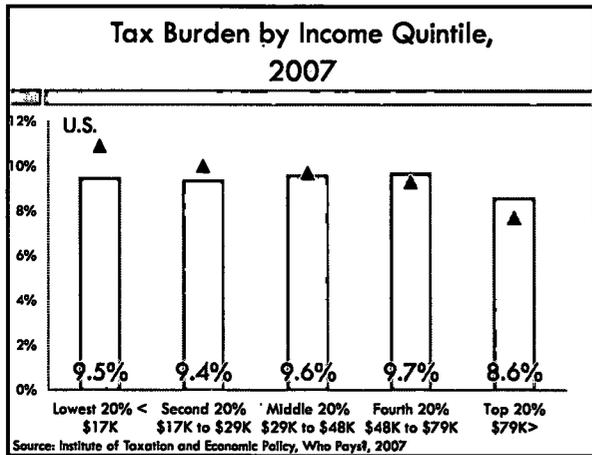
Total Revenue: \$18.7 Billion

Source: 2010 Statistical Abstract, North Carolina Department of Revenue









Major Revenue Sources

- Individual Income Tax
 - History
 - Rates
 - Current Issues
- Sales and Use Tax
 - History
 - Rates
 - Current Issues

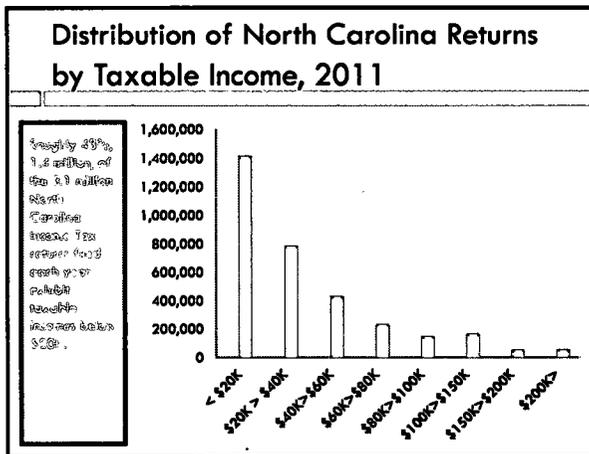
Individual Income Tax - History

- Imposed since 1849
- Applied broadly 1921-37
- Based on federal taxable income (1989)
- Top bracket, 7.75% (2008)
- \$9.0B, FY 09-10
- Temporary surtax (2009)
 - Expires July 1, 2011
 - \$170M

Individual Income Tax: Brackets

Tax Rates	Taxable Income		
	6%	7%	7.75%
Single	< \$12.8K	\$12.8K > \$60K	\$60K >
Head of Household	< \$17K	\$17K > \$80K	\$80K >
Married-Joint	< \$21.5K	\$21.5K > \$100K	\$100K >
Married-Separate	< \$10.6K	\$12.8K > \$50K	\$50K >

- ### Individual Income Tax – Points of Note
- Bracket Creep
 - Tax brackets not indexed for inflation
 - More tax payers are pushed into higher tax brackets annually
 - Volatility
 - Revenues move with the economy



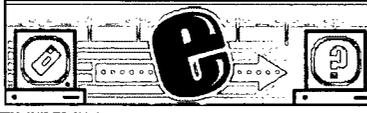
Sales Tax

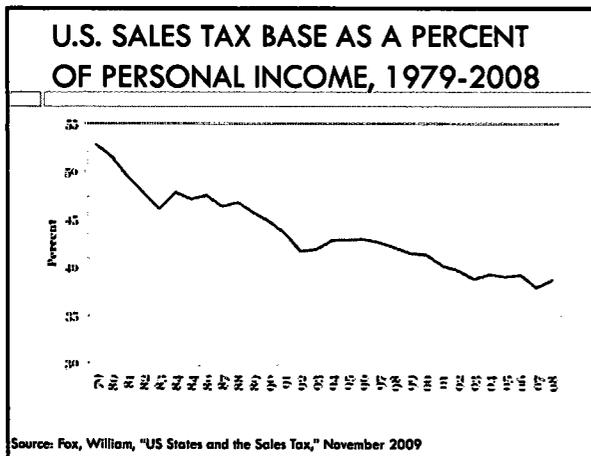
- Created in 1933
- Collected through local merchants
- Applied to purchase price
 - Combined 7.75% to 8.25%
 - State rate of 5.75%
 - Local rate varies 2% to 3.25%

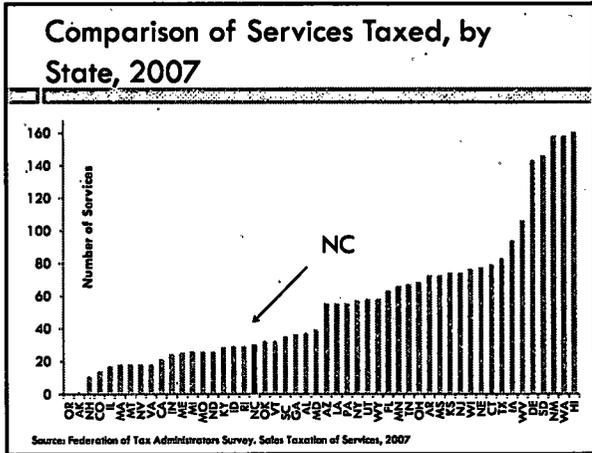


Sales Tax – Points of Note

- Temporary increase expires July 2011(\$1.0B)
- Participation in Streamlined Sales Tax Agreement
 - Simplifies tax collection for vendors
- Erosion of Sales Tax Base
 - Moving to a service based economy
 - Increasing sales tax exemptions and refunds (\$2.9B)
- Transition to e-commerce





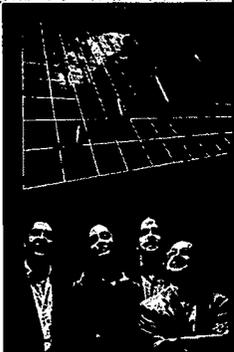


Secondary Revenue Sources

Secondary Revenue Sources
 Corporate Tax
 Other
 Franchise Tax, Insurance Premiums Tax, Estate Tax

Corporate Income Tax

- Imposed since 1921
- Applies to all companies conducting business in NC
- Represents \$1 Billion of GF tax revenue
- Rate of 6.9%
- Temporary 3% surtax (2009)
 - \$25M-\$30M

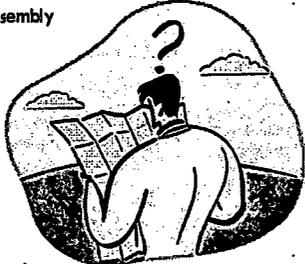


Other Taxes

- Franchise Tax
 - Precursor to the corporate income tax enacted in 1849
- Insurance Premium Tax
- Estate Tax
 - Less than 1% of General Fund tax revenue

Questions?

Sandra Johnson
Fiscal Research Division
North Carolina General Assembly
(919) 733-4910
sandraj@ncleg.net





North Carolina General Assembly House Committee on Finance

Minutes

February 3, 2011

The House Committee on Finance met on Thursday, February 3, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes and Folwell; Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Gibson, Hall, Hill, Jordan, Luebke, McCormick, McGee, Moffitt, Moore, Ross, Samuelson, Stone, Warren, and Weiss. Also present were Sergeant-at-Arms Young Bae, John Brandon, Fred Hines, and Bob Rossi. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson Starnes called the meeting to order at 8:35 am and recognized the five (5) pages present: (1) Octavia Tisdale of Wake County, sponsored by Representative Gill; (2) Harrison Jenkins of Iredell County, sponsored by Representative Setzer; (3) Johanna Kern of Alamance County, sponsored by Representative Ingle; (4) Jared Dembski of Burke County, sponsored by Representative Blackwell; and (5) Erin Vasko of Gaston County, sponsored by Representative Torbett.

Chairperson Starnes recognized Rodney Bizzell, of the Fiscal Research Division, to proceed with his presentation entitled **Overview of Local Revenue Sources** (see **attachment 3**). Following presentation, Rodney answered questions from members.

Chairperson Starnes then recognized Cindy Avrette, of the Research Division, to proceed with her presentation entitled **Personal Taxes (Income and Estate Taxes)** (see **attachment 4**). Following the presentation, Cindy answered questions from members.

Chairperson Starnes then recognized Jonathan Tart, of the Fiscal Research Division, to start his presentation entitled **Business Taxes (Income and Franchise Taxes)** (see **attachment 5**). Following his presentation, Jonathan answered questions from members.

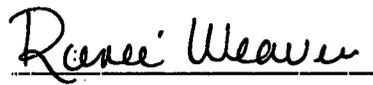
Chairperson Starnes then recognized Lennie Collins, Assistant Director of the Corporate, Excise and Insurance Tax Division of the Department of Revenue and also Donna Powell, Assistant Director of the Special Corporate Compliance Initiatives Division, also of the Department of Revenue.

There being no further business presently before the Committee, Chairperson Starnes adjourned the meeting at 9:50 am.

Respectfully submitted,



Representative Edgar Starnes
Presiding Co-Chair



Renee Weaver
Clerk, House Committee on
Finance

AGENDA

Joint House & Senate Finance Committee

Thursday, February 3, 2011

Room 544 LOB

8:30 a.m.

Chaired by: Representative Edgar Starnes

House Co-Chairs

Representative Julia Howard

Representative Dale Folwell

Representative Mitch Setzer

Representative Edgar Starnes

Senate Co-Chairs

Senator Fletcher Hartsell

Senator Bob Rucho

Call to Order

Rep. Starnes called to order.

Introduction of Pages

Informational Presentations

③ **Overview of Local Revenue Sources**
Rodney Bizzell, Fiscal Research Division

④ **Personal Taxes (Income and Estate Taxes)**
Cindy Avrette, Research Division

⑤ **Business Taxes (Income and Franchise Taxes)**
Jonathan Tart, Fiscal Research Division

Committee Discussion

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: Feb 3, 2011 Room: 544

House Sgt-At Arms:

House Pages

- 1. Name: Fred Hines
- 2. Name: John Brandon
- 3. Name: Bab Rossi
- 4. Name: YOUNG Bae
- 5. Name: _____

Senate Sgt-At Arms:

- 1. Name: Leslie Wright
- 2. Name: CHESTER WHITE
- 3. Name: CHARLES HARPER
- 4. Name: _____
- 5. Name: _____

House Pages

~~SENATE PAGES~~
STERLING CARTER

~~SPONSOR~~
GUNN

Name	COUNTY	SPONSOR
1. OCTAVIA TISCOLO	WAKE	GILL
2. HARRISON JENKINS	IREDELL	SETZER
3. ^{Tina Kern} red Dembiski	Alamance BURIF	Ingle Blattwell
4 Erin Vasko	Gaston	Torbett

PAGES ATTENDING

COMMITTEE: Joint Finance ROOM: 544

DATE: 2-3 TIME: 8:30

PLEASE PRINT LEGIBLY!!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
¹ Sterling Carter	Yanceyville	Gunn
² Aaron Teran	Raleigh	Hunt
³		
⁴		
⁶		
⁷		
⁸		
⁹		
¹⁰		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

VISITOR REGISTRATION SHEET

House & Senate Finance
Name of Committee

February 3, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Mehan	Capstrat
Dave Farson	City of Charlotte
Paul Stock	NCBA
Karee Lamm	NCACC
Daniel R. Arduin	DI-FPNC
Abby Z Sahari	Bishop's Program DSI
Daniel Baum	TROUTMAN SANDERS
Becki Gray	John Locke Foundation
Cecily Hawthorne	ETGR
Julia Adams	The Arc of NC

VISITOR REGISTRATION SHEET

House & Senate Finance
Name of Committee

February 3, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sunny Braswell	Connectnc, Inc
Erica Nelson	NC CCP
Pian Lan	Chrysa
Tom Atkins	NEANPLA
Alice Garland	NCEL
Meredith Swadlow	Policy Group
Lesley Cates	UNC CTA
Henry Lancaster	LCA
Julie [unclear]	BCS
David McAvoy	NC Realtors
Anna Lockhart	NC BWLA
Tom Coors	TMC

VISITOR REGISTRATION SHEET

House and Senate Finance Committee

Feb. 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Drew Wilton	Wilton Wilton
Jim Farrell	Farrell & Assoc.
Tim KENT	NC Beer & Wine Wholesalers
Wendell	NCLC
Cady Thomas	NCAR
Alison Goff	Smith, Anderson
DAVID BARNES	PS
Bob Poccia	NEFA
Andy Ellen	NCPW
Mildred Spearman	AOC
Joseph Mahan	ASNC

VISITOR REGISTRATION SHEET

House and Senate Finance Committee

Feb. 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John Bowdich	AstraZeneca
ZEB ALLEY	N M R S
Hoban Poon	NORMA
Helen Williams	NCICU
Elizabeth Bise	Brady Pierce
Allison Waller	Charlotte Chamber
Steve Mitzen	ASTENAS
Graig Salanido	GSK
L (P) Ryan	nc PA
Wendy Kelly	Policy Group
Kathleen Joyce	NCAAA

**OVERVIEW OF
LOCAL GOVERNMENT
REVENUE SOURCES**

Joint House and Senate Finance, February 2, 2011
Rodney Sizemore, Fiscal Research Division

Sources of Local Revenue

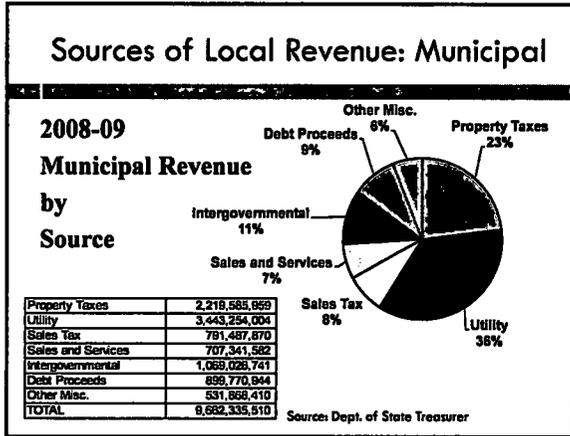
- Sources of Local Revenue
 - County
 - Municipal
- Local Taxes and Fees
 - Property Tax
 - Sales Tax
 - Other Local Taxes and Fees
- State and Local Shared Revenues

Sources of Local Revenue: County

**2008-09
County Revenue
by
Source**

Property Taxes	5,709,117,358
Sales Tax	1,401,820,121
Sales and Services	1,741,531,384
Intergovernmental	2,387,888,132
Debt Proceeds	1,699,918,492
Other Misc.	1,311,736,137
TOTAL	13,472,132,632

Source: Dept. of State Treasurer



- ### Local Taxes: Property Tax
- Authorized as local revenue source in 1921.
 - Most stable local revenue source.
 - Classes of property must be taxed uniformly.
 - Only the General Assembly has authority to exempt classes of property.
 - Real property must be revalued at least every 8 years.
 - Each county or municipality determines the property tax rate annually

- ### Local Taxes: Sales Tax
- Same Base as State Rate
 - Article 39 (1971) – one cent, point of collection
 - Article 40 (1983) – ½ cent, population
 - Article 42 (1985) – ½ cent, population
 - Article 44 (2002) – ½ cent, repealed
 - Article 46 (2007) – ¼ cent (county only)
 - Distribution to municipalities based on either ad valorem or population
 - Food Tax – 2%

Utility Fees

- Water and Sewer
- Electricity Charges
 - "Electricities" purchase power from utility companies and distribute and sell it to homes and businesses.
- Gas Charges
 - Gas cities purchase natural gas from private utilities for resale.
- Stormwater Fees
 - Larger cities have established stormwater programs in response to federal requirements.

Sales and Services

- Building Permits
- Inspection Fees
- Garbage/Recycling Fees
- Ambulance and Rescue Charges
- Animal Tags
- Parks and Recreation Fees

Local Debt

- General Obligation Bonds
- Revenue and Special Obligation Bonds
- Bond Anticipation Notes
- Installment Purchase Agreements
- Certificates of Participation (COPS)
- Local Government Commission approves local debt authorizations.
- Bond rating agencies evaluate capacity and willingness of issuer to repay debt.

Other Local Revenues

- Privilege License Taxes**
 - Imposed on the privilege of engaging in certain occupations
- Motor Vehicle License Tax**
 - All municipalities are authorized to levy a tax of \$5 per vehicle. The General Assembly has authorized amounts up to \$30.
- Special Assessments**
 - Levied against property to pay for public improvements that benefit that property (e.g., streets, sidewalks, water systems, storm sewer and beach-erosion control.)
- Profits from ABC Stores**
 - Approximately 80% of net profits are distributed to local units.
- Investment Earnings**
- Taxes Permitted by Local Act**
 - Occupancy Taxes
 - Meals Taxes

Intergovernmental Revenues

State and County Shared Revenues

- Beer and Wine Tax - Shared only for the types of beverages allowed in the county.**
 - Distribution is based on the type of beverage.
- Real Estate Transfer Tax**
 - \$1.00 tax for each \$500.00 in value transferred.
 - Also known as the Deed Tax. County Retains 50%+.
- Telecommunications and Video Programming**
 - Combined sales tax rate applies to telecommunications and video programming services; local distribution applies.

Intergovernmental Revenues

State and Municipal Shared Revenues

- Gasoline Tax - 1 3/4 cents per gallon distributed through Powell Bill Funds. Restricted Use.**
- Utility Franchise Tax - 3.22%**
- Excise Tax on Piped Natural Gas**
 - Municipalities receive half of tax collected within boundaries.
- Beer and Wine Tax - municipalities receive per capita share of taxes if sales are allowed within jurisdiction.**
- Telecommunications and Video Programming**

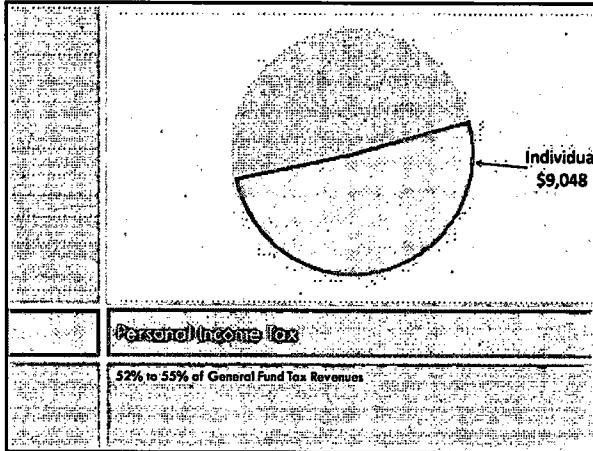
13

Questions?

Rodney Bizzell
Fiscal Research Division
733-4910
Rodney.Bizzell@ndleg.net

PERSONAL TAXES: INCOME AND ESTATE

2011 Rates and General Provisions February 1, 2011
 Cindy Axon, Research Director



NC's Personal Income Tax

- NC Constitutional Amendment of 1920
 - Permitted the taxation of incomes
 - Rate of tax on incomes could not exceed 6%
- Amendment of 1935
 - 6% limitation increased to 10%

NC PIT Prior to 1989

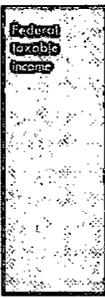
- NC did not employ a federal starting point for calculating State taxable income
- Numerous exemptions and deductions
- Five tax brackets
- Rates ranging from 3% to 7%



Tax Fairness Act of 1989 (SB 51)

- Simplified calculation of the tax
 - Federal taxable income
 - Eliminated many exclusions, deductions, exemptions
- Reduced taxes for approximately 65% of the taxpayers
 - Increased personal exemption and standard deduction, did not index
 - Two tax brackets with rates of 6% and 7%, did not index

Calculating NC Taxable Income



$$\begin{aligned}
 \text{State taxable income} = & \\
 & \text{Federal taxable income} \\
 & - \text{Amounts exempt from State income tax} \\
 & + \text{Amounts taxed by the State but not by the federal government}
 \end{aligned}$$

Taxable Income v. AGI

Taxable Income	Adjusted Gross Income
<ul style="list-style-type: none"> <input type="checkbox"/> 6 states use as a starting point <input type="checkbox"/> Represents income after all federally allowed deductions <ul style="list-style-type: none"> <input type="checkbox"/> Personal exemptions <input type="checkbox"/> Itemized deductions or standard deduction <ul style="list-style-type: none"> <input type="checkbox"/> 37% itemize <input type="checkbox"/> Mortgage interest and charitable contributions 	<ul style="list-style-type: none"> <input type="checkbox"/> 29 states use as a starting point <input type="checkbox"/> Represents income after 'above the line' deductions <ul style="list-style-type: none"> <input type="checkbox"/> Business related expenses <input type="checkbox"/> Few non-business related expenses <ul style="list-style-type: none"> <input type="checkbox"/> Alimony, qualified education expenses, IRA contributions

Federal Taxable Income

- Constitutional limitation on delegation of taxing authority
 - IRC Update
- Subjects NC tax revenues to greater number of federal tax policies
- Large number of adjustments
 - NC does not index personal exemptions or standard deduction
 - Confusing to taxpayers

Calculating NC Taxable Income

Adjustments to federal taxable income: Exemptions

State taxable income =

Federal taxable income

- Amounts exempt from State income tax

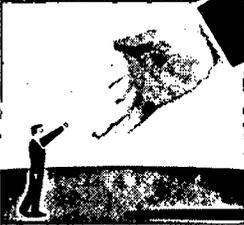
+ Amounts taxed by the State but not by the federal government

State Tax Exemptions: Federal Law

- Interest on US obligations
- Income from an Indian tribe
- Amounts paid under the Railroad Retirement Act of 1937



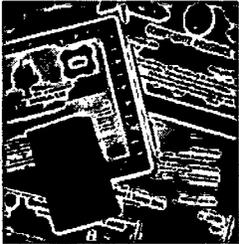
State Tax Exemptions: Contractual



- Gain from obligations issued before 1995 to the extent allowed by State law
- Bailey retirement income (\$401.7 m)

State Tax Exemptions: Practice

- Interest on NC and local government obligations and obligations of a nonprofit educational institution chartered in NC
- The deductible amount for interest on US, NC, and nonprofit educational institutions = \$20.9 m
 - Deductible amount for NC obligations > \$ 1 m



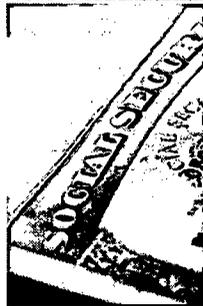
State Tax Exemptions: Accounting



- Refunds of state, local, and foreign taxes
- Amount by which basis of property under State law differs from the basis of the property under federal law

State Tax Exemptions: Social Security

- Full exemption
 - SSI benefits in excess of federal limit = \$375.4 m
- Other states
 - 15 states tax SSI to some extent
 - 5 follow federal practice
 - 26 states fully exempt
 - 9 states do not impose a PIT



Federal Taxation of SSI Benefits

Federal law regarding a portion of public security benefits in 1987

- Provisional income
 - < \$32K, no taxation
 - \$32K - \$44K, up to 50% taxable
 - > \$44K, up to 85% taxable
- Only 25% of SSI beneficiaries pay any tax liability on their benefits
- Over 80% of taxable SSI are reported by taxpayers with over \$50,000 of AGI

State Tax Exemption: Retirement

- Retirement income
 - \$4,000 for governmental retirement income
 - \$2,000 for private retirement income
 - \$80.9 million



Misc. State Tax Exemptions

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> Severance Wages <ul style="list-style-type: none"> <input type="checkbox"/> Not to exceed \$35,000 <input type="checkbox"/> \$15.5 million <input type="checkbox"/> Erroneous Conviction <input type="checkbox"/> Disaster Relief Reserve Fund | <ul style="list-style-type: none"> <input type="checkbox"/> NC 529 Plan <ul style="list-style-type: none"> <input type="checkbox"/> AGI limits in 2012 <input type="checkbox"/> \$5 million <input type="checkbox"/> Volunteer Fire and Rescue <ul style="list-style-type: none"> <input type="checkbox"/> \$1 million <input type="checkbox"/> Sale of Mfg'd Home Community to Mfg'd Home Owners |
|--|---|

Calculating NC Taxable Income



State taxable income =
 Federal taxable income
 - Amounts exempt from State income tax
 + Amounts taxed by the State but not by the federal government

Add Backs: IRC Decoupling

- Standard deduction
 - Federal = \$5,700 (single; MFS) \$8,350 (H/H)
 - State = \$3,000 (single; MFS); \$4,400 (H/H)
 - Add back \$2,700
- Personal exemption
 - Federal = \$3,650
 - State = \$2,500 if AGI < \$100,000 (MFJ)
 - State = \$2,000 if AGI = or > \$100,000 (MFJ)
 - Add back at least \$1,150 for each PE claimed

Calculating NC State Tax Liability

Applicable
tax rates

State taxable income
x **Applicable Rate**
= **State tax liability**



Tax Brackets and Rates

<ul style="list-style-type: none"> <input type="checkbox"/> Prior to 1989 <ul style="list-style-type: none"> <input type="checkbox"/> 6 brackets <input type="checkbox"/> Rates ranging from 3% to 7% <input type="checkbox"/> 1989 <ul style="list-style-type: none"> <input type="checkbox"/> Two brackets <input type="checkbox"/> Rates of 6% and 7% <input type="checkbox"/> 1991 <ul style="list-style-type: none"> <input type="checkbox"/> Three brackets <input type="checkbox"/> 6%, 7%, and 7.75% <input type="checkbox"/> 2001-2006 <ul style="list-style-type: none"> <input type="checkbox"/> Temporary 4th bracket of 8.25% <input type="checkbox"/> Extended twice 	<ul style="list-style-type: none"> <input type="checkbox"/> 2007 <ul style="list-style-type: none"> <input type="checkbox"/> Temporary rate phased down to 8% <input type="checkbox"/> 2008 <ul style="list-style-type: none"> <input type="checkbox"/> 3 brackets <input type="checkbox"/> 6%, 7%, and 7.75% <input type="checkbox"/> 2009 and 2010 <ul style="list-style-type: none"> <input type="checkbox"/> Temporary surtax <input type="checkbox"/> 2% surtax, taxable income exceeds \$100K (MFJ) <input type="checkbox"/> 3% surtax, taxable income exceeds \$250K (MFJ)
---	---

Comparison to Other States

Rates

- 30 states have a lower rate than North Carolina
- 1 state has the same highest tax rate
- 1 states have a higher tax rate
- 7 states do not have an income tax

The rest of the story ...

- What is the tax base?
- What are the applicable deductions and exemptions?
- What are the tax brackets?
- What are the applicable credits?

Calculating NC State Tax Due

Credits

$$\begin{aligned}
 &\text{State taxable income} \\
 &\times \text{applicable tax rate} \\
 &= \text{Tax liability} \\
 &\quad - \text{Credits} \\
 &= \text{Tax Due}
 \end{aligned}$$

Tax Credits: Children

- Children < 17
 - AGI limitation
 - \$147.3 million
- Childcare
 - \$53.6 million
- Adoption
 - \$5.9 million
 - Sunsets 2013



Tax Credit: Earned Income



- Refundable tax credit
- 5% of the federal credit amount
- \$100 million
- Sunsets 2013

Tax Credits: Non-itemizers



- Charitable contributions by non-itemizers
- \$26.5 million

Tax Credits: Health

- Long-term care premiums
 - AGI limitation
 - \$4.7 million
 - Sunsets 2013
- Disabled persons
 - \$1.5 million
- Construction of dwellings for handicapped persons



Tax Credits: Energy	
<input type="checkbox"/> Investing in renewable energy property <input type="checkbox"/> \$4 million <input type="checkbox"/> Sunsets 2016	<input type="checkbox"/> Tax Credits for renewable fuels <input type="checkbox"/> Fuel dispensing facilities - Constructing fuel processing facilities <input type="checkbox"/> Sunset 2011
<input type="checkbox"/> Donations to acquire renewable energy property	<input type="checkbox"/> Recycling facility - \$7.0 million
<input type="checkbox"/> Refund motor fuel excise tax for biodiesel <input type="checkbox"/> \$1.2 million <input type="checkbox"/> Sunsets 2010	

Tax Credits: Business	
<input type="checkbox"/> Creating jobs <input type="checkbox"/> \$8 million <input type="checkbox"/> Sunsets 2011	<input type="checkbox"/> Research & development <input type="checkbox"/> Business (\$19 million) <input type="checkbox"/> UNC (\$2.5 million) <input type="checkbox"/> Sunsets 2014
<input type="checkbox"/> Investing in business property <input type="checkbox"/> \$16.5 million <input type="checkbox"/> Sunsets 2011	<input type="checkbox"/> Low-income housing <input type="checkbox"/> \$34 million, refundable <input type="checkbox"/> Sunsets 2015
<input type="checkbox"/> Investing in real property <input type="checkbox"/> \$0.4 million <input type="checkbox"/> Sunsets 2011	<input type="checkbox"/> Film production <input type="checkbox"/> \$22.5 million, refundable <input type="checkbox"/> Sunsets 2014

Miscellaneous Tax Credits	
<input type="checkbox"/> Real property donations <input type="checkbox"/> \$25.7 million	<input type="checkbox"/> Property taxes paid on farm machinery <input type="checkbox"/> \$1.6 million
<input type="checkbox"/> Conservation tillage equipment	<input type="checkbox"/> Recycling oyster shells <input type="checkbox"/> Sunsets 2011
<input type="checkbox"/> Gleaned crops	<input type="checkbox"/> Work opportunity <input type="checkbox"/> \$0.4 million <input type="checkbox"/> Sunsets 2012
<input type="checkbox"/> Poultry composting facility	

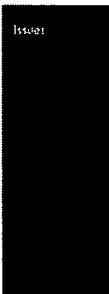
Tax Credits: Historic Rehabilitation

- Income producing historic structure
 - \$3.0 million
- Non-income producing historic structure
 - \$5 million
- Income producing mill property
 - \$1 million
 - Sunsets 2011
- Non-income producing mill property
 - \$5 million
 - Sunsets 2011



PIT Points to Remember

- Largest single source of GF revenues
- Non-withholding portion of the tax is highly volatile
- Reliance on federal tax code changes
- Many adjustments



Tax Reform Recommendations

- Broaden the base, lower the rates
 - Use AGI as the starting point
 - Eliminate exemptions, deductions, and credits
- Lessen the State's exposure to the volatility of the current PIT structure
- Ensure tax equity in tax structure as a whole



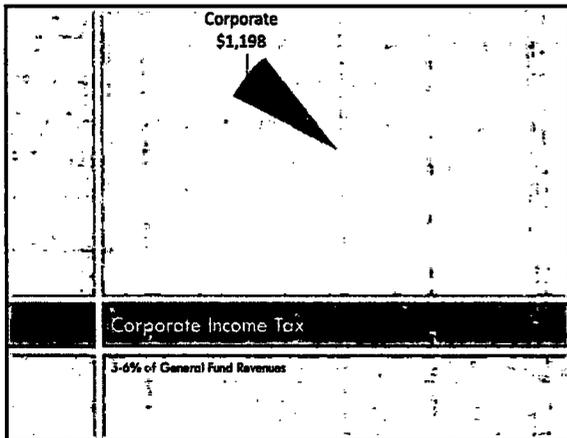
Questions?	
<input type="text"/>	<ul style="list-style-type: none">□ Department of Revenue<ul style="list-style-type: none">□ Tom Dixon, Assistant Secretary of Tax Administration<ul style="list-style-type: none">■ 733-4433■ Tom.dixon@dorms.com□ Legislative Staff<ul style="list-style-type: none">□ Research, 733-2578□ Fiscal Research, 733-4910□ Bill Drafting, 733-6660□ First name.last name@ndeg.net

OVERVIEW OF
CORPORATE TAXES AND TAX
INCENTIVES

Joint House and Senate Finance, February 3, 2011
Jonathan Tarr, Fiscal Research Division

Income/Franchise Tax Revenue

- Corporation Taxes are the third largest category of revenues for the State
- Approximately 10% of State tax revenues were attributable to the Corporate Income and Franchise Tax for Fiscal Year 2009-2010



NC Corporate Income Tax Rates

- 1921: 3% of net income
- 1939: 6% of net income
- 1987: 7% of net income
- 1991: 7.75% of net income, plus surtax
- 1996: phased down rate to 6.9%, effective after 1999
- 2009: 3% surtax for 2009 and 2010

Some Statistics from 2008 Tax Year

- About 79,000 corporate taxpayers
- Less than 1/3 of these companies actually had a net tax liability
- Among those that had a tax liability, 78% had taxable income of \$100k or less, but they paid only 2.6% of the tax

More Statistics from 2008

- C-Corporations with NC taxable income of over \$1 million represented 88% of the total corporate income tax revenue, but they made up only 2% of the corporations filing returns
- 60% of total corporate income tax revenue attributable to 200 corporations with NC taxable income of over \$10 million

Computing NC Taxable Income

- NC taxable income = Federal taxable income, as adjusted
- Internal Revenue Code Update
- Key differences
 - NEL vs NOL
 - Bonus depreciation

NC taxable Income Apportioned

- Multistate corporations apply NC apportionment formula to determine NC taxable income
- Apportionment formulas
 - Three factors: Sales, Property, and Payroll
 - Double-weighted sales (1988)
 - Single sales (2009 for a 'qualified capital intensive corporation')

Separate Entity Reporting

- NC requires a separate return
- Must determine State net income as if a separate return had been filed for federal tax purposes
- Strategy: Create legal structures to shift income from one state to another, lower tax, state
 - Delhaize
 - WalMart
 - Limited

Presentation ended after this slide

Franchise Tax

- Privilege tax for:
 - Privilege of engaging in business
 - The "enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of" the existence of the business structure
 - The benefit and protection received from the government and laws of NC in doing business

Who pays Franchise Tax?

- C corporation
- S corporation
- Limited liability company (LLC) that elects to be taxed as a corporation under the IRC

Businesses Not Subject to the Tax

- Limited liability company (other than ones electing to be taxed as a corporation)
- Partnership
- Sole proprietor
- Insurance companies

Calculation of Tax

- Tax rate applied to highest of three asset bases:
- Capital stock, surplus, and undivided profits apportioned to NC using the apportionment percentage determined for income tax
 - Book value of NC real and tangible personal property, less outstanding debt created to acquire or improve the real property
 - 55% of the appraised value of NC real and tangible personal property

Some Statistics from 2008 Tax Year

- Taxpayers with franchise taxable amount over \$40 million made up less than 1% of the returns, but paid 66% of the total tax
- Amounts due by companies is generally modest. 99% of taxpayers owe \$110,000 or less.

Rate of Tax

- \$1.50 per \$1,000 of taxable assets (.0015)
- \$35 minimum tax
- \$75,000 maximum tax for holding companies – those that receive at least 80% of income from subsidiaries

Utility Franchise Tax

- Applies instead of the general franchise tax
- Calculated on gross receipts
- Applies to:
 - Electric power company – 3.22% rate
 - Water utility company - 4% rate
 - Sewer utility company – 6%
- Tax on electric power companies is shared with cities

Tax Incentives

- Tax Credits
 - Article 3J Jobs and Investment Credits
 - Research and Development
 - Renewable energy
 - Film production
 - State ports
 - Real property donations

Article 3J Tax Credits

- Tax Credits for Growing Businesses
 - Replaced William S. Lee Act Incentives in 2007
 - Credit for Creating Jobs
 - Credit for Investing in Business Property
 - Credit for Investing in Real Property (Tier 1 counties only)

2008 Article 3J Jobs Credits Generated

	Number of New Jobs	Credits Generated
Tier One	2,284	28,590,000
Tier Two	839	4,253,000
Tier Three	3,249	2,637,875
Total	6,372	35,440,875

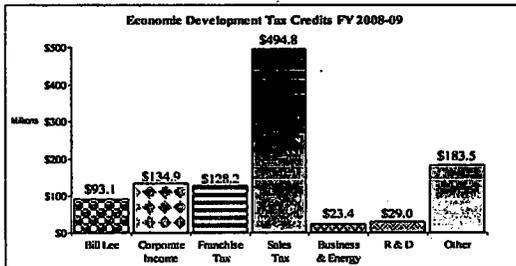
2008 Investment in Business Property Credits Generated

	Investment	Credits Generated
Tier One	402,168,157	28,095,346
Tier Two	235,859,128	11,843,752
Tier Three	703,924,546	36,273,286
Total	1,341,951,831	76,212,384

Other Tax Incentives

- Exemptions
- Deductions
- Refunds
- Caps
- Preferential rates

Tax Incentives



Economic Development Inventory, February 2010, Available at http://www.ncga.state.nc.us/fiscalresearch/frd_reports/frd_reports_pdf/Inventories/Final_2010_EDI.pdf

Questions?

Jonathan Tart
Fiscal Research Division
733-4910
Jonathan.tart@ncleg.net



North Carolina General Assembly
House Committee on Finance

Minutes

February 9, 2011

The House Committee on Finance met on Wednesday, February 9, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Setzer, Starnes and Folwell; Vice-Chair Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Faison, Hill, Jordan, Luebke, McCormick, McGee, Moffitt, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:35 am and recognized the four (4) pages present: (1) Nae-Nae Blount of Wake County sponsored by Representative Hall; (2) Tiffany Davis of Davie County sponsored by Representative Howard; (3) Hannah Andrews of Alamance County sponsored by Representative Ingle; and (4) Jordan Jackson of Surry County sponsored by Representative Stevens.

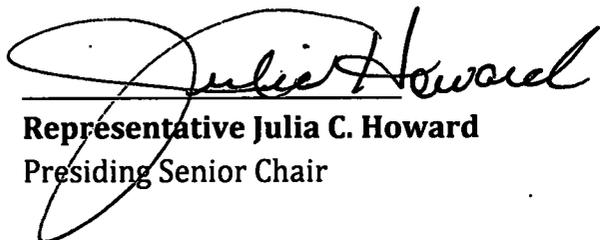
Chairwoman Howard recognized Jonathan Tart, of the Fiscal Research Division, to proceed with his presentation entitled **Business Taxes (Corporate Franchise Tax)** (see **attachment 3**). Following presentation, Jonathan answered questions from members.

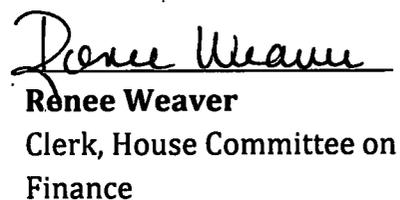
Chairwoman Howard then recognized Trina Griffin, of the Research Division, to proceed with her presentation entitled **Sales and Use Tax** (see **attachment 4**). Sandra Johnson, of the Fiscal Research Division completed this presentation and also provided a copy of a chart on **Sales Tax on Services** (see **attachment 5**). Following presentation, Trina and Sandra answered questions from members.

Chairwoman Howard recognized staff from the Department of Revenue. They are: Tom Dixon, Assistant Secretary Tax Administration; Eric Wayne, Director Sales and Use Tax Division; Ginny Upchurch, Assistant Director Sales and Use Tax Division; Ed Strickland, Administrative Officer Sales and Use Tax Division; Administrative Officer Sales and Use Tax Division; and Jeff Hendrickson, Administrative Officer Sales and Use Tax Division.

There being no further business presently before the Committee, Chairwoman Howard adjourned the meeting at 9:50 am.

Respectfully submitted,


Representative Julia C. Howard
Presiding Senior Chair


Renee Weaver
Clerk, House Committee on
Finance

AGENDA

Joint House & Senate Finance Committee

Wednesday, February 9, 2011

Room 544 LOB

8:30 a.m.

Chaired by: Representative Julia Howard

House Co-Chairs

Representative Julia Howard

Representative Dale Folwell

Representative Mitch Setzer

Representative Edgar Starnes

Senate Co-Chairs

Senator Fletcher Hartsell

Senator Bob Rucho

Call to Order

Introduction of Pages

Informational Presentations

3

Business Taxes (Corporate Franchise Tax)

Jonathan Tart, Fiscal Research Division

4

Sales and Use Tax

Trina Griffin, Research Division

Sandra Johnson, Fiscal Research Division - 3rd presentation

5

2009 Revenues Law

3

Committee Discussion

Adjournment

HOUSE PAGES

NAME OF COMMITTEE FINANCE DATE 2-9-11

1. Name: Nae-Nae Blount

County: Wake

Sponsor: Hall

2. Name: Tiffany Davis

County: Davie

Sponsor: Julia Howard

3. Name: Hannah Andrews

County: Alamance

Sponsor: Dan Ingle

4. Name: Jordan Jackson

County: Surry

Sponsor: Sarah Stevens

5. Name: _____

County: _____

Sponsor: _____

SGT-AT-ARM

1. Name: Fred Hines

2. Name: John Brandon

3. Name: Earl Coker

4. Name: Ken Kirby

VISITOR REGISTRATION SHEET

Finance

2/9/11

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JOHN SHAW	SIERRA CLUB - CAPITAL GROUP
CHUCK W BOLT	WILLIAMS MULLOY
Will Culpeper	MVA
Paul Sherman	NCFB
JOHN GOODMAN	NC CHAMBER
Allison Waller	Charlotte Chamber
Gary Smith	www
Don Cooper	NATIONAL HERITAGE ACADEMY
Ellen Fung	National Bridges & Structures
Jimmy Broughton	Womble Carlyle
Frederick Bon	Bone & Asso.

VISITOR REGISTRATION SHEET

Finance

2/9/11

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Forrest Gilbr	Gow Office
Michael S. Sowell	Rev. Leake
Belle Wilson	AARP
Henry Huford	N.C.B.A.
Tom Dixon	NCDOR
Eric Wayne	NCDOR
Ginny Upchurch	NCDOR
Amy McLemore	NCDOR
Jeff Henderson	NCDOR
Ed Strickland	NCDOR
ZEB ALLEY	NMRS

VISITOR REGISTRATION SHEET

Finance

2/09/11

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<u>Govt corp</u>	<u>NMRS</u>
<u>Jim Stegall</u>	<u>NCAPCS</u>
<u>Chip Kulhar</u>	<u>Nelson Mullins</u>
XXXXXXXXXX	<u>NCAPCS</u>
<u>Samantha Colafrancesco</u>	<u>NCAPCS</u>
<u>Gail Worthington</u>	<u>parent</u>
<u>Michelle Terrell</u>	<u>NC Alliance for Public CS</u>
<u>John Belletto</u>	<u>NC Alliance for Public Schools</u>

Senate PAGES ATTENDING

COMMITTEE: Joint Finance ROOM: 544 LOB

DATE: 2-9-11 TIME: 8:30AM

PLEASE PRINT LEGIBLY!!!!!!!!!!!!!!

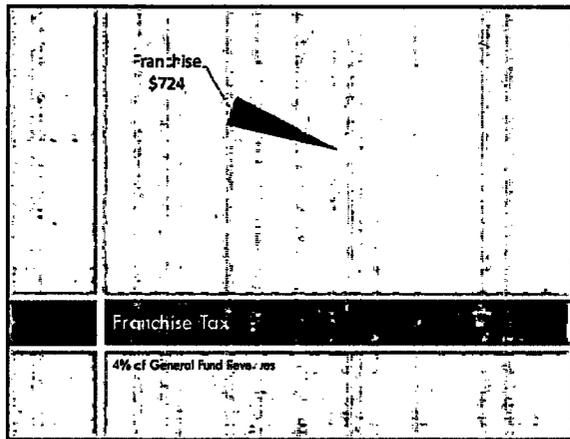
Page Name	Hometown	Sponsoring Senator
1 <i>Kristopher Faheem</i>	<i>Raleigh</i>	<i>Blue</i>
2		
3		
4		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

**OVERVIEW OF
FRANCHISE TAX**

Joint House and Senate Finance, February 9, 2011
Jonathan Tarr, Fiscal Research Division



Franchise Tax

- Privilege tax for:
 - Privilege of engaging in business
 - The "enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of" the existence of the business structure
 - The benefit and protection received from the government and laws of NC in doing business

Who pays Franchise Tax?

- C corporation
- S corporation
- Limited liability company (LLC) that elects to be taxed as a corporation under the IRC

Businesses Not Subject to the Tax

- Limited liability company (other than ones electing to be taxed as a corporation)
- Partnership
- Sole proprietor
- Insurance companies

Calculation of Tax

- Tax rate applied to highest of three asset bases:
- Capital stock, surplus, and undivided profits apportioned to NC using the apportionment percentage determined for income tax
 - Book value of NC real and tangible personal property, less outstanding debt created to acquire or improve the real property
 - 55% of the appraised value of NC real and tangible personal property

Some Statistics from 2008 Tax Year

- Taxpayers with franchise taxable amount over \$40 million made up less than 1% of the returns, but paid 66% of the total tax
- Amounts due by companies is generally modest. 99% of taxpayers owe \$110,000 or less.

Rate of Tax

- \$1.50 per \$1,000 of taxable assets (.0015)
- \$35 minimum tax
- \$75,000 maximum tax for holding companies – those that receive at least 80% of income from subsidiaries

Utility Franchise Tax

- Applies instead of the general franchise tax
- Calculated on gross receipts
- Applies to:
 - Electric power company – 3.22% rate
 - Water utility company - 4% rate
 - Sewer utility company – 6%
- Tax on electric power companies is shared with cities

Questions?	
Jonathan Tart Fiscal Research Division 733-4910 Jonathan.tart@ncleg.net	

AN OVERVIEW OF SALES AND USE TAX

Joint House and Senate Finance, February 9, 2011
Tina Griffin & Sandra Johnson

Outline

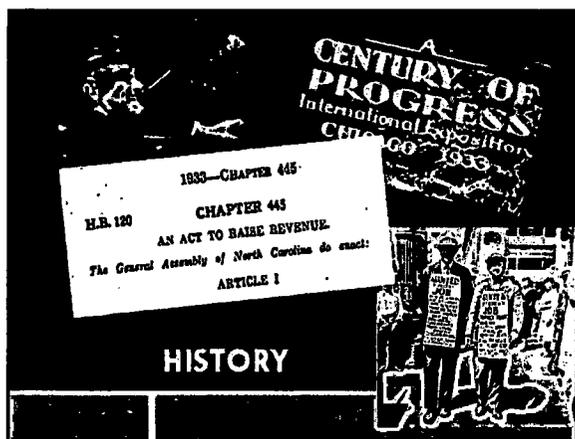
- History
- Sales Tax Basics: Use Tax, Nexus, Streamlined
- Rates: General, Combined General, Preferential
- Exemptions & Refunds
- Tax Reform Proposals

Sales and Use \$5.565 B

Total Tax Revenue \$17.7 B

Sales Tax

31.4% of General Fund Revenues



History

- ❑ Created in 1933 as temporary tax to meet a "supreme emergency"; made permanent in 1939.
- ❑ 3% on tangible personal property
- ❑ Exemptions:
 - ❑ Sales to Federal or State governments.
 - ❑ "Primary and essential articles of food"
 - ❑ Items taxed under another statute
 - ❑ Public school books
 - ❑ Certain sales of farm, mineral, and forest products.
- ❑ Gross receipts tax on amusements enacted in 1933 at same rate as retail sales of merchandise – 3%

That Was Then...

1940-1950	1951-1960	1961-1970	1971-1980
Exempt food Exempt prescription drugs Exempt fuel sold to farmers	Expanded tax to lodging Exemptions expanded 1%/\$80 cap on motor vehicles & airplanes	1%/\$80 cap on mill machinery Food exemption repealed	1¢ local sales tax authorization

That Was Then...

1981-1990	1991-2000	2001-Present
Merchants discount repealed	1 st rate increase since enactment - 4%	Streamlined
Highway use tax on vehicles	Exempt food	Third 1/2% local sales tax
Two 1/2% local sales tax authorizations	Use of exemptions & refunds as economic devpt.	Rate increases
Exempt food purchased with food stamps		Sales tax holidays
Sales tax on utilities		Video programming
		Medicaid swap
		Digital products

This Is Now

- 45 states and the District of Columbia have sales tax.
- 33 states allow localities to charge a local sales tax.
- Combined state and local rates range from 4.35% (Hawaii) to 9.44% (Tennessee).
- Consumption tax; shrinking base due to shift in consumer's spending patterns.
- Sales tax more stable than income tax but sale of durable goods more volatile than services.

Shift in Consumption

	1979 Percent	2007 Percent
Total Expenditures	100.0	100.0
Durable Goods	13.4	11.1
Nondurable Goods	39.1	29.2
Services	47.4	59.7

Sources: Dr. Roby Sawyers, NC State University, "Principles of Sound Tax Policy - How Does the NC Sales Tax Measure Up?" November 17, 2009.

Services Currently Taxed in NC

- Certain Utilities
 - Telecommunications
 - Electricity
 - Heating Oil
- Video Programming
 - Cable TV
 - Direct Satellite TV
- Personal Services
 - Laundry & dry cleaning
 - Diaper service
 - 900 numbers
 - Tuxedo rental
- Business Services
 - Graphic design
 - Photocopying & Printing
 - Photo finishing



Use Tax



- A tax on tangible personal property, digital property, and certain services purchased outside the State for use, storage, or consumption in the State.
- Paid by purchaser when sales tax has not been collected by the seller.
- Reported annually on income tax return.
- Undercollected because of lack of effective enforcement.

Nexus

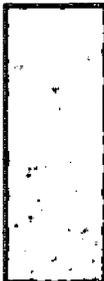
- Quill Corporation v. North Dakota* (1992)
- A retailer must have a physical presence in the State to be required to collect NC sales tax.
- Amazon "click-through" legislation
- Internet Transactions Resolution Program

E-Commerce in NC

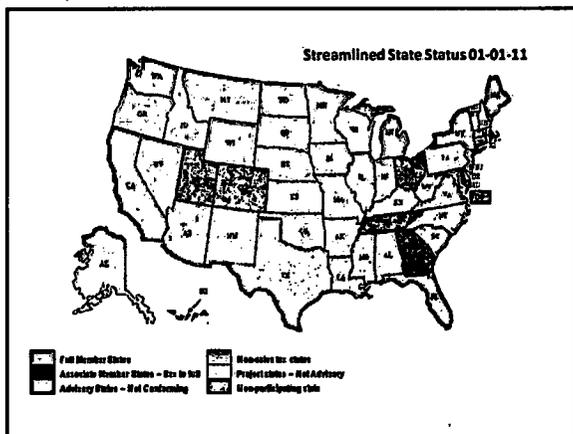
- How much is out there in uncollected sales tax from e-commerce?
 - Univ. of TN study estimates that \$138.6 million
 - Focuses on B2B transactions as well as B2C
 - Estimates assume that only large retailers currently comply.
 - Fiscal Research estimates that \$20.6 million in State
 - Focuses only on retail transactions.
 - Assumes current compliance by 65% of retailers.

STREAMLINED SALES TAX AGREEMENT

Streamlined Sales Tax Agreement



- Created in 1999.
- Voluntary, cooperative effort of states, the District of Columbia, local governments, and the business community to simplify and modernize sales and use tax collection and administration.
- 24 of 44 states with a sales tax have passed conforming legislation (20 full members, including North Carolina; 4 associate members).
- NC became a member of the Agreement October 1, 2005.
- Collection of over \$46.5 million through voluntary compliance since joining.



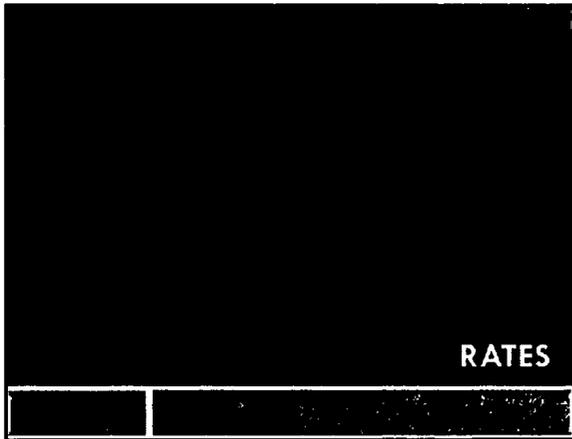
Simplification

Uniformity

- Uniform State and local base
- One State rate, with some exceptions
- One rate per local jurisdiction
- No caps or thresholds

Administration

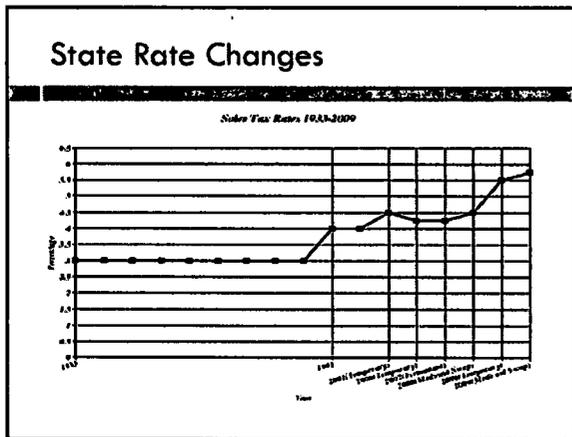
- State-level administration of tax
- State responsible for electronic, downloadable databases of jurisdiction boundaries and tax rates
- Central, electronic registration for all states
- Simple electronic return and electronic payment



General Rate

- The general State rate of tax is 5.75%. The temporary 1% Increase enacted last year is scheduled to expire July 1, 2011 (\$1.0 B).
- Items that are subject to State sales tax are also subject to the local sales and use tax. The local rate of tax varies:

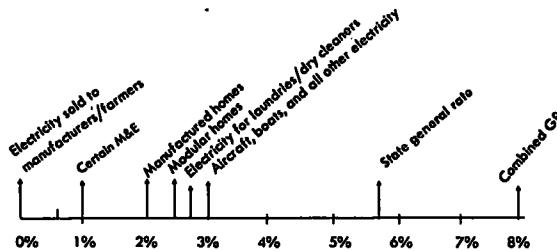
2% (82)	2.25% (18)	2.5% (1)	
All other 82 counties	Alexander Catawba Cumberland Duplin Halifax Haywood Hertford Lee Martin	New Hanover Onslow Pitt Randolph Robeson Rowan Sampson Surry Wilkes	Mecklenburg



Excise Tax on Machinery

- Prior to 2001 – 1% sales tax/\$80 cap on mill machinery
- In 2001, sales tax replaced with privilege tax at same rate to conform to Streamlined.
- Since then, eligible M&E expanded to include:
 - Major recycling facility
 - R&D company in physical, engineering, and life sciences
 - Software publishing
 - Industrial machinery refurbishing company
 - Datacenters

Range of Current State Rates



SELECT SALES TAX EXEMPTIONS AND REFUNDS

Sandra Johnson

History: Three Classes of Exemptions

- Subject to another tax or sound tax policy principle
 - Highway use tax, business inputs, etc.
- Serves as a governmental entity
 - Local government, Federal government
- Part of a public policy decision
 - Charitable organizations, food, chiropractor supplements



History

- 1933 – Exemptions included food, items sold to government, etc.
- 1941 – General Assembly added the first exemption relating to sales to religious or charitable institutions
- 1961 – Sales tax exemptions replaced with refunds
- 1995 – Refund expanded to "homes for the aged"
- 2005 – General Assembly repealed refunds for public schools, creating public school transfer

History

1951	2011
<ul style="list-style-type: none"> <input type="checkbox"/> 32 sales tax exemptions <input type="checkbox"/> Sales to non-profit, religious, and charitable organizations <input type="checkbox"/> Sales of gasoline or other motor fuels <input type="checkbox"/> Public school books <input type="checkbox"/> Sales of mill machinery 	<ul style="list-style-type: none"> <input type="checkbox"/> 59 sales tax exemptions <input type="checkbox"/> Supplements sold by chiropractors \$400K <input type="checkbox"/> Sales from vending machines \$11.4M <input type="checkbox"/> Newspapers sales made by street vendors \$7.5M <input type="checkbox"/> 26 types of organizations eligible for sales tax refunds

Organization Types Eligible for Sales Tax Refunds

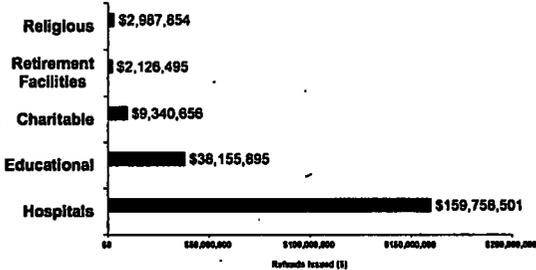
- Governmental agencies
- Religious and charitable
- Nonprofit hospitals
- Nonprofit educational institutions
- Qualifying continuing care and retirement communities

Government Refunds

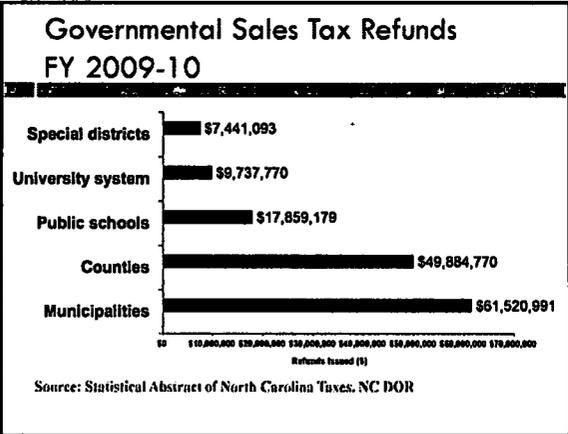
- Sub-state governments
 - Counties
 - Municipalities
 - Special districts
 - Public schools

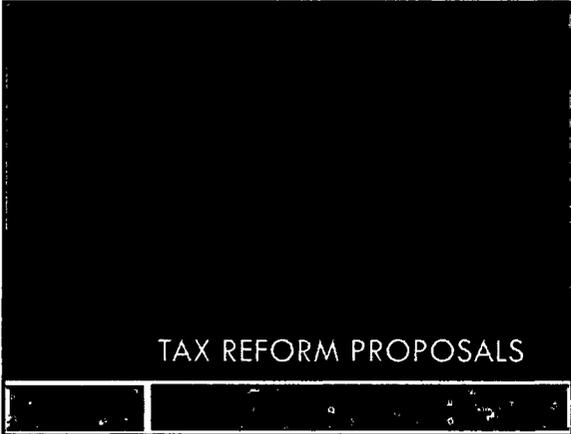


Nonprofit Sales Tax Refunds > \$100K, FY 2009-10



Source: Statistical Abstract of North Carolina Taxes, NC DOR





- ### Tax Reform Proposals
- Eliminate preferential rates.
 - Eliminate/modify exemptions and refunds.
 - Transition certain "privilege" taxes to sales tax base (e.g. admissions, movies).
 - Broaden base to include more personal services/lower the rate.

Contacts



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 - Eric Wayne, Director of the Sales and Use Tax Division
 - 733-2151
 - Eric_wayne@dams.com
- **Legislative Staff**
 - Research, 733-2578
 - Fiscal Research, 733-4910
 - First name.last name@ncleg.net

Sales Tax on Services
Federation of Tax Administrators
February 1, 2011

	NC	Number of Taxing States	Avg Tax Rate
Basic Sales Tax Rate	5.75	As of July 1, 2004	*1
Agricultural Services			
1 Soil prep., custom baling, other ag.	E	4	3.22
2 Veterinary (both large and small animal)	E	5	2.98
3 Horse boarding and training (not race horses)	E	6	3.36
4 Pet grooming	E	18	4.91
5 Landscaping (including lawn care)	E	20	5.33
Industrial and Mining Services			
6 Metal, non-metal and coal mining	E	6	3.48
7 Seismograph & Geophysical	E	6	3.65
8 Oil Field	E	10	3.90
9 Typesetting; platemaking for the print trade	E	20	5.30
Construction			
10 Gross Income of Const. Contractors	E	12	4.27
11 Carpentry, painting, plumbing and similar trades	E	13	4.98
12 Construction service (grading, excavating, etc)	E	11	4.86
13 Water well drilling	E	10	4.70
14 Income from intrastate transp. of persons	E	11	4.36
15 Local transit (intra-city) buses	E	5	3.53
16 Income from taxi operations	E	8	4.16
17 Intrastate courier service	E	6	3.78
18 Interstate air courier (billed in-state)	E	1	4.00
Storage			
19 Automotive storage	E	19	5.68
20 Food storage	E	9	4.50
21 Fur storage	E	16	4.75
22 Household good storage	E	13	4.59
23 Mini-storage	E	13	4.52
24 Cold Storage	E	13	4.73
25 Marina service (docking, storage, cleaning, repair)	E	18	4.96
26 Marine towing service (incl. tugboats)	E	8	4.02
27 Travel agent services	E	3	3.43
28 Packing and crating	E	10	4.32

*1

*2

*3

*4

Utility Service-Industrial Use

29 Intrastate telephone & telegraph	6	44	5.19	
30 Interstate telephone & telegraph	6	26	5.81	
31 Cellular telephone services	6	40	5.32	
32 Electricity	3	37	4.97	*5
33 Water	E	18	4.92	*6
34 Natural gas	E	37	4.92	*7
35 Other fuel (incl. heating oil)	5.75	38	5.23	*8
36 Sewer and refuse, industrial	E	13	4.61	

Utility Service-Residential Service

37 Intrastate telephone & telegraph	8	41	5.46	
38 Interstate telephone & telegraph	8	26	5.88	
39 Cellular telephone services	8	43	5.48	
40 Electricity	3	24	4.82	*9
41 Water	E	12	4.98	*10
42 Natural gas	E	22	4.72	*11
43 Other fuel (incl. heating oil)	5.75	23	5.07	
44 Sewer and refuse, residential	E	9	4.13	

Finance, Insurance, & Real Estate

45 Service charges of banking institutions	E	3	3.83	
46 Insurance services	E	6	3.41	
47 Investment counseling	E	6	3.31	
48 Loan broker fees	E	4	3.88	
49 Property sales agents (real estate or personal)	E	5	2.98	
50 Real estate mgmt fees (rental agents)	E	5	2.98	
51 Real estate title abstract services	E	5	3.98	
52 Tickertape reporting (financial reporting)	E	8	4.11	

Personal Services

53 Barber shops and beauty parlors	E	7	3.70	
54 Carpet and upholstery cleaning	E	18	4.91	*12
55 Dating services	E	8	4.61	
56 Debt counseling	E	7	3.84	
57 Diaper service	5.75	23	4.96	
58 Income from funeral services	5.75	14	4.39	*13
59 Fishing and hunting guide services	E	10	4.86	
60 Garment services (altering & repairing)	E	19	5.13	

Business Services

61 Gift and package wrapping service	E	21	5.07	
62 Health clubs, tanning parlors, reducing salons	E	21	5.25	
63 Laundry and dry cleaning services, coin-op	E	6	4.48	
64 Laundry and dry cleaning services, non-coin op	5.75	23	5.23	
65 Message services	E	10	4.46	
66 900 Number services	5.75	29	5.75	
67 Personal Instruction (dance, golf, tennis, etc)	E	6	3.48	
68 Shoe repair	E	20	5.17	*14
69 Swimming pool cleaning & maintenance	E	17	5.17	
70 Tax return prep	E	6	3.48	
71 Tuxedo rental	5.75	39	5.34	
72 Water softening and conditioning	E	13	4.59	
73 Billboards	E	5	3.38	
74 Radio & TV, national advertising	E	2	2.19	
75 Radio & TV, local advertising	E	4	2.47	
76 Newspaper	E	4	2.47	*15
77 Magazine	E	5	3.07	*16
78 Advertising agency fees	E	11	4.56	
79 Armored car services	E	15	4.79	
80 Bail bond fees	E	4	2.97	
81 Check & debt collection	E	8	4.14	
82 Commercial art and graphic design	5.75	21	5.22	
83 Commercial linen supply	5.75	31	5.09	
84 Credit information, credit bureaus	E	12	4.99	
85 Employment agencies	E	10	4.39	
86 Interior design and decorating	E	9	3.79	*17
87 Maintenance and janitorial services	E	19	5.01	
88 Lobbying and consulting	E	7	3.84	
89 Marketing	E	6	3.48	
90 Packing and crating	E	9	4.08	
91 Exterminating (includes termite services)	E	19	5.35	
92 Photocopying services	5.75	43	5.37	*18
93 Photo finishing	5.75	44	5.32	*19
94 Printing	5.75	45	5.34	*20
95 Private investigation (detective) services	E	14	4.67	
96 Process server fees	E	6	3.48	
97 Public relations, mgmt consulting	E	7	3.84	

98 Secretarial and court reporting services	E	8	4.11	
99 Security services	E	16	4.84	
100 Sign construction and installation	E	29	5.40	*21
101 Telemarketing services on contract	E	6	3.48	
102 Telephone answering service	E	19	4.98	
103 Temp. help agencies	E	10	4.81	
104 Test laboratories (excluding medical)	E	8	3.86	
105 Tire recapping and repairing	E	28	5.26	*22
106 Window cleaning	E	18	4.95	

Computer

107 Software-package or canned program	5.75	47	5.32	
108 Software-modifications to canned program	E	30	5.03	
109 Software-custom programs-material	E	25	5.15	*23
110 Software-customer programs-professional serv.	E	14	4.46	*24
111 Internet service providers-Dialup	E	11	5.89	
112 Internet service providers-DSL or other broadband	E	14	5.64	
113 Info services	E	12	4.09	
114 Data processing services	E	9	3.76	
115 Mainframe computer access and processing serv.	E	11	4.26	

Automotive Services

116 Auto washing and waxing	E	21	5.25	
117 Auto road service and towing serv.	E	18	5.14	
118 Auto service. Except repairs, incl. painting & lube	E	24	5.32	
119 Parking lots & garages	E	20	5.55	
120 Auto rust proofing & undercoating	E	26	5.31	

Admissions & Amusements

121 Pari-mutuel racing events	3	27	6.46	*25
122 Amusement park admission & rides	3	37	5.26	*26
123 Billiard parlors	E	27	5.32	
124 Bowling alleys	E	27	5.13	
125 Cable TV services	E	25	5.57	*27
126 Direct satellite TV	5	22	6.00	
127 Circuses and fairs -- admission and games	3	34	5.53	*28
128 Coin operated video games	E	18	4.81	
129 Admission to school and college sports events	3	22	5.67	*29
130 Membership fees to private clubs	E	22	5.46	

131 Admission to cultural events	3	33	5.42	*30
132 Pinball and other mechanical amusements	E	19	4.88	
133 Admission to professional sports events	3	37	5.43	*31
134 Rental of films and tapes by theaters	E	8	4.06	
135 Rental of video tapes for home viewing	5.75	45	5.39	

Professional Services

136 Accounting and bookkeeping	E	5	2.98	
137 Architects	E	5	2.98	
138 Attorneys	E	5	2.98	
139 Dentists	E	4	2.72	
140 Engineers	E	5	2.98	
141 Land surveying	E	7	3.88	
142 Medical test laboratories	E	4	2.72	
143 Nursing services out-of-hospital	E	4	2.72	
144 Physicians	E	4	2.72	

Leases & Rentals

145 Personal property, short-term (generally)	5.75	45	5.37	
146 Personal property, long-term (generally)	5.75	45	5.35	
147 Bulldozers, draglines and const. mach., short term	5.75	45	5.32	
148 Bulldozers, draglines and const. mach., long term	5.75	45	5.30	
149 Rental of hand tools to licensed contractors	5.75	45	5.37	
150 Short term auto rental	8	48	6.35	*32
151 Long term auto lease	3	38	5.42	*33
152 Limo service (with driver)	E	14	4.55	
153 Aircraft rental to individual pilots, short term	3	40	5.08	
154 Aircraft rental to individual pilots, long term	3	39	5.06	*34
155 Chartered flights (with pilot)	E	11	4.44	
156 Hotels, motels, lodging houses	5.75	48	6.08	*35
157 Trailer parks-overnight	E	27	5.67	

Fabrication, Installation & Repair Services

158 Custom fabrication labor	5.75	38	5.38	*36
159 Repair material, generally	5.75	47	5.32	*37
160 Repair labor, generally	E	24	5.24	*38
161 Labor charges on repair of aircraft	E	19	5.17	
162 Labor charges - repairs to interstate vessels	E	12	5.07	
163 Labor charges - repairs to intrastate vessels	E	19	5.05	
164 Labor- repairs to commercial fishing vessels	E	15	4.96	

165	Labor charges on repairs to railroad rolling stock	E	11	4.65	
166	Labor charges on repairs to motor vehicles	E	22	5.18	
167	Labor on radio/TV repairs; other electronic equip	E	24	5.24	
168	Labor charges-repairs other tangible prop	E	24	5.24	
169	Labor-repairs or remodeling of real prop	E	14	4.86	
170	Labor charges on repairs delivered under warranty	E	7	4.34	
171	Service contracts sold at the time of sale of TPP	E	30	5.27	
172	Installation charges by persons selling prop	E	23	5.11	
173	Installation charges-other than seller of goods	E	18	5.18	
174	Custom processing (on customer prop)	E	26	5.32	
175	Custom meat slaughtering, cutting and wrapping	E	12	4.79	
176	Taxidermy	E	27	5.27	
177	Welding labor (fabrication and repair)	E	31	5.30	*39
178	Do you impose sales tax on other services not listed?	N			

- *1 Items subject to the general State rate of sales or use tax are subject to the applicable local rate of tax. Typesetting exempt; sales of printing plates to manufacturers for use in their printing presses to imprint containers used to ship their manufactured products- 1% State, \$80.00 maximum tax per article.
- *2 Receipts are exempt. Buses are subject to the 3% state rate of highway use tax with maximum of \$1,000.
- *3 Parts and material only taxable.
- *4 Sales of electricity to manufacturers, farmers, and commercial laundries and dry cleaners for the prescribed purposes are subject to a 2.83% rate of tax. Not subject to local taxes.
- *5 Exempt if delivered through mains. Subject to a general state & local tax if delivered in bottles.
- *6 Sales to commercial laundries freezer locker plants, manufacturers for use in connection with the industry or plant but not for residential heating purposes, farmers for other than household purposes, and commercial laundries are taxed at 1%. Not subject to local sales tax.
- *8 Not subject to local taxes.
- *9 Exempt if delivered through mains. Subject to the general state & local tax if delivered in bottles.
- *10 Subject to an excise tax based on therms delivered; rates from .047 to .003 per therm.
- *11 Rug cleaning services exempt if performed in home.
- *12 First \$1,500 of charge is exempt.
- *13 Materials used in repair are taxable.
- *14 Sales of newspapers by newspaper street vendors and by newspaper carriers making door-to-door deliveries and by vending machines are exempt. Sales of newspapers by others are subject to the general State sales tax and applicable local sales tax
- *15 Sales of magazines by magazine vendors making door-to-door deliveries are exempt. Sales of magazines by others are subject to the general State sales tax and applicable local sales tax.
- *16

- *17 Retail sales of tangible personal property by interior designers are subject to the general State tax and applicable local sales tax.
- *18 Considered tangible property
- *19 Considered tangible property
- *20 Considered tangible property
- *21 May be taxable, See Sales and Use Tax Administrative Rule .0805.
- *22 Material only taxable.
- *23 See G.S. 105-164.3(20)
- *24 Generally not taxable; but see G.S. 105-164.3(20)
- *25 Exempt under sales tax. Taxable under admissions tax statute.
Exempt under sales tax. Charges for live entertainment are subject to amusement tax, admissions and rides are not taxable.
- *26
- *27 Equipment rental by viewer is subject to the general state and local sales tax.
Exempt under sales tax. Admissions to circus and fairs (certain agricultural fairs are exempted) are taxable under admissions tax statute; charges for games are not taxable.
- *28 Exempt under sales tax. Admissions to elementary and secondary school events are not taxable. Admissions to college events are subject to admissions tax with certain exclusions based on the amount of the admission charge and age of participants.
- *29
- *30 Exempt under sales tax. Taxable under admissions tax statute.
- *31 Exempt under sales tax. Taxable under admissions tax statute.
- *32 Exempt from sales tax. Vehicles subject to Highway Use tax. Short term lease is less than 365 continuous days.
- *33 Exempt from sales tax. Vehicles subject to Highway Use tax. Long term lease is 365 continuous days or longer.
- *34 \$1,500 maximum tax.
- *35 Exempt after 90 continuous days to the same person.
- *36 Considered a part of sales price.
- *37 Taxable at 1% or 4.5% whichever is applicable.
Repair labor is exempt if separately stated on invoice from the tangible personal property. Material is taxable at 1% or 4% rate, whichever is applicable.
- *38 Fabrication labor is part of sales price of tangible personal property. Repair labor exempt if separately stated on customer's invoice.
- *39 North Carolina now applies the regular combined general state and local rate to telecommunications, cable TV and satellite TV.
- **
- *** Prepaid telephone charges are taxed as tangible personal property at the regular state rate
- **** Satellite radio is taxed as tangible personal property at the regular rate.

The general rate in NC was 4.5% on July 1, 2004, it was reduced to 4.25% on December 1, 2006 and is scheduled to decrease to 4% on July 1, 2007



North Carolina General Assembly House Committee on Finance

Minutes

February 10, 2011

The House Committee on Finance met on Thursday, February 10, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes and Folwell; Vice-Chair McComas; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Gibson, Hackney, Hall, Jordan, Luebke, McCormick, McGee, Moffitt, Moore, Ross, Samuelson, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson Starnes called the meeting to order at 8:35 am and recognized the four (4) pages present: (1) Nae-Nae Blount of Wake County sponsored by Representative Hall; (2) Tiffany Davis of Davie County sponsored by Representative Howard; (3) Sam Potter of Cabarrus County sponsored by Representative Barnhart; and (4) Jordan Jackson of Surry County sponsored by Representative Stevens.

Chairperson Starnes recognized Jonathan Tart and Rodney Bizzell, of the Fiscal Research Division, to proceed with their presentation entitled **Economic Development Tax Incentives** (see **attachment 3**). Following presentation, Jonathan and Rodney answered questions from members.

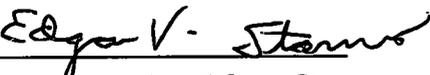
Chairperson Starnes then recognized Barry Boardman, of the Fiscal Research Division, to proceed with the **Consensus Forecast for the 2011-2011 Biennium** (see **attachment 4**). Following the presentation, Barry answered questions from members.

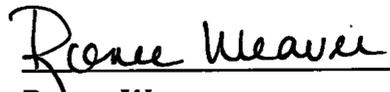
Chairperson Starnes recognized Heather Fennell, of the Research Division, to proceed with her presentation entitled **Miscellaneous Taxes: Gross Premiums Tax; Alcoholic**

Beverage Excise Tax; Tobacco Products Tax; Pied Natural Gas Tax (see attachment 5).
Following presentation, Heather answered questions from members.

There being no further business presently before the Committee, Chairperson Starnes adjourned the meeting at 9:50 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

#1

AGENDA
House Finance Committee

Thursday, February 10, 2011
Room 544 LOB
8:30 a.m.

Chaired by: Representative Edgar Starnes

House Co-Chairs

Representative Julia Howard
Representative Mitchell Setzer

Representative Dale Folwell
Representative Edgar Starnes

Call to Order

Introduction of Pages

Informational Presentations

③ **Economic Development Tax Incentives**
Jonathan Tart, Fiscal Research Division
Rodney Bizzell, Fiscal Research Division

④ **Consensus Forecast for the 2011-2013 Biennium**
Barry Boardman, Fiscal Research Division

⑤ **Miscellaneous Taxes: Gross Premiums Tax; Alcoholic Beverage Excise Tax;
Tobacco Products Tax; Piped Natural Gas Tax**
Heather Fennell, Research Division

Committee Discussion

Adjournment

HOUSE PAGES

NAME OF COMMITTEE FINANCE

DATE Feb 10, 2011

1. Name: Nae-nae Blount

County: Wake

Sponsor: Hall

2. Name: Jordan Jackson

County: Sunny

Sponsor: Stevens

3. Name: Tiffany Davis

County: DAVIE

Sponsor: JULIA HOWARD

4. Name: SAM POTTER

County: cabarrus

Sponsor: Barnhart

5. Name: _____

County: _____

Sponsor: _____

SGT-AT-ARM

1. Name: Fred Hines

2. Name: John Brandon

3. Name: Earl Coker

4. Name: Ken Kirby

VISITOR REGISTRATION SHEET

House Finance Committee

February 10, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
W. Gordon Culpeper	Visitor
Will Culpeper	MVA
Renee Kipy	City
BAND Louie	Manufactured and Modular Homes
Elizabeth Biser	Brooks Pierce
JACK COZART	NSS
John McAlister	NC Chamber
B. B. B. B. B.	WM

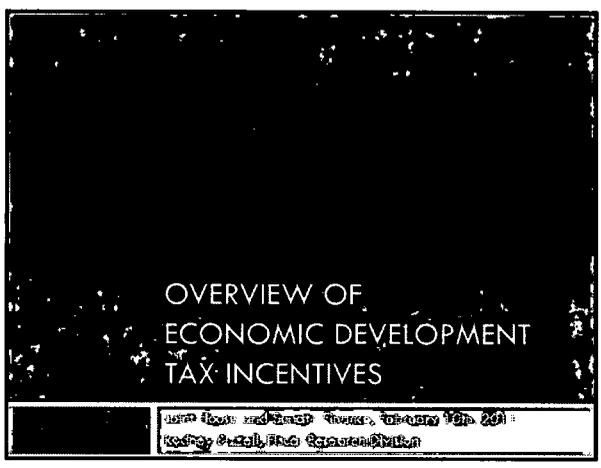
VISITOR REGISTRATION SHEET

House Finance Committee
Name of Committee

February 10, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Donna Powell	DOR
AL MILAK	DOR
Michael Houser	DOR
Eric Wayne	neon
Andrew Lynch	DOST
Debbie Hammick	NC Farm Bureau
Kathy Hawley	DWIA Energy
Butch Gunnells	NC Beverage A
Amy McConkey	NC Beverage Ass'n
Bill Doucette	SELF
L ROGERS	CWMTA



Overview

- Economic Development Incentives
 - Installments and Carryforwards
 - Tax Credits Generated vs. Taken
 - Savings from Repeal of Incentives
- Corporate and Franchise Tax Expenditures Related to Economic Development
- Sales Tax Expenditures Related to Economic Development

Economic Development Incentives

- Article 3A – William S. Lee Act
 - Repealed in 2007 and replaced with Article 3J
- Article 3B – Business and Energy Tax Credits
 - Tax credits for energy property and facilities
- Article 3F – Research and Development
 - Tax credits for eligible research expenses
- Article 3G – Major Computing Facilities
 - Dell Incentive
- Article 3J – Growing Businesses

Economic Development Incentives

In general, major incentive credits (Article 3A – J) share certain attributes

- Can be taken against the corporate income or franchise tax.
- Credits are limited to 50% of taxable income
- Most credits are taken in installments over 4 or 5 years
- Carryforwards extend the time over which credits can be taken (range from 5-25 years)

Economic Development Incentives

- Credits Generated vs. Credits Taken
- Between 1996 and 2006, the total Lee Act credits generated exceeded \$2 billion.
- The amount of credits used or "taken" during that time totaled \$632 million.
- An estimated 35% of the generated credits will never be used.

Source: UNC Center for Competitive Economies

Article 3J Tax Credits

- Tax Credits for Growing Businesses
 - Replaced William S. Lee Act Incentives in 2007
 - Credit for Creating Jobs
 - Credit for Investing in Business Property
 - Credit for Investing in Real Property (Tier 1. counties only)

2008 Article 3J Jobs Credits Generated

	Number of New Jobs	Credits Generated
Tier One	2,284	28,550,000
Tier Two	839	4,253,000
Tier Three	3,249	2,637,875
Total	6,372	\$35,440,875

2008 Investment in Business Property Credits Generated

	Investment	Credits Generated
Tier One	402,168,157	28,095,346
Tier Two	235,859,128	11,843,752
Tier Three	703,924,546	36,273,286
Total	\$1,341,951,831	\$76,212,384

Timing of Tax Credit Impact

	Tax Credits Taken (\$millions)			
Year of Tax Credit Generation	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
2008	5.4	12.1	12.1	12.1
2009		5.4	12.1	12.1
2010			5.4	12.1
2011				5.4
TOTAL	\$5.4	\$17.5	\$29.6	\$41.7

Economic Development Inventory

http://www.ncleg.net/fiscalresearch/frd_reports/frd_reports_pdfs/inventories/Final_2010 EDI.pdf

Questions?

Rodney Bizzell
Fiscal Research Division
733-4910
Rodney.Bizzell@ncleg.net



NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office
George R. Hall, Legislative Services Officer

Fiscal Research Division
300 N. Salisbury Street, Suite 619
Raleigh, NC 27603-5925
Tel. 919-733-4910 Fax 919-715-3589

Marilyn Chism, Director

February 9, 2011

MEMORANDUM

TO: North Carolina General Assembly
FROM: Barry Boardman, Ph.D.
Fiscal Research Division
SUBJECT: General Fund Revenue Update

A consensus revenue forecast for the 2011-13 biennium has been reached between Fiscal Research and the Office of State Budget and Management. The notes below summarize the results of the consensus revenue estimating process.

Forecast Summary

The forecast expects FY 2010-11 collections to exceed the budgeted amount by \$156.4 million and for modest growth to occur during the next biennium off this slightly higher base:

	Revenues (millions)	Change (millions)
2010-11	\$19,134.2	
2011-12	\$18,822.6*	(\$311.6) ✓
2012-13	\$19,884.1*	\$1,061.5 ✓

*An additional \$80 million reduction is likely because of changes to the Federal Estate Tax in 2011 and 2012. The Federal changes will reduce the number of estates with a State Estate Tax liability. The decline in FY 2011-12 revenue is the direct result of expiring temporary tax increases.

Given the uncertainty surrounding the pace of growth in the economy, the consensus forecasters took a cautious approach. This approach seemed particularly prudent with the ongoing weaknesses and instability in the housing and employment markets. At no time during the biennium are revenues expected to grow faster than the long term average of 5.7 percent. Quite often in a full expansionary economy revenue growth can exceed 9 percent. The forecast ruled out the possibility of a full-blown economic expansion throughout the biennium.

Budget Gap

A recent publication by Fiscal Research estimated the potential size of the budget gap for FY 2011-12¹. The size of the budget gap was a function of expiring tax increases, the end of federal stimulus dollars, and both mandatory and discretionary spending pressures. One component of the budget gap was an assumption on General Fund revenue for FY 2011-12. The estimate assumed that revenue would grow by \$700 million off of a base of \$17.5 billion. Thus, General Fund revenue was estimated at \$18.2 billion. The new consensus forecast has increased both the revenue base and the rate of growth that was used in the estimate. The result is General Fund revenues will be approximately \$600 million higher than what was used to originally estimate the budget gap.

Current Year Revenues

- (1) The estimated revenue surplus for the current year is \$156.4 million above the \$18,977.8 billion budgeted amount. General Fund collections are forecast to increase 2.7 percent over the amount collected in FY 2009-10. The 2.7 percent growth rate is quite modest, and is reflective of the very sluggish economic recovery.
- (2) Key revenue sources have now strung together six months of positive collection growth and January saw a continuation of that trend. The result is net baseline tax collections are forecast to grow 3.1 percent. That compares to the original budget forecast that envisioned 2.8 percent growth in tax revenue.
- (3) Sales tax growth is now estimated at nearly six percent above the budgeted amount. There are two reasons for the higher than expected growth rate. First, collections at the end of FY 2009-10 were higher than anticipated when the budget numbers were being crafted. The second reason is the growth of this tax has picked up considerably beginning the second quarter of this fiscal year. Baseline sales tax collections for the year are expected to finish up 1.5 percent over last year. Larger than expected refunds from non-profits and local governments are keeping the overall growth rate below 2 percent.
- (4) The personal income tax is forecast to fall by 0.5 percent this year. Unlike the Sales Tax, personal income taxes were lower than expected in FY 2009-10, thus growth was off of a lower base than originally projected. Despite coming off a base nearly 1.5 percent lower, growth in withholding collections will make up most of the difference.
- (5) This forecast does recognize that the economy is at a turning point making the swings in volatile collections difficult to forecast. In many years a "ballooning" effect can occur during April as final payments from the previous tax year come due and estimated payments based on the experience of last year are made. Further complicating the forecast are expectations for refunds, which have been running much higher than in typical years. The consensus forecast expects refunds to remain elevated, but not by as high a margin as in the past two years.

¹ "North Carolina's FY 2011-12 Budget Gap", Fiscal Brief, Fiscal Research Division of the North Carolina General Assembly, December 7, 2010.

Outlook for the 2009-11 Biennium

- (1) The recession that began in December 2007, technically ended in June 2009. The recovery phase coming out of the recession has lasted 19 months and we are just now on the cusp of entering the expansionary phase of the business cycle. The housing market downturn, which spread throughout the economy during 2008, combined with the global financial market collapse in October 2008 sent the economy into a prolonged and severe recession. Thirty-eight months after the onset of the recession the housing market has yet to fully heal and the financial sector, while gaining solid footing, is still susceptible to weaknesses. Nonetheless, State and national forecasters have been upgrading their forecasts with more and more positive economic data being reported. These forecasts expect the economy to show ever increasing improvement throughout 2011. While robust expansionary growth may be 18 to 24 months away, solid, sustained growth is anticipated throughout the biennium. The revenue forecast was influenced by improving economic conditions, but forecasters chose to take a much more cautious approach than some recent forecasts might suggest is warranted.
- (2) Employment has always been a lagging economic indicator, not changing direction until well after the turn in the business cycle. The sluggish, lengthy recovery has exacerbated that tendency and significant gains in employment may not begin until the end of 2011. Thus, despite improvements along many economic fronts, the employment outlook for the state has not been upgraded. Employment is expected to experience gains close to two percent each year of the biennium, adding as many as 175,000 new jobs by the end of FY 2012-13. The majority of these gains will start to occur in the second half of 2011. Even with the two percent growth, the State is forecast to have 100,000 fewer jobs than at the onset of the Great Recession.
- (3) Employment is closely tied to personal income and extensive employment losses from layoffs and cutbacks by key businesses such as the financial sector have ended, thus improving the prospects for income growth over the biennium. The consensus forecast envisions 4.4 percent and 6.5 percent growth in personal income for the respective fiscal years. Those numbers are built primarily on the anticipation of modest employment and wage growth. Additionally, twenty percent of Personal Income Tax collections come from non-withholding such as investments and business income. The forecast expects non-withholding to rebound given the ongoing strength in equity markets and business profits. Part of the gain from these sources will be offset by the carry forward of losses experienced during the recession. By comparison, the two years following the last recession Personal Income Tax grew by 6.1 percent and 11.1 percent, respectively.
- (4) Sales Tax collections are forecast to increase by 5.3 percent and 4.5 percent, respectively this biennium. These are modest growth rates given the significant drop-off in collections over the last three years. During the last few years, retail sales in North Carolina plummeted by double-digits as employment losses mounted and consumer confidence sank. The housing market, which led us into the recession, has yet to fully heal and the result is many household balance sheets remain out of balance. The employment market has stabilized and there is some growing confidence by consumers, which is starting to show up in the consumer spending data. Nonetheless, the modest growth rates reflect that overall conditions will not have fully rebounded during the biennium, and therefore, we project lower growth

than what one might expect after the significant drop-off in collections that have occurred over the last 3 years. To put the forecasted growth in perspective, the increase in net collections will only be on par with the amount of revenue generated during the 2006-07 fiscal year, and yet there will be an estimated 600 thousand more people living in the State.

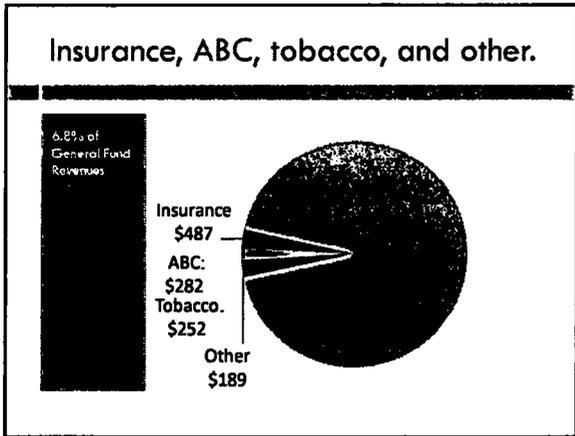
- (5) Net corporate profits are expected to grow by 11 percent over the next biennium. Corporate income is always very volatile with yearly swings by as much as 30 percent to 40 percent. For the upcoming biennium we think these receipts will be relatively flat in the first year. Growth is forecast at only 2.2 percent reflecting the mild economic recovery, plus the losses from the lengthy recession that will continue to be taken against the bottom line. The second year of the biennium corporate tax receipts are expected to grow by 8.6 percent, which is closer to the long run average growth. Another business tax, the Franchise Tax, declined significantly this fiscal year with a baseline drop estimated at 10.4 percent. The key reason is that an important basis for calculating the tax, capital stock, declined significantly during the recession, thus lowering the amount of Franchise Tax owed. We expect a rebound during the biennium, but only at rate of 6 to 7 percent.
- (6) **Putting all these assumptions together leads to a 4.6 percent higher baseline of General Fund revenues in 2011-12, and 5.5 percent growth in 2012-13.** The following table provides a comparison of baseline growths starting in FY 2000-01.

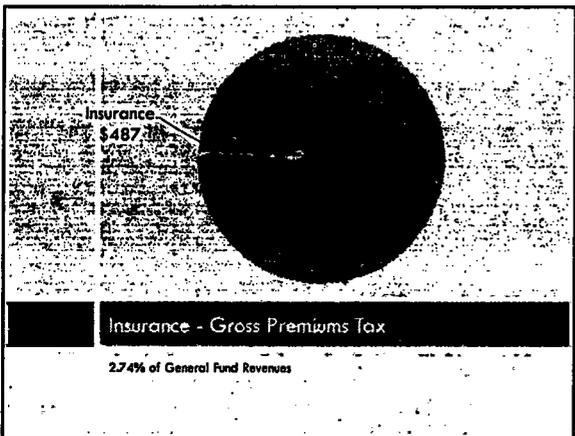
Fiscal Year	Baseline Growth Rate (Percent)
2000-01	4.5
2001-02	(6.1)
2002-03	(0.4)
2003-04	5.8
2004-05	9.3
2005-06	12.0
2006-07	7.2
2007-08	5.4
2008-09	(11.1)
2009-10	(3.5)
2010-11 (e)	2.8
2011-12 (e)	4.6
2012-13 (e)	5.5

- (7) The revenue outlook for the 2011-13 biennium reflects a continuation of the slowly developing economic recovery in 2011. Employment growth will lag behind the pace of the recovery, yet will show continued improvement throughout the biennium. Revenue collections will be bolstered by an improvement in consumer confidence, the gradual healing of the housing market, and continued wage and salary growth. Therefore, the prospects for revenue collections to return to long term average growth as we move into 2012 are quite good. Nonetheless, the toll taken on the State by the Great Recession will not be behind us for at least another two or three years.

OVERVIEW OF MISCELLANEOUS TAXES

Joint House and Senate Finance, February 10, 2011
Fiscal Council, Research Division





Gross Premiums Tax

Imposed on gross premiums covering all persons, property and risk.

Rates:

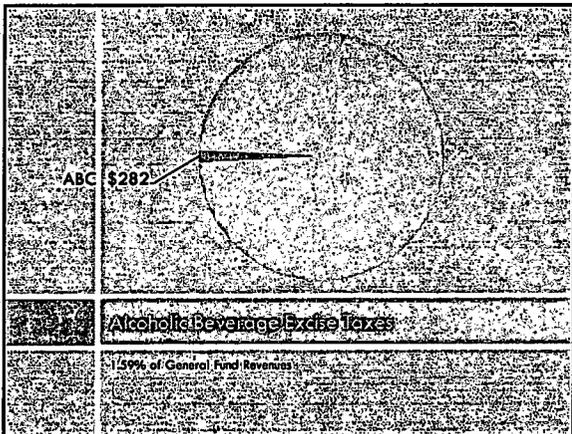
- 2.5% on gross premiums of workers' compensation policies.
- 1.9% on gross premiums of all other insurance policies – including health policies.

Gross Premiums Tax

Additional Rate

Distribution

- Property Coverage – 0.74%
- 10% of automobile physical damage coverage.
- 100% of all other property coverage.
- 30% to Volunteer Fire Department Fund for grants.
- 25% to Fire Districts.
- Remainder to General Fund.

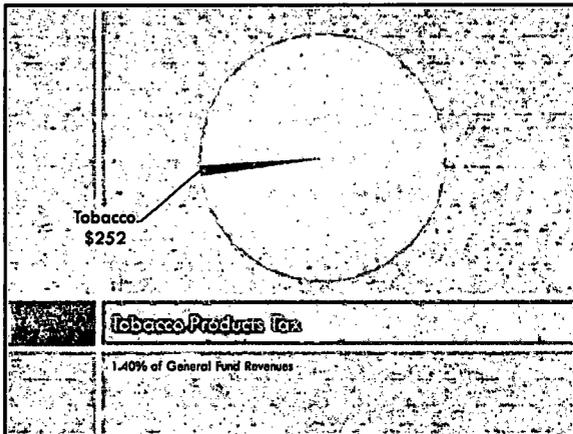


Alcoholic Beverage Taxes

- Rates:
 - Beer – 61.71¢ per gallon.
 - Unfortified wine – 26.34¢ per liter.
 - Fortified wine – 29.34¢ per liter.
 - Spirituous liquor – 30% of:
 - Distiller's price + ABC freight and bailment charges + local ABC markup.

Alcoholic Beverage Taxes - Distribution

- | By statute: | 2009 Budget: |
|------------------------------|---------------------------|
| □ Local Governments: | □ Local Governments: |
| □ Beer - 20.47%. | □ Beer – 7.24%. |
| □ Unfortified wine - 49.44%. | □ Unfortified wine – 18%. |
| □ Fortified wine – 18%. | □ Fortified wine – 6.49%. |



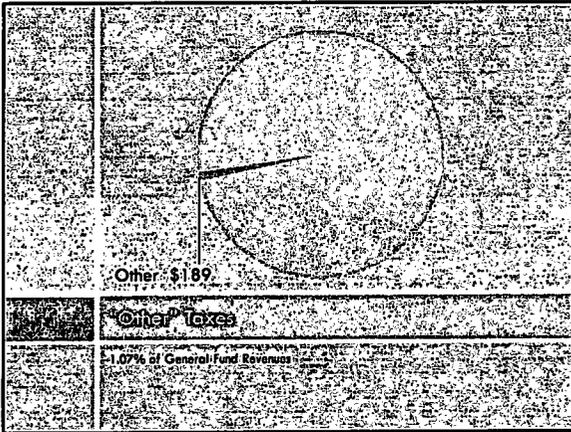
Tobacco – Cigarettes and OTP.

Cigarettes

- Rate - 2.25¢ per cigarette, 45¢ per pack.
- Discount – 2% for filing timely report.
- Proceeds – General Fund.

Other tobacco products (OTP)

- Rate - 12.8% of the cost of the product.
- Discount – 2% for filing timely report.
- Proceeds – 3% of cost of product – GF. Remainder - Cancer Fund.



Freight Car Tax

- 3% of gross earnings of freight line companies.
- In place of property tax.



Piped Natural Gas

- Excise tax in lieu of sales tax.
- Tax rate based on monthly therm volumes of piped natural gas received by the end-user.
- Exemptions – Gas cities, manufacturers for use in operation of manufacturing facility, farmer for farming purpose.
- Distribution to cities

Piped Natural Gas

Monthly Volume of Therms Received	Rate Per Therm
First 200	\$.047
201 to 15,000	.035
15,001 to 60,000	.024
60,001 to 500,000	.015
Over 500,000	.003

State Privilege Taxes

- Most of the State privilege license taxes were repealed, effective July 1, 1997.

Amusements	3%
Motion Picture Shows	1%
Professionals	\$50
Installment Paper Dealers	.277% of face value of obligations/quarter
Loan agencies, check cashers, pawnbrokers	\$250/location
Banks	\$30 for each \$1M in assets
Newspaper publishers	\$15 on each ton that fails to meet the applicable minimum recycled content percentage required by law



North Carolina General Assembly House Committee on Finance

Minutes

February 16, 2011

The House Committee on Finance met on Wednesday, February 16, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chair McComas; and Representatives Alexander, Brawley, Carney, Collins, Gibson, Hall, Jordan, Luebke, McCormick, McGee, Moffitt, Moore, Rhyne, Samuelson, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, and Fred Hines. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Etefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson Setzer called the meeting to order at 8:35 am and recognized the three (3) pages present: (1) Morgan McRae of Mecklenburg County sponsored by Representative R. Moore; (2) Jessica Pope of Nash County sponsored by Representative Collins; and (3) Kelia Williams of Wake County sponsored by Representative Gill.

Chairperson Setzer recognized Secretary David Hoyle of the North Carolina Department of Revenue. Following Secretary Hoyle's presentation, he answered questions from members.

Chairperson Setzer recognized additional staff members from the Department of Revenue. They are: Tom Dixon, Assistant Secretary Tax Administration; Linda Millsaps, Chief Operating Officer, Eric Wayne, Director Sales and Use Tax Division; Michael Houser, Legislative Affairs, Canaan Huie, General Counsel; Bill Wilkes, Assistant Director Property Tax Division; David Baker, Director Property Tax Division; Julian Fitzgerald, Director Motor Fuels Tax Division; and Donna Alderman, Assistant Director Motor Fuels Tax Division.

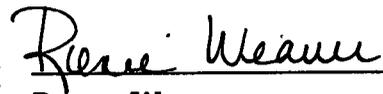
Chairperson Setzer recognized Greg Roney, of the Research Division, to proceed with his presentation entitled **Overview of Motor Fuel and Highway Use Taxes (see attachment 3)**. The presentation was cut short due to time.

Chairperson Setzer adjourned the meeting at 9:50 am.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mitchell Setzer".

Representative Mitchell Setzer
Presiding Chair

A handwritten signature in cursive script that reads "Renee Weaver".

Renee Weaver
Clerk, House Committee on
Finance

AGENDA
House Finance Committee

#1

Wednesday, February 16, 2011
Room 544 LOB
8:30 a.m.

Chaired by: Representative Mitchell Setzer

Call to Order

Introduction of Pages

Introduction of Members and Staff

Presentations

Department of Revenue
Secretary David Hoyle

③ **Overview of Motor Fuel and Highway Use Taxes**
Greg Roney, Research Division

Overview of Local Government Revenue Sources
Martha Walston, Fiscal Research Division
Heather Fennell, Research Division

> rescheduled to
2-23-11
due to time

Committee Discussion

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: FEB. 16, 2011 Room: 544

House Sgt-At Arms:

- 1. Name: FRED HINES
- 2. Name: JOHN BRANDON
- 3. Name: EARL COKER
- 4. Name: KEVIN KIRBY
- 5. Name: _____

Senate Sgt-At Arms:

- 1. Name: _____
- 2. Name: _____
- 3. Name: _____
- 4. Name: _____
- 5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE House FINANCE DATE 02-16-11

1. Name: Morgan McPae

County: Mecklenburg

Sponsor: Rodney Moore

2. Name: Jessica Pope

County: Nash

Sponsor: Jeffrey L. Collins

3. Name: Kelia Williams

County: Wake

Sponsor: Rosa Gill

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

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VISITOR REGISTRATION SHEET

FINANCE

FEBRUARY 16, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Karl Krapp	NCLM
TOM DIXON	NC DOR
LINDA MILLS	NC DOR
Eric Wayne	NC DOR
Michael Housee	NC DOR
Canaan Huie	NC DOR
JULIAN FITZGERALD	NC DOR
Downa Alderman	NC DOR
Janice Davidson	NC DOR
David Baker	NC DOR
Bill Wilkes	NC DOR

VISITOR REGISTRATION SHEET

FINANCE

FEBRUARY 16, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alec Abelin	Google, 1600 Amphitheater, CA
Andrew Meehan	Cap Street
Johanna	NELSON MULLENS
Dept of Commerce	Katie Stanley
David McGowan	NC Realtors
Kary Auer	EGIT
Michael Bray	Yam County Schools
James Hutton	MA. Any City Schools
Steve Holroy	Longmire Group
Eddie Goodman	NC Alliance

VISITOR REGISTRATION SHEET

FINANCE

FEBRUARY 16, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Stephanie King	NC DOT
Laurie Smith	NC DOT
John Shaw	SIERRA CLUB CAPITAL GROUP
Will Culpepper	MVA
Paul Sherman	MCFB
Lorrie Turner	T-Mobile
Cama Hourly	ETX City of NC
John Mellett	MWC
Allison Waller	Charlotte Chamber
Maureen Goff	Smith Anderson
Alan Kozak, M.D.	N.C. Society of Anesthesiologists

VISITOR REGISTRATION SHEET

FINANCE

FEBRUARY 16, 2011

Name of Committee

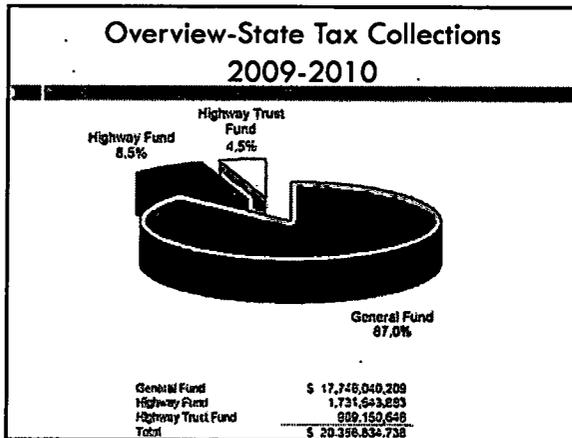
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

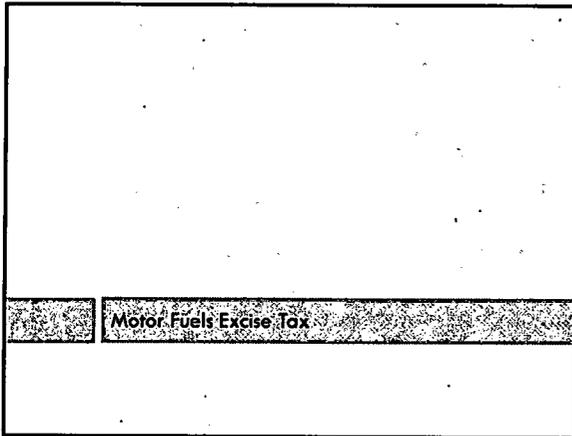
NAME	FIRM OR AGENCY AND ADDRESS
B.J. Miller	Moses Cone
Amy Whited	NC med society
Matt Farrell	NC SBA
Franklin Robinson	NCMA
PRESTON HOWARD	MCIC
Marc Freeman	NCTE
J. Ann Lewis	Public School
Erin Handman	ETOR
PAUL NORCROSS	NCAPCS
XXXXXXXXXX	NCAPCS
Kym Newman	NCAPCS
Samantha Colafiancisco	NCAPCS

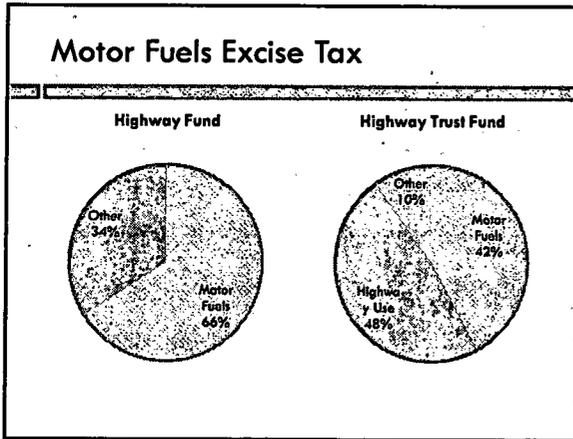
**MOTOR FUELS EXCISE TAX
AND HIGHWAY USE TAX**

Finance Committee, February 16, 2011
Greg Roney, Research Division



- Overview-Highway Fund**
- Highway Fund revenue used to maintain State's public roads and fund operations of Dept of Transportation
 - Road Maintenance
 - DMV and Highway Patrol
 - Powell Bill/Secondary Roads
 - Funding Sources
 - Motor Fuels Excise Tax (75% of Tax Collection)
 - Fees: Truck Plates, Vehicle Registration, Driver License





- ### Motor Fuels Excise Tax-Overview
- All states impose a tax on gasoline
 - Distribution
 - 75% to Highway Fund
 - 25% to Highway Trust Fund
 - Other distributions: Commercial and Non-Commercial Leaking Petroleum Underground Storage Tank Cleanup Funds; Water and Air Quality Account; Wildlife Resources Fund; Powell Bill

Motor Fuels Excise Tax-History

- Centralization of responsibility for roads with the State
- 1921: Motor Fuels tax imposed at \$0.01
- 1931
 - State assumes responsibility for all roads except city streets
 - Rate is \$0.05 (equivalent to \$0.63 per gallon today)

Motor Fuels Excise Tax-History-Continued

- 1951: Powell Bill (Aid to Municipalities)
 - States assumes responsibility for city streets which are part of the state highway system
 - \$0.05 per gallon to cities for their streets
- 1986
 - Rate increased from \$0.12 to \$0.155
 - Variable component was added to rate
 - \$0.14 per gallon fixed rate plus
 - 3% of the average wholesale price

Motor Fuels Excise Tax-History-Continued

- 1989
 - Highway Trust Fund created
 - Rate increased from \$0.157 to \$0.209
 - \$0.17 per gallon fixed rate plus
 - 7% of the average wholesale price
- 1991: Fixed component of rate changed to \$0.175
- 2011: No rate changes since 1991
 - \$0.17 per gallon fixed plus 7% of the weighted average wholesale price of motor fuels
 - Floor Rate is \$0.299 until July 1, 2011
 - Total Rate: \$0.325 per gallon (1st Quarter 2011)

Motor Fuels Excise Tax-Collection

Interstate Trucking Industry

- ❑ 48 contiguous states joined Int'l Fuel Tax Agreement (IFTA)
- ❑ Truckers file 1 report to base state reporting and paying fuel taxes for all 48 states
- ❑ IFTA clearinghouse handles payments among states
- ❑ Major tax reform which simplified tax reporting and unified tax reporting for all contiguous states

"Tax of the Rack"

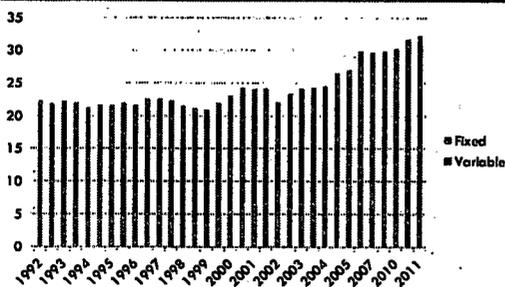
- ❑ Collected by wholesale distributors of motor fuels on purchases made from major oil companies
- ❑ Tax due when fuel pumped into tanker truck "at the rack"
- ❑ Major tax reform which eliminated taxpayers and improved compliance

Motor Fuels Excise Tax-Exemptions and Refunds

- ❑ Fuel not used on the highway (100% refund but subject to sales tax)
- ❑ Exemptions
 - ❑ US Government
 - ❑ State Agencies
 - ❑ Counties
 - ❑ Municipal Corporations
 - ❑ Community Colleges
 - ❑ Boards of Education
 - ❑ Fuel for Export
 - ❑ Fuel for Aircraft

- ❑ Volunteer fire dept and rescue squads; sheltered workshops; taxicabs; nonprofits operating for a local government (refund of tax paid less \$0.01)
- ❑ Concrete mixing vehicles; solid waste compacting vehicles; vehicles delivering and spreading mulch, soil, and similar materials; certain agricultural and tank delivery vehicles (33 1/3 % Refund)

Motor Fuels Excise Tax-Components



Comparison-State Roadways

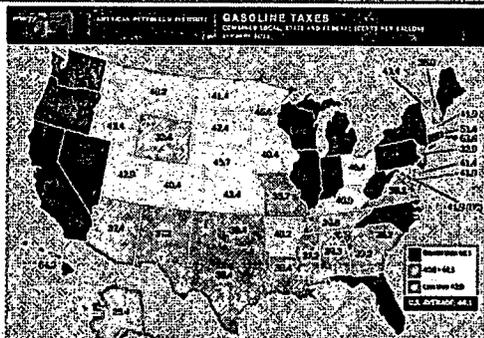
- NC and Texas have largest state-controlled highway systems, over 79,000 miles
- NC controls 76% of the road miles
- Comparison to Surrounding States

	Total Miles	State-Controlled	Percentage
□ Georgia	118,778	17,930	15%
□ South Carolina	66,249	41,437	63%
□ Tennessee	91,956	13,886	15%
□ Virginia	72,659	57,72	79%

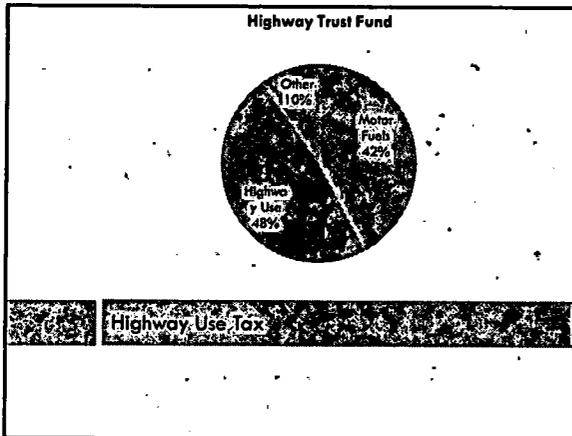
Comparison-State Taxation of Gasoline

- Comparison to Surrounding States
- Georgia \$0.1530
- South Carolina \$0.1600
- Tennessee \$0.2000 (Diesel \$.1700)
- Virginia \$0.1750 (Surcharge 0.0350)
- NC rate is higher than 34 states and lower than 15
- Only NC has a variable rate (some states have a local option that counties can vary)

Comparison-Tax on Gasoline



Presentation Ended



- ### Highway Use Tax-History
- 41 states impose tax on the sales of motor vehicles
 - 1989
 - Highway Trust Fund created
 - Highway Use Tax enacted (3% with \$1,000 cap)
 - Replaced sales tax on motor vehicles (2% with \$300 cap)
 - Sunset when the projects of the Trust Fund completed
 - 1993: Cap increased from \$1,000 to \$1,500
 - 2001: Cap repealed
 - 2007: Sunset repealed

- ### Highway Use Tax-Rates and Comparison
- Rates:
 - Non-Commercial Vehicles 3% with no cap
 - Commercial Vehicles 3% with \$1,000 cap
 - Recreational Vehicles 3% with \$1,500 cap
 - Base
 - Retail price = net purchase price after trade
 - Market value for casual sales = schedule set by Commissioner
 - Comparison to Surrounding States
 - Georgia 4%
 - South Carolina 5%
 - Tennessee 7%
 - Virginia 3%

Highway Use Tax-Exemptions

- Exemptions where new title issued but ownership has not changed
 - Change in owner's name
 - Transfer of salvaged vehicle to insurer
 - Divorce
 - Transfer by State of handicapped-equipped vehicles
- Sale to dealer for resale
- Gifts between spouses and parent/child
- Transfer of death of owner
- Transfer for driver's education
- Volunteer fire departments and rescue squads

Highway Use Tax-Companion Tax

- Rates:
 - Long-term Lease (1 year) 3%
 - Short-term Lease 8% (General Fund)
- Base:
 - Gross receipts from lease or rental

Renee Weaver (Rep. Howard)

To: Rep. Mitchell Setzer
Subject: Finance Committee Meeting

Hi Rep. Setzer,

As Chair of tomorrow's Finance meeting Rep. Howard wanted to share a couple of things with you. Tomorrow at the beginning of the meeting would be a great opportunity to have the Committee members and staff introduce themselves. Also a mention of the Occupancy Tax Subcommittee and the members that have been appointed would be in order.

Renee Weaver
House Finance Clerk
(919)715-1812

Subcommittee on Occupancy Tax

Rep. McGee, chair

Rep. Carney

Rep. Cotham

Rep. Moffitt

Rep. Warren



North Carolina General Assembly
House Committee on Finance

Minutes

February 23, 2011

The House Committee on Finance met on Wednesday, February 23, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, Moffitt, Ross, Samuelson, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Billy Jones and Bill MacRae. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:30 am and recognized the four (4) pages present: (1) Elizabeth Rogers of Robeson County sponsored by Representative Pierce; (2) Sydney Elmore of Wake County sponsored by Representative Stam; (3) Jhamil King of Burke County sponsored by Representative Blackwell; and (4) Sam Shumate of Cumberland County sponsored by Representative Parfitt.

The first bill considered by the Committee was **HB 123 – Business Entity Changes** (see **attachment 3**). The Chair recognized Representative Brubaker to explain the bill. Following the explanation, Representative Starnes moved that HB 123 be given a favorable report; the motion carried.

The next bill considered by the Committee was **SB 55 – Increase Property Tax Appeals Efficiency** (see **attachment 4**). The Chair recognized Representative Carney to explain the bill. Following the explanation, Representative Cotham moved that SB 55 be given a favorable report; the motion carried.

Chairwoman Howard recognized Greg Roney, of the Research Division, to continue with his presentation entitled **Overview of Motor Fuel and Highway Use Taxes** (see attachment 5). The presentation was cut short due to time during the last Committee meeting. Following his presentation, Greg answered questions from the members.

Chairwoman Howard recognized Martha Walston, of the Fiscal Research Division, and Heather Fennell of the Research to begin their presentation entitled **Overview of Local Government Revenue Sources** (see attachments 6 and 7). Heather also provided a copy of the **Guidelines for Occupancy Tax Legislation** (see attachment 8). Following the presentation, Martha and Heather answered member's questions.

Chairwoman Howard recognized additional staff members from the Department of Revenue. They are: Bill Wilkes, Assistant Director Property Tax Division; David Baker, Director Property Tax Division; and Cindy Honeycutt, also with the Property Tax Division.

There being no further business presently before the Committee, Chairwoman Howard adjourned the meeting at 9:30 am.

Respectfully submitted,



Representative Julia C. Howard
Residing Senior Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 123 A BILL TO BE ENTITLED AN ACT TO REVISE THE BUSINESS ENTITY OWNERSHIP REQUIREMENTS OF LAND AT PRESENT-USE VALUE.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 55 A BILL TO BE ENTITLED AN ACT TO INCREASE THE EFFICIENCY OF
PROPERTY TAX APPEALS IN MECKLENBURG COUNTY.

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 _____.

#1

AGENDA
House Finance Committee

Wednesday, February 23, 2011
Room 544 LOB
8:30 a.m.

Chaired by: Representative Julia C. Howard

Call to Order

Introduction of Pages

Bills:

HB 123 Business Entity Changes
Representatives Howard, Brubaker, Luebke, Hill

SB 55 Increase Property Tax Appeals Efficiency
Senators Clodfelter, Dannelly

Presentations

Overview of Motor Fuel and Highway Use Taxes
Greg Roney, Research Division

Overview of Local Government Revenue Sources
Martha Walston, Fiscal Research Division
Heather Fennell, Research Division

Adjournment

HOUSE PAGES

NAME OF COMMITTEE House Comm. DATE 2-23-11

1. Name: Elizabeth Rogers ✓

County: Robeson

Sponsor: Pierce

2. Name: Sydney Elmore ✓

County: Wake

Sponsor: Paul Stam

3. Name: Jhamil King ✓

County: Burke

Sponsor: Blackwell

4. Name: Sam Shymate ✓

County: Cumberland

Sponsor: Parfitt

5. Name: _____

County: _____

Sponsor: _____

VISITOR REGISTRATION SHEET

House Finance Committee	February 23, 2011
Name of Committee	Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
DANIEL BAUM	TROUTMAN SANDERS
Janice Davidson	NCDDR
Donna Alderman	NCDDR
Burt Tascico	NCADOT
Bill Wilkes	NCDDR
Cindy Honeycutt	NCDDR
David Baker	NCDDR
Jim Miller	NCADOT
Candi Pambu	Intern
Cameron Howley	Electricity of NC

VISITOR REGISTRATION SHEET

House Finance Committee

February 23, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
W. Gordon Culpeper	Visitor
Will Culpeper	MVA
Amy Hobbes	Speaker's Office
Henry Hutaff	N.P.B.A.
Cody Thomas	NCAR
Paul Shuman	NCFB
Michael Houser	NC DOR
Patric Meyer	NCLM
Carlton Huffer	NCLBA
Jesse Hayes	NCHBA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 123

Short Title: Business Entity Changes. (Public)

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

Referred to: Finance.

February 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE BUSINESS ENTITY OWNERSHIP REQUIREMENTS OF
3 LAND AT PRESENT-USE VALUE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 105-277.3(b1) reads as rewritten:

6 "§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.

7 ...

8 (b1) (Effective for taxes imposed for taxable years beginning on or after July 1,
9 2008) Entity Ownership Requirements. – In order to come within a classification described in
10 subsection (a) of this section, land owned by a business entity ~~or trust must have been owned~~
11 ~~by the business entity or trust or by one or more of its members or creators, respectively, must~~
12 meet the requirements of subdivision (1) of this subsection and land owned by a trust must
13 meet the requirements of subdivision (2) of this subsection.

14 (1) Land owned by a business entity must have been owned by one or more of
15 the following for the four years immediately preceding January 1 of the year
16 for which the benefit of this section is claimed:

17 a. The business entity.

18 b. A member of the business entity.

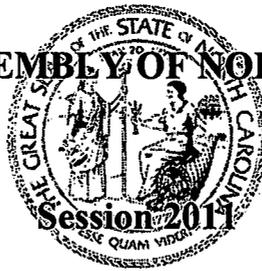
19 c. Another business entity whose members include a member of the
20 business entity that currently owns the land.

21 (2) Land owned by a trust must have been owned by the trust or by one or more
22 of its creators for the four years immediately preceding January 1 of the year
23 for which the benefit of this section is claimed."

24 SECTION 2. This act is effective for taxable years beginning on or after July 1,
25 2011. An application for property tax relief provided by this act may be filed and must be
26 accepted at any time up to and through September 1 for the July 1, 2011, taxable year.



GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: February 23, 2011

TO: House Finance Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 123 (First Edition) - Business Entity Changes

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
General Fund					
	No General Fund Impact				
Local Governments					
	See Assumptions and Methodology				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments					
EFFECTIVE DATE: Taxable years beginning on or after July 1, 2011.					

BILL SUMMARY:

HB 123 would allow for Present-use Value (PUV) ownership requirements to be satisfied when PUV property ownership changes from one business entity to another, provided the business entities share a common member. This bill is a recommendation of the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY:

In 2008, the Revenue Laws Study Committee proposed legislation to broaden the ownership requirements so that farmland could be owned by a business entity whose membership includes modern estate planning vehicles such as a family limited partnership, a family limited liability company, or a trust. S.L. 2008-146 alleviated problems tax assessors were having with recognizing these types of ownership. Now, for example, if the farmland is owned by a business entity, the members of the business entity are no longer restricted to individuals but can include trusts and other business entities.

Recently, problems have arisen in instances where PUV ownership technically changes from one business entity to another, even though membership in the business entity may be identical. House Bill 123 would allow the business entity ownership requirements to be satisfied when the business entity that currently owns the farmland shares one or more members in common with the business entity that previously owned the farmland.

Although the change will allow for some property to remain in PUV status, which would have been denied under current law, the bill is not anticipated to have a significant fiscal impact on local property tax revenues.

SOURCES OF DATA: NC Department of Revenue; Bill Summary by Martha Walston, Committee Counsel

TECHNICAL CONSIDERATIONS: None



#11

HOUSE BILL 123: Business Entity Changes

2011-2012 General Assembly

Committee: House Finance	Date: February 22, 2011
Introduced by: Reps. Howard, Brubaker, Luebke, Hill	Prepared by: Martha Walston
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 123 is a recommendation of the Revenue Laws Study Committee. The bill makes changes to the business entity ownership requirements for qualification of land at its present-use value so that the requirements are met when the current owner of the land shares members in common with the prior owner of the land.*¹

SB 93, sponsored by Sen. Hartsell, Clodfelter, and Tillman, is a companion bill.

CURRENT LAW: Since 1973, farmland (agricultural land, horticultural land, and forestland) has been appraised and assessed at its present-use value as opposed to fair market value for property tax purposes if the farmland meets certain ownership, size, and use requirements. Farmland owned by a business entity meets the ownership requirements if the land was owned by the business entity or one of its members for the four years immediately preceding January 1 of the year for which the benefit is claimed. Prior to 2008, the members of the business entity had to be individuals. In 2008, the Revenue Laws Study Committee proposed legislation to broaden the ownership requirements so that farmland could be owned by a business entity whose membership includes modern estate planning vehicles such as a family limited partnership, a family limited liability company, or a trust.² S.L. 2008-146 alleviated problems tax assessors were having with recognizing these types of ownership. Now, for example, if the farmland is owned by a business entity, the members of the business entity are no longer restricted to individuals but can include trusts and other business entities.

BILL ANALYSIS: The 2008 changes to the present-use value (PUV) statutes focus on problems the tax assessors were having with recognizing types of ownership. Ownership is determined on the basis of the name on the deed but does not always consider real parties in interest.

Recently, counties have received applications where farmland has been owned as follows:

- Farmland owned by ABC Partnership for past four years applies for PUV status.
- The partners of ABC Partnership are Tom, Dick, and Harry.
- The previous owner of the farmland was XYZ Partnership.
- The partners of XYZ Partnership were also Tom, Dick, and Harry.
- Counties have denied PUV status to the farmland based upon the language in G.S. 105-277.3(b1): The farmland had not been owned by its current owner, ABC Partnership, for four years immediately preceding the application, nor was the land owned by a partner of ABC Partnership.

¹ A "business entity" is defined as a corporation, general partnership, limited partnership, or limited liability company. A "member" is defined as a shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

² When the membership of a business entity includes a business entity or trust, then the individual members of the business entity and the individual beneficiaries of the trust are deemed to be indirect members of the qualified business entity.

House Bill 123

Page 2

House Bill 123 would allow the business entity ownership requirements to be satisfied when the business entity that currently owns the farmland shares one or more members in common with the business entity that previously owned the farmland. For example, because one or more partners of the partnership that currently owns the farmland are the same partners of the partnership that previously owned the farmland, the ownership requirement would be met. In this example, the real parties in interest have not changed.

EFFECTIVE DATE: This act becomes effective for taxable years beginning on or after July 1, 2011. However, applications filed beyond the listing period (January 1-January 31) would be accepted up to and through September 1, 2011, so that an owner may benefit from the property tax relief during the July 1, 2011 tax year.

H123-SMLA-3(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 55
Finance Committee Substitute Adopted 2/16/11

Short Title: Increase Property Tax Appeals Efficiency. (Local)

Sponsors:

Referred to:

February 10, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE EFFICIENCY OF PROPERTY TAX APPEALS IN MECKLENBURG COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 509 of the 1981 Session Laws is repealed.

SECTION 2. Section 3 of this act applies only to Mecklenburg County.

SECTION 3. G.S. 105-322 reads as rewritten:

"§ 105-322. County board of equalization and review.

(a) Personnel. - Except as otherwise provided herein, the board of equalization and review of each county shall be composed of the members of the board of county commissioners.

Upon the adoption of a resolution so providing, the ~~board of commissioners~~ Mecklenburg County Board of Commissioners is authorized to appoint a special board of equalization and review to carry out the duties imposed under this section. The resolution shall provide for the membership, qualifications, terms of office and the filling of vacancies on the board. The membership of the special board provided for in the resolution must be at least five members. The resolution may authorize the special board to establish rules and procedures, including a separation into panels of three or more for deliberations. The board of commissioners shall also designate the clerk and chairman of the special board. The resolution may authorize the assessor to appoint deputy clerks, as needed. The resolution may also authorize a taxpayer to appeal a decision of the special board with respect to the listing or appraisal of his property or the property of others to the board of county commissioners. The resolution shall be adopted not later than the first Monday in March of the year for which it is to be effective and shall continue in effect until revised or rescinded. It shall be entered in the minutes of the meeting of the board of commissioners and a copy thereof shall be forwarded to the Department of Revenue within 15 days after its adoption.

~~Nothing in this subsection (a) shall be construed as repealing any law creating a special board of equalization and review or creating any board charged with the duties of a board of equalization and review in any county.~~

(b) Compensation. - The board of county commissioners shall fix the compensation and allowances to be paid members of the board of equalization and review for their services and expenses.

(c) Oath. - Each member of the board of equalization and review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as a member of the board of equalization and review to be influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the board of county commissioners.



1 (d) Clerk and Minutes. – ~~The assessor shall serve as clerk, clerk, or deputy clerk, to the~~
2 board of equalization and ~~review, review~~ shall be present at all meetings, shall maintain
3 accurate minutes of the actions of the board, and shall give to the board such information as he
4 may have or can obtain with respect to the listing and valuation of taxable property in the
5 county.

6 (e) Time of Meeting. – Each year the board of equalization and review shall hold its
7 first meeting not earlier than the first Monday in April and not later than the first Monday in
8 May. In years in which a county does not conduct a real property revaluation, the board shall
9 complete its duties on or before the third Monday following its first meeting unless, in its
10 opinion, a longer period of time is necessary or expedient to a proper execution of its
11 responsibilities. Except as provided in subdivision (g)(5) of this section, the board may not sit
12 later than July 1 except to hear and determine requests made under the provisions of
13 subdivision (g)(2), below, when such requests are made within the time prescribed by law. ~~In~~
14 ~~the year in which a county conducts a real property revaluation, the board shall complete its~~
15 ~~duties on or before December 1, except that it may sit after that date to hear and determine~~
16 ~~requests made under the provisions of subdivision (g)(2), below, when such requests are made~~
17 ~~within the time prescribed by law. The resolution adopted under subsection (a) of this section~~
18 may authorize the special board to sit beyond the end of the current calendar year until the first
19 meeting of the special board in the next calendar year to hear and determine requests made
20 under the provisions of G.S. 105-322(g)(2) for appeals filed in the current calendar year. From
21 the time of its first meeting until its adjournment, the board shall meet at such times as it deems
22 reasonably necessary to perform its statutory duties and to receive requests and hear the appeals
23 of taxpayers under the provisions of subdivision (g)(2), below.

24 (f) Notice of Meetings and Adjournment. – A notice of the date, hours, place, and
25 purpose of the first meeting of the board of equalization and review shall be published at least
26 three times in some newspaper having general circulation in the county, the first publication to
27 be at least 10 days prior to the first meeting. The notice shall also state the dates and hours on
28 which the board ~~will meet following its first meeting and the date on which it expects to~~
29 adjourn; it shall also carry a statement that in the event of earlier or later adjournment, notice to
30 that effect will be published in the same newspaper. Should a notice be required on account of
31 earlier adjournment, it shall be published at least once in the newspaper in which the first notice
32 was published, such publication to be at least five days prior to the date fixed for adjournment.
33 Should a notice be required on account of later adjournment, it shall be published at least once
34 in the newspaper in which the first notice was published, such publication to be prior to the date
35 first announced for adjournment.

36 (g) Powers and Duties. – The board of equalization and review has the following
37 powers and duties:

- 38 (1) Duty to Review Tax Lists. – The board shall examine and review the tax
39 lists of the county for the current year to the end that all taxable property
40 shall be listed on the abstracts and tax records of the county and appraised
41 according to the standard required by G.S. 105-283, and the board shall
42 correct the abstracts and tax records to conform to the provisions of this
43 Subchapter. In carrying out its responsibilities under this subdivision (g)(1),
44 the board, on its own motion or on sufficient cause shown by any person,
45 shall:
- 46 a. List, appraise, and assess any taxable real or personal property that
47 has been omitted from the tax lists.
 - 48 b. Correct all errors in the names of persons and in the description of
49 properties subject to taxation.
 - 50 c. Increase or reduce the appraised value of any property that, in the
51 board's opinion, has been listed and appraised at a figure that is

- 1 below or above the appraisal required by G.S. 105-283; however, the
2 board shall not change the appraised value of any real property from
3 that at which it was appraised for the preceding year except in
4 accordance with the terms of G.S. 105-286 and 105-287.
- 5 d. Cause to be done whatever else is necessary to make the lists and tax
6 records comply with the provisions of this Subchapter.
- 7 e. Embody actions taken under the provisions of subdivisions (g)(1)a
8 through (g)(1)d, above, in appropriate orders and have the orders
9 entered in the minutes of the board.
- 10 f. Give written notice to the taxpayer at the taxpayer's last known
11 address in the event the board, by appropriate order, increases the
12 appraisal of any property or lists for taxation any property omitted
13 from the tax lists under the provisions of this subdivision (g)(1).
- 14 (2) Duty to Hear Taxpayer Appeals. – On request, the board of equalization and
15 review shall hear any taxpayer who owns or controls property taxable in the
16 county with respect to the listing or appraisal of the taxpayer's property or
17 the property of others.
- 18 a. A request for a hearing under this subdivision (g)(2) shall be made in
19 writing to or by personal appearance before the board prior to its
20 adjournment. However, if the taxpayer requests review of a decision
21 made by the board under the provisions of subdivision (g)(1), above,
22 notice of which was mailed fewer than 15 days prior to the board's
23 adjournment, the request for a hearing thereon may be made within
24 15 days after the notice of the board's decision was mailed.
- 25 b. Taxpayers may file separate or joint requests for hearings under the
26 provisions of this subdivision (g)(2) at their election.
- 27 c. At a hearing under provisions of this subdivision (g)(2), the board, in
28 addition to the powers it may exercise under the provisions of
29 subdivision (g)(3), below, shall hear any evidence offered by the
30 appellant, the assessor, and other county officials that is pertinent to
31 the decision of the appeal. Upon the request of an appellant, the
32 board shall subpoena witnesses or documents if there is a reasonable
33 basis for believing that the witnesses have or the documents contain
34 information pertinent to the decision of the appeal.
- 35 d. On the basis of its decision after any hearing conducted under this
36 subdivision (g)(2), the board shall adopt and have entered in its
37 minutes an order reducing, increasing, or confirming the appraisal
38 appealed or listing or removing from the tax lists the property whose
39 omission or listing has been appealed. The board shall notify the
40 appellant by mail as to the action taken on the taxpayer's appeal not
41 later than 30 days after the board's adjournment.
- 42 (3) Powers in Carrying Out Duties. – In the performance of its duties under
43 subdivisions (g)(1) and (g)(2), above, the board of equalization and review
44 may exercise the following powers:
- 45 a. It may appoint committees composed of its own members or other
46 persons to assist it in making investigations necessary to its work. It
47 may also employ expert appraisers in its discretion. The expense of
48 the employment of committees or appraisers shall be borne by the
49 county. The board may, in its discretion, require the taxpayer to
50 reimburse the county for the cost of any appraisal by experts
51 demanded by the taxpayer if the appraisal does not result in material

1 reduction of the valuation of the property appraised and if the
2 appraisal is not subsequently reduced materially by the board or by
3 the Department of Revenue.

- 4 b. The board, in its discretion, may examine any witnesses and
5 documents. It may place any witnesses under oath administered by
6 any member of the board. It may subpoena witnesses or documents
7 on its own motion, and it must do so when a request is made under
8 the provisions of subdivision (g)(2)c, above.

9 A subpoena issued by the board shall be signed by the chair of
10 the board, directed to the witness or to the person having custody of
11 the document, and served by an officer authorized to serve
12 subpoenas. Any person who willfully fails to appear or to produce
13 documents in response to a subpoena or to testify when appearing in
14 response to a subpoena shall be guilty of a Class 1 misdemeanor.

- 15 (4) Power to Submit Reports. – Upon the completion of its other duties, the
16 board may submit to the Department of Revenue a report outlining the
17 quality of the reappraisal, any problems it encountered in the reappraisal
18 process, the number of appeals submitted to the board and to the Property
19 Tax Commission, the success rate of the appeals submitted, and the name of
20 the firm that conducted the reappraisal. A copy of the report should be sent
21 by the board to the firm that conducted the reappraisal.

- 22 (5) ~~Duty to Change Abstracts and Records After Adjournment.~~ – Following
23 adjournment upon completion of its duties under subdivisions (g)(1) and
24 (g)(2) of this subsection, the board may continue to meet to carry out the
25 following duties:

- 26 a. To hear and decide all appeals relating to discovered property under
27 G.S. 105-312(d) and (k).
28 b. To hear and decide all appeals relating to the appraisal, situs, and
29 taxability of classified motor vehicles under G.S. 105-330.2(b).
30 c. To hear and decide all appeals relating to audits conducted under
31 G.S. 105-296(j) and relating to audits conducted under
32 G.S. 105-296(j) and (l) of property classified at present-use value and
33 property exempted or excluded from taxation.
34 d. To hear and decide all appeals relating to personal property under
35 G.S. 105-317.1(c).
36 e. To appraise and reappraise property under G.S. 105-325(a)(6)."

37 **SECTION 4.** Section 1 of this act becomes effective only upon the adoption of a
38 resolution by the Mecklenburg Board of County Commissioners under Section 3 of this act.
39 The remainder of this act becomes effective January 1, 2011.



SENATE BILL 55: Increase Property Tax Appeals Efficiency

2011-2012 General Assembly

Committee:	House Finance	Date:	February 23, 2011
Introduced by:	Sens. Clodfelter, Dannelly	Prepared by:	Heather Fennell
Analysis of:	Second Edition		Committee Counsel

SUMMARY: *Senate Bill 55 would amend the property tax appeals process in Mecklenburg County.*

[As introduced, this bill was identical to H43, as introduced by Reps. Carney, Samuelson, R. Moore, which is currently in House Finance.]

CURRENT LAW: Unless local legislation is enacted, a statutory process is provided for the appeal of property tax valuation.

Statutory Process: G.S. 105-322 provides the county commissioners review and decide property tax appeals, unless the commissioners adopt a resolution to appoint a county board of equalization. The board must hold its first meeting no earlier than the first Monday in April, and no later than the first Monday in May. The board may only meet past July 1 of each year to consider appeals filed before the statutory deadline of July 1. The Property Tax Commission hears appeals from the board.

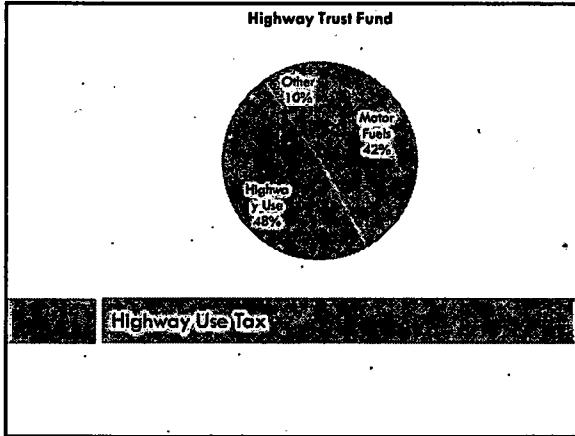
Mecklenburg Local Legislation: Chapter 509 of the 1981 Session Laws provides the property tax appeals process for Mecklenburg County. The Mecklenburg Board of County Commissioners is authorized to appoint a special board of equalization of 5-9 members. The local legislation provides the powers and procedures for the special board including duties of the board, time of meetings, and notice of meetings. For years in which the County has conducted a revaluation of real property, the Chairman of the special board may divide the board into 3 panels of at least 3 members.

BILL ANALYSIS: The proposed committee substitute to Senate Bill 55 would provide a new property tax appeals process for Mecklenburg County. The new process differs from the statutory process in the following ways:

- The special board of equalization and review must consist of at least 5 members.
- The resolution adopted by the County Commissioners may authorize the special board to adopt rules and procedures, including separation into three or more panels for deliberations.
- The special board is authorized to meet beyond the calendar year in which it was appointed to reconsider appraisals for which new facts relating to the value of the property have been discovered. Under the statutory process, these reconsiderations are heard by the Board of County Commissioners as the special board has usually adjourned by the end of the calendar year.
- Publications of notice for meetings for the board must follow the statutory process, except publication is not required for meetings after the initial meeting.

EFFECTIVE DATE: The repeal of the prior local act is effective when the Mecklenburg County Commissioners adopt a resolution under this act. This remainder of this act is effective January 1, 2011.

S55-SMTD-6(e2) v2



- Highway Use Tax-History**
- 41 states impose tax on the sales of motor vehicles
 - 1989
 - Highway Trust Fund created
 - Highway Use Tax enacted (3% with \$1,000 cap)
 - Replaced sales tax on motor vehicles (2% with \$300 cap)
 - Sunset when the projects of the Trust Fund completed
 - 1993: Cap increased from \$1,000 to \$1,500
 - 2001: Cap repealed
 - 2007: Sunset repealed

- Highway Use Tax-Rates and Comparison**
- Rates:
 - Non-Commercial Vehicles 3% with no cap
 - Commercial Vehicles 3% with \$1,000 cap
 - Recreational Vehicles 3% with \$1,500 cap
 - Base
 - Retail price = net purchase price after trade
 - Market value for casual sales = schedule set by Commissioner
 - Comparison to Surrounding States
 - Georgia 4%
 - South Carolina 5%
 - Tennessee 7%
 - Virginia 3%

Highway Use Tax-Exemptions

- Exemptions where new title issued but ownership has not changed
 - Change in owner's name
 - Transfer of salvaged vehicle to insurer
 - Divorce
 - Transfer by State of handicapped-equipped vehicles
- Sale to dealer for resale
- Gifts between spouses and parent/child
- Transfer at death of owner
- Transfer for driver's education
- Volunteer fire departments and rescue squads

Highway Use Tax-Companion Tax

- Rates:
 - Long-term Lease (1 year) 3%
 - Short-term Lease 8% (General Fund)
- Base:
 - Gross receipts from lease or rental

LOCAL REVENUE SOURCES

Martha Walston, Fiscal Research Division
February 16, 2011

Local Revenue Sources

- Property Tax
- Deed Stamp tax
- Sales tax: occupancy tax and meals tax
- Privilege tax
- Other local taxes and shared revenue

Sources of Local Revenue: County

**2008-09
County Revenue
by
Source**

Property Taxes	5,709,117,366
Sales Tax	1,401,920,121
Sales and Services	1,141,531,383
Intergovernmental	2,387,688,132
Debt Proceeds	1,559,919,492
Other/Misc.	1,131,756,137
TOTAL	13,472,132,632

Source: Dept. of State Treasurer

Property Tax
Constitutional authority

- N.C. Constitution gives General Assembly sole power to classify property for taxation
- Power must be exercised on State-wide basis
- Every class of property must be taxed by uniform rule, and every classification must be by general law uniformly applicable in every unit of local government

Property Tax
Constitutional Authority

- Exemptions: property belonging to the State, counties, and municipal corporations
- Authorizes General Assembly to exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes; personal property to a value not exceeding \$300; and \$1,000 in property held and used as owner's residence
- Only General Assembly may grant exemptions and these exemptions must be on State-wide basis

Generalities

- Tax imposed on all real and tangible personal property unless specifically exempted
- Appraised at true value (market value or price at which the property would exchange hands between a willing and financially able buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used)

Generalities

- Property appraised and assessed by county tax assessor
- Property must be listed during listing period: month of January
- Real property taxes due and payable on September 1 and are delinquent if not paid before January 6

Generalities
Appraisal of real property

- Must be appraised at least once every 8 years, unless county is required to advance or chooses to advance reappraisal year
- 44 counties have adopted shorter reappraisal year
- County with a population of 75,000 or greater must advance its reappraisal if its sales assessment ratio fluctuates by more than 15%

Generalities
Appraisal of real property

- School of Government Bulletins:
 - "A Citizens' Guide to the Revaluation and Assessment of Property by North Carolina Counties" by Shea Riggsbee Denning, Property Tax Bulletin #144, March 2008
 - "The Revaluation Revolt of 2009" by Christopher B. McLaughlin, Local Government Law Bulletin #121, September 2009

Generalities

Appeal

- Taxpayers appeal to the county board of equalization and review (composed of members of board of county commissioners)
- Property Tax Commission hears appeals from county board of E & R (Commission composed of five members, three appointed by Governor and two appointed by General Assembly)
- North Carolina Court of Appeals hears appeals from the Property Tax Commission

Exemptions and Exclusions

- Must be authorized by Constitution and laws of State
- G.S. 105-275 lists 45 classes of property that are designated special classes of property under the Constitution and excluded from tax
- G.S. 105-278.1 - property owned by units of government
- G.S. 105-278.2 - burial property
- G.S. 105-278.3 - property used for religious purposes
- G.S. 105-278.4 - property used for educational purposes
- G.S. 105-278.5 - property of religious educational assemblies used for religious and educational purposes
- G.S. 105-278.6 - property used for charitable purposes
- G.S. 105-278.6A - qualified retirement facility
- G.S. 105-278.7 - property used for educational, scientific, literary, or charitable purposes
- G.S. 105-278.8 - property used for charitable hospital purposes

Property Tax Relief Programs

Exclusions and Deferrals

- Elderly or disabled property tax homestead exclusion
- Disabled veteran property tax homestead exclusion
- Property tax deferral programs:
 1. Property tax homestead circuit breaker (G.S. 105-277.18)
 2. Present-use value property (G.S. 105-277.3)
 3. Working waterfront property (G.S. 105-277.14)
 4. Wildlife conservation land (G.S. 105-277.15)
 5. Historic district property held as future site of historic structure (G.S. 105-275(29e))
 6. Historic property (G.S. 105-278)
 7. Inventory property tax deferral (G.S. 105-277.1D)
 8. Nonprofit property held as future site of low or moderate income housing (G.S. 105-278.6(e))

Elderly or disabled property tax homestead exclusion

- Excludes from property tax the greater of \$25,000 or 50% of appraised value of permanent residence of qualifying owner
- Qualifying owner must be at least 65 or totally and permanently disabled, and have an income for the previous year that does not exceed an income eligibility limit

Elderly or disabled property tax homestead exclusion

- For 2008, the income eligibility limit was \$25,000. In subsequent years, the limit has been indexed by cost-of-living adjustment. Income eligibility limit for 2011 is \$27,100
- Income is defined as all moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant

Disabled veteran property tax homestead exclusion

- Excludes first \$45,000 of appraised value of the permanent residence of disabled veteran or surviving spouse of disabled veteran if spouse has not remarried
- Disabled veteran's character of service must be honorable or under honorable conditions, and disabled veteran must either (1) have received federal benefits for specially adapted housing or (2) received certification from federal agency that the veteran has a service-connected, permanent, and total disability

**Property Tax Deferral
Generalities**

- Common traits of eight deferral programs
 - Owner must qualify for program
 - Deferred taxes are lien on property and become due and payable when disqualifying event occurs
 - Only deferred taxes for deferral period plus the taxes in the year that property is disqualified become due
 - Deferred taxes are difference in taxes that would be due without the deferral minus the taxes that are paid under the deferral program

**Property Tax Deferral
Homestead Circuit Breaker**

- Effective 2009, owner may defer portion of property tax on permanent residence if:
 - Owner is at least 65 OR totally and permanently disabled
 - Owner has owned home as permanent residence for five years
 - Owner's income does not exceed 150% of the income eligibility limit for the elderly and disabled homestead exclusion

**Property Tax Deferral
Homestead Circuit Breaker**

Tax limitation (2011)

Income= \$0 to \$27,100	Property Taxes limited to 4% of income
Income= \$27,101 to \$40,650	Property Taxes limited to 5% of income
Income= Over \$40,650	Does not qualify

**Property Tax Deferral
Homestead Circuit Breaker**

- Deferred taxes for last three years are due if:
 - Owner dies
 - Property is transferred
 - Property no longer used as owner's permanent residence

**Property Tax Deferral
Present-Use Value (PUV)**

- Since 1973, PUV program has allowed certain farmland to be assessed at PUV as opposed to market value
- PUV: value of land in its current use as farmland based solely on its ability to produce income and assuming an average level of management
- Applies to agricultural land, horticultural land, and forestland
- Purpose of program: to preserve the family farm

**Property Tax Deferral
Present-Use Value**

- Classifications
 - Agricultural land: actively engaged in commercial production or growing of crops, plants, or animals
 - Horticultural land: actively engaged in commercial production of growing of fruits, vegetables, nursery products, or flowers
 - Forestland: actively engaged in the commercial growing of trees

**Property Tax Deferral
Present-Use Value**

- Farmland ownership requirement:
 - individual, tenants in common, trusts, or business entity
 - If owned by individual, must be owner's home or owned by owner or relative for four years
 - If owned by business entity, must be owned by business entity or one or more of members of business entity for four years

**Property Tax Deferral
Present-use Value**

- Farmland size requirement:
 - Agricultural: at least 10 acres in actual production
 - Horticultural: at least 5 acres in actual production
 - Forestland: at least 10 acres in actual production

**Property Tax Deferral
Present-Use Value**

- Farmland income requirement:
 - Agricultural and horticultural: must have at least one tract that produced at least \$1,000 average gross income per year for the three years preceding the application for PUV
 - Forestland: no income requirement (not feasible since forestland generally produces income when timber is harvested)

**Property Tax Deferral
Present-Use Value**

- Farmland sound management requirement:
 - Land must be used for production of agricultural, horticultural, or forestry products in manner that maximizes the return from the land
 - Forestland must have written sound management plan
 - Agricultural or horticultural land must demonstrate one of the following: compliance with agency-administered and approved plan, compliance with set of best management practices for commercial production, compliance with income test, evidence of net income from farm operation, evidence that farming is principal source of income, certification by agency in county that land is operated under sound management plan

**Property Tax Deferral
Working Waterfront Property**

- Effective July 1, 2009, the following property is appraised and taxed at PUV if it has produced an average gross income of at least \$1,000 for the most recent three-year period:
 - Pier that extends into coastal fishing waters and requires access fee
 - Real property adjacent to coastal fishing waters and primarily used for commercial fishing operation or fish processing

**Property Tax Deferral
Wildlife Conservation Land**

- Effective July 1, 2010, following land is appraised and assessed as if it were agricultural land under the PUV program if it meets all of the following size, ownership, and use requirements:
 - Consists of at least 20 contiguous acres, but no more than 100 acres of an owner's land in the county may qualify
 - Owned by individual, family business entity, or family trust for the previous five years
 - Land managed under written wildlife habitat conservation agreement with NC Wildlife Resources Commission
 - Land was classified as farmland under PUV program when the conservation agreement was signed

**Property Tax Deferral
Historic Property**

- Real property designated as historic property or as historic landmark by local ordinance is taxed at 50% of market value
- Deferred taxes for the preceding three years become due when there is a change in the ordinance or a change in the property other than by fire or other natural disaster

**Property Tax Deferral
Historic District Property**

- The following historic district property is excluded from property tax:
 - must be held by nonprofit corporation organized for historic preservation and held for future site for historic structure
- Land may be excluded for five years
- Deferred taxes become due if historic structure not moved to property within five years

Property Tax Deferral - Nonprofit property held for future low or moderate income housing

- Real property held by nonprofit organization as future site for housing for individuals or families with low or moderate income is exempt from property taxes for five years
- Deferred taxes due if property not used for this purpose within five years

**Property Tax Deferral
Inventory Property**

- Effective July 1, 2010, an occupant-ready residence constructed on parcel of real property and owned by a general contractor for resale qualifies for a property tax deferral
- Amount deferred for the real property is the portion of tax that represents the increase in property value resulting from construction of residence on the property
- Deferred taxes become due when one of following occurs:
 - Builder transfers residence
 - Residence is occupied
 - Five years have passed from time property was first subject to listing for tax benefit
 - Three years have passed from date property first received the benefit

**Property Tax
Motor Vehicles**

- Local governments collect property tax on motor vehicles registered in State
- DMV sends monthly data to each county identifying vehicles that have been issued or renewed registrations
- Most vehicles registered on staggered basis throughout calendar year
- County then sends tax bill to vehicle owner
- Tax due first day of fourth month following (1) last day of month in which new registration applied for, or (2) date former registration expires

**House Bill 1779 - Combined MV Registration
Renewal and Property Tax Collection System**

- HB 1779 ratified during 2005 Session
- Current registration renewal and tax notices will be combined into single notice
- Taxes collected at registration or renewal
- Value of vehicle based on schedule for all 100 counties
- Vehicle owner can pay taxes and registration fees at any DMV or tag office in the State

Deed Stamp Tax

- State imposes a tax on most recorded deeds
- Tax measured by price paid for property
- Rate is \$1 for each \$500 of sales price
- Tax collected by county: 1/2 to county for any public purpose, and remaining 1/2 to Department of Revenue (75% to Parks and Recreation Trust Fund and 25% to Natural Heritage Trust Fund)

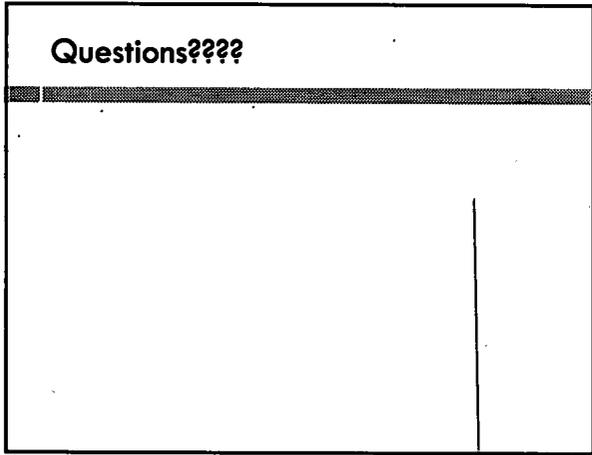
Deed Stamp Tax

- Following transfers are exempt:
 - By operation of law
 - By lease for a term of years
 - By will
 - By intestacy
 - By gift
 - No consideration paid
 - By merger, conversion, or consolidation
 - By instrument securing indebtedness

Local land transfer tax

- In 2007, counties authorized to levy either a land transfer tax (up to 0.4%) or local sales tax (.25%)
- Proceeds may be used for any lawful purpose
- 23 referendums have been held and all were unsuccessful
- Seven counties given authority to impose tax by local legislation: Dare, Currituck, Chowan, Camden, Pasquotank, Perquimans, and Washington (never enacted in Washington)

Questions???



OVERVIEW OF OTHER LOCAL REVENUE SOURCES

House and Senate Finance,
Heather Fennell, Research Division

General Rate and Local Rates

- The general **State rate** of tax is 5.75%. The temporary 1% increase enacted last year is scheduled to expire July 1, 2011.
- Items that are subject to State sales tax are also subject to the local sales and use tax. The **local rate** of tax varies:

2% (82)	2.25% (18)	2.5% (1)
All other 82 counties	Alexander Catawba Cumberland Duplin Halifax* Haywood Hertford Lee Martin	New Hanover Onslow Pitt Randolph Robeson Rowan Sampson Surry Wilkes
		Mecklenburg

Current Local Sales Taxes

1 st 1 cent Art. 39		Any lawful purpose	Point of collection
1 st ½ cent Art. 40		Counties - 30% school capital	Per capita
2 nd ½ cent Art. 41		Counties - 60% school capital	Per capita Point of collection
Third ½ cent Art.		Any lawful	½ Point of collection
		Repealed	
¼ cent Art. 46		Any lawful purpose	Point of collection – <i>distributed to County only.</i>

Local Privilege License Taxes

- **Counties (G.S. 153A-152)**
 - **No general taxing power.**
 - **Repealed Schedule B lists taxable activities.**
- **Cities (G.S. 160A-211)**
 - **General taxing power.**
 - **Repealed Scheduled B provides limits on activities cities may tax.**
- **Sometimes gross receipts, sometimes flat amount.**

Local Occupancy Taxes

- Levied on operators of transient accommodations.
- The first occupancy tax legislation in North Carolina was enacted in 1983.
- In addition to the sales tax.
- Generally speaking, proceeds are used for tourism purposes.
- 79 counties; 91 municipalities.

Occupancy Tax - Guidelines

- Rate – Not to exceed 6%, including city and county combined.
- Use – 2/3 to promote travel and tourism, remainder for tourism-related expenditures.
- Administration – local tourism promotion agency.
- Cost of Collection – Not to exceed 3% of first \$500,000, 1% of remainder.

Local Meals Tax

- A 1% tax on the sales price of prepared food and beverage sold at retail within corporate limits.
- Proceeds typically dedicated for constructing and/or improving/maintaining convention/civic centers.
- ³~~4~~ counties: Cumberland, Dare, Mecklenburg, Wake ~~Durham~~.
- 3 cities: Charlotte, Hillsborough, Monroe

Other taxes

- Motor vehicle and heavy equipment rental gross receipts. - In lieu of property tax, up to 1.5% of gross receipts of rentals.
- Animal taxes. – Pets, usually dogs and cats.
- Vehicle taxes. – *Cities only.** \$5 for any purpose, additional \$5 for public transportation.*

State and Local Shared Revenue

- Beer and wine excise tax.
- Scrap tire disposal tax.
- White goods disposal tax.
- Electric franchise tax.
- Piped natural gas excise tax.
- Telecommunications tax.
- Video programming tax.

Department of Revenue Report

□ <http://www.dornrc.com/publications/reimbursement.html>

County/ Municipality	Beer and Wine Excise Tax [\$]	Scrap Tire Disposal Tax [\$]	Whitegoods Disposal Tax [\$]	Electric Franchise/ Natural Gas Excise Tax [\$]	Telecommunications Tax [\$]	Video Programming Distribution [\$]	Solid Waste Disposal Tax [\$]
Alamance County	78,741.39	158,359.84	43,218.32	-	-	194,574.97	46,953.30
Alamance	526.31	-	-	22,132.41	6,025.00	278.94	256.66
Burlington	72,637.93	-	-	2,012,698.36	1,305,077.00	426,186.49	35,079.32
Elon	10,383.00	-	-	190,013.33	83,186.00	75,940.41	5,062.30
Graham	21,201.34	-	-	428,574.53	314,876.00	120,434.95	10,270.96
Green Level	3,499.78	-	-	39,737.19	18,071.00	10,463.13	1,704.39
Haw River	2,911.04	-	-	71,002.87	52,909.00	14,285.60	1,420.85
Mebane	14,050.07	-	-	557,341.33	159,909.00	60,773.60	6,726.61
Ossipee	672.43	-	-	11,044.00	5,153.00	2,015.45	-
Swepsonville	1,772.84	-	-	59,057.00	4,130.00	5,224.18	-
Alexander County	-	40,197.52	-	-	-	145,591.38	29,643.95
Taylorsville	2,755.54	-	-	88,153.67	80,372.00	38,903.10	1,347.72
Alleghany County	13,237.29	12,116.05	3,305.96	-	-	49,517.84	7,908.28
Sparta	2,558.71	-	-	218,550.40	33,195.00	9,972.46	1,245.39
Anson County	-	27,641.01	-	-	-	27,661.94	12,411.12

GUIDELINES FOR OCCUPANCY TAX LEGISLATION

Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably.

Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition (NCTTC) has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by the House Finance Committee in 1993. Subsequently, the House Finance Committee established the Occupancy Tax Subcommittee, which regularly reviews occupancy tax legislation and looks for the inclusion of the following uniform provisions in the bills it considers:

- ◆ **Rate** – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
- ◆ **Use** – At least two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism-related expenditures, which may include beach nourishment.
- ◆ **Definitions** The terms "net proceeds", "promote travel and tourism", "tourism-related expenditures", and "beach nourishment" are defined terms:
 - **Net proceeds** – Gross proceeds less the costs to the city/county of administering and collecting the tax, as determined by the finance officer, not to exceed 3% of the first \$500,000 of gross proceeds collected each year and 1% of the remaining gross receipts collected each year.
 - **Promote travel and tourism** – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.
 - **Tourism-related expenditures** – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a city/county by attracting tourists or business travelers to the city/county. The term includes tourism-related capital expenditures.
 - **Beach Nourishment**¹ – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the

¹During the 2001 Regular Session, the Occupancy Tax Subcommittee of the House Finance Committee considered several bills authorizing the use occupancy tax proceeds for beach nourishment. Although "beach nourishment" was not among the uses contained in the uniform guidelines, the subcommittee nevertheless concluded that beach nourishment was an acceptable expansion of the occupancy tax use provisions. In doing so, the subcommittee drafted this uniform definition of beach nourishment for use in occupancy tax legislation.

North Carolina shorelines and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for the following:

- a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies;
 - b. The nonfederal share of the cost required to construct these projects;
 - c. The costs associated with providing enhanced public beach access; and
 - d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.
- ◆ **Administration** – The net revenues must be administered by a local tourism promotion agency, typically referred to as a “Tourism Development Authority,” that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ½ of the members must be currently active in the promotion of travel and tourism in the taxing district and 1/3 of the members must be affiliated with organizations that collect the tax.²
 - ◆ **Costs of Collection** – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.
 - ◆ **Conformity with Other Local Occupancy Taxes** – In 2008, the NCTTC formally revised its policy position with regard to occupancy taxes to include a statement that if a city seeks to impose a new occupancy tax or increase its existing tax on lodging facilities in a county that also has an existing occupancy tax, the county occupancy tax must conform to the guidelines in order for the Coalition to support the proposed municipal tax. During the 2009 Regular Session, the House Finance Chairs³ considered the revised policy statement of the NCTTC but declined to amend the House Finance Committee's Guidelines for Occupancy Tax accordingly.

Research Division
NC General Assembly
Revised 2/14/11

² In March 2005, the House Finance chairs decided to change the percentage of members that must be currently active in the promotion of travel and tourism from ¾ to ½. The House Finance chairs in 2005-06 were: Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright.

³ During the 2009-2010 Session, the House Finance chairs were: Representatives Luebke, Wainwright, Weiss, and Gibson.

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: 2-23-11 Room: 544

House Sgt-At Arms:

1. Name: John Brandon

2. Name: Earl Coker

3. Name: Billy Jones

4. Name: Bill MacRae ✓

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____



North Carolina General Assembly
House Committee on Finance

Minutes

February 24, 2011

The House Committee on Finance met on Thursday, February 24, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Gibson, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Billy Jones and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson Starnes called the meeting to order at 8:30 am and recognized the two (2) pages present: (1) Sydney Elmore of Wake County sponsored by Representative Stam; and (2) Sam Shumate of Cumberland County sponsored by Representative Parfitt.

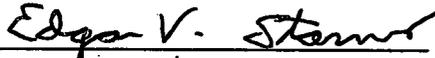
The first bill considered by the Committee was **HB 5 – Kinston Annexation Repealed** (see **attachment 3**). The Chair recognized Representative LaRoque to explain the bill. Representative LaRoque provided a handout (see **attachment 4**). Following the explanation, Chairperson Starnes asked if anyone from the public would like to speak against the bill. There was no one present to do so. Chairperson Starnes then invited anyone from the public who would like to speak against the bill. Chairperson Starnes recognized Stewart Smith of Lenoir County. Chairperson Starnes recognized Representative McCormick who moved that HB 5 be given a favorable report. The motion was held for discussion on the bill. The Chair then recognized Representative McCormick who re-stated his motion; the motion carried. The Chair then recognized Representative Wainwright who requested a roll call vote (see **attachment 5**). The vote was 19 for and 11 against.

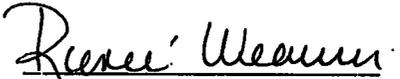
The next bill considered by the Committee was **HB 37 - Lexington Annexations Repealed** (see **attachment 6**). The Chair recognized Representative R. Brown to explain the bill. The Chair invited anyone from the public to speak for the bill. The Chair recognized John Frank of Lexington. Chairperson Starnes then invited anyone from the public to speak against the bill. The Chair recognized John Walser and John Gray representing the City of Lexington. They spoke against the bill. Following the discussion, Representative McCormick moved that HB 37 be given a favorable report; the motion carried.

The last bill considered by the Committee was **HB 124 - IRC Update** (see **attachment 7**). The Chair recognized Representative Stam who moved to introduce a proposed committee substitute (see **attachment 8**). The motion carried and Representative Howard explained the proposed committee substitute. The Chair then recognized Representative Faison who moved to have a roll call vote (see **attachment 9**). The vote was 21 for and 2 against. Representative McGee moved to a favorable report as to the committee substitute bill, unfavorable as to the original bill; the motion carried.

There being no further business presently before the Committee, Chairperson Starnes adjourned the meeting at 9:52 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Starnes, Setzer, Folwell (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 5 A BILL TO BE ENTITLED AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE, BY WITHDRAWING THE DELEGATION OF AUTHORITY TO THE CITY OF KINSTON TO MAKE A CERTAIN ANNEXATION.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Starnes, Setzer, Folwell (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 37 A BILL TO BE ENTITLED AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY WITHDRAWING THE DELEGATION OF AUTHORITY TO THE CITY OF LEXINGTON TO MAKE CERTAIN ANNEXATIONS.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Starnes, Setzer, Folwell (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 124 A BILL TO BE ENTITLED AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

#1

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

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

DAY & DATE: Thursday, February 24, 2011
TIME: 8:30 am
LOCATION: 544 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 5	Kinston Annexation Repealed.	Representative LaRoque
HB 37	Lexington Annexations Repealed.	Representative Brown
HB 124	IRC Update.	Representative Howard Representative Brubaker Representative Starnes Representative Setzer

Respectfully,
Representative Starnes, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **2 PM** o'clock on **February 22, 2011**.

- Principal Clerk
- Reading Clerk – House Chamber

Renee Weaver (Committee Assistant)

AGENDA
House Finance Committee

Thursday, February 24, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Starnes

Call to Order

Introduction of Pages

Bills:

HB 5 Kinston Annexation Repealed
Representative LaRoque

HB 37 Lexington Annexations Repealed
Representative R. Brown

HB 124 IRC Update
Representatives Howard, Brubaker, Starnes, Setzer

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: Feb 24, 2011 Room: 544

~~House Sgt-At Arms:~~

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____

HOUSE

~~House~~ Sgt-At Arms:

1. Name: John Brandon

2. Name: Billy Jones

3. Name: Earl Coker

4. Name: Ken Kirby

5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE _____ DATE _____

1. Name: Sydney Gemore

County: Wake

Sponsor: Stam

2. Name: Sam Shumate

County: Cumberland

Sponsor: Parfitt

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

VISITOR REGISTRATION SHEET

House Finance Committee

February 24, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME

FIRM OR AGENCY AND ADDRESS

Jerry Burkhart

200 NAVARJO RD LEX NC

John Tank

616 Indian Wells Cir LEX

HOWARD Cox

110 SEMINOLE LN - LEXINGTON

Eric Saul

263 Rolling Park Dr. - lex.

Elizabeth Danner

112 Choctaw Dr., Lexington, NC

Charles W Cozart

263 SIOUAN DR. LEX. N.C

Lula A. Cozart

" "

Mr. and Mrs. Jack B. Landert

506 Indian Wells Cir. Lex NC

Mr. & Mrs. Marvin Sandifer

209 Spruce Rd. Lexington NC. 27295

Lensie Collins

NC DOR

Nick Gobble

Lexington NC

Jim Donald

Lexington, NC

VISITOR REGISTRATION SHEET

House Finance Committee

February 24, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Cameron Hanley	Electricities of NC
JOHN WALSON	CITY OF LEXINGTON
John L. GRAY	City of Lexington
Dwyl S. Wd	P. Wd & Assoc
John McAlister	NC Chamber
Paul Meyer	NCLM
Will Culpeper	MVA
Joyce Pates	JP Pates
Emily Grimm	MWC
Therese	Electricities of NC
Jh Pates	NCLM

VISITOR REGISTRATION SHEET

House Finance Committee

February 24, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Jeremy Gobble	Lexington NC
Keith A. Bost	Lexington, NC
STEWART SMITH	Lenoir
Michael Sawicki	Lexington, NC
Mike Bralkowski	CUAFA - DAVIDSON COUNTY
Doug Aitken	Fair Alternation Coalition
Fred Boyett	Smith Mountain Leatherwood
Anne Lofgren	LA to Rep. Rayner Brown
Cady Thomas	NCA2
Michael House	NC DOR
Jossi Hayes	NCHBA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 5
Committee Substitute Favorable 2/10/11

Short Title: Kinston Annexation Repealed.

(Local)

Sponsors:

Referred to:

January 27, 2011

A BILL TO BE ENTITLED

AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE, BY WITHDRAWING THE DELEGATION OF AUTHORITY TO THE CITY OF KINSTON TO MAKE A CERTAIN ANNEXATION.

The General Assembly of North Carolina enacts:

SECTION 1. The ordinance adopted by the City Council of the City of Kinston on June 1, 2009, entitled "AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF KINSTON UNDER THE AUTHORITY GRANTED BY PART 3, ARTICLE 4A, CHAPTER 160A OF THE GENERAL STATUTES OF NORTH CAROLINA," described therein as containing approximately 501.45 acres, is repealed.

SECTION 2. This act is effective from and after June 1, 2009.





HOUSE BILL 5: Kinston Annexation Repealed

2011-2012 General Assembly

Committee: House Finance	Date: February 24, 2011
Introduced by: Rep. LaRoque	Prepared by: Trina Griffin
Analysis of: Second Edition	Committee Counsel

SUMMARY: *House Bill 5 repeals an involuntary annexation ordinance adopted by the City of Kinston on June 1, 2009, affecting approximately 501.45 acres.*

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." Pursuant to this Section, the General Assembly enacted Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to involuntarily add territory to their municipal limits, if the area meets the statutory requirements. Generally speaking, a municipality may involuntarily annex property if:

1. It is adjacent or contiguous to the city.
2. 1/8 of the external boundary area coincides with the city boundary.
3. It is not part of another city.
4. It is developed for urban purposes.

BILL ANALYSIS: House Bill 5 repeals an involuntary annexation ordinance enacted by the City of Kinston on June 1, 2009 affecting approximately 501.45 acres.

EFFECTIVE DATE: Effective from and after June 1, 2009.

BACKGROUND: This annexation is currently the subject of litigation brought by property owners in the annexation area. The Lenoir County Superior Court upheld the annexation in April of 2010. The case is pending before the North Carolina Court of Appeals.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H5-SMSV-3(e2) v2

City of Kinston

Office of the Mayor



February 8, 2011

To Whom It May Concern,

Last night the Kinston City Council voted unanimously to oppose House Bill 5 entitled "Kinston Annexation Repealed". The current City Council makes a compelling argument that "House Bill 5 restricts the ability of locally elected officials to make the best decisions, based on current law, for the area they represent." However, as Mayor of the City of Kinston I disagree that House Bill 5 is intended to usurp the power of locally elected officials, but rather the bill is a means to end of an undemocratic, but legal process used by the City of Kinston.

Although the current City Council is unanimous in its opposition to House Bill 5, the previous City Council, which approved the forced annexation, was not. Needless to say the intent of this letter is to inform you that our community does not unanimously support forced annexation as a tool for Kinston to grow.

According to the North Carolina Supreme Court, in a 2006 case called *Nolan v. Village of Marvin*, "The primary purpose of involuntary annexation, as regulated by these statutes, is to promote "sound urban development" through the organized extension of municipal services to fringe geographical areas. These services must provide a meaningful benefit to newly annexed property owners and residents, who are now municipal taxpayers, and must also be extended in a nondiscriminatory fashion."

The current annexation by the City of Kinston does not promote "sound urban development" because the proposed annexation areas are primarily homes that were built 50 years ago.

I do agree with our City Council that annexation reforms are needed. Forced annexation for too long has been used as a bullying tool for municipalities to gobble up parcels without the consent of the taxpayers of those parcels. The State of North Carolina needs a process that is fair to the municipalities and to the taxpayers targeted by those annexations.

Respectfully,

A handwritten signature in black ink, appearing to read "BJ Murphy", is written over a horizontal line.

BJ Murphy, Mayor
City of Kinston

02-13-2011

The Free Press / www.kinston.com

THE FREE PRESS

OUR OPINION

End justifies means with annexation bill

REPUBLICAN MAJORITY in both chambers of the General Assembly have shifted Raleigh's priorities in a number of areas, but perhaps none so dramatically as the area of municipal annexation. In the session's first month, legislators have introduced five bills that would curb the ability of cities and towns to expand through involuntary annexation. Anyone remotely familiar with local issues would not be surprised to learn that two of the bills affect Kinston.

One does so directly — a local bill (HB 5) filed by Rep. Stephen LaRoque, R-Lenoir, within hours of the session's opening, to block the city of Kinston's long-running effort to annex several neighborhoods along U.S. 258, on the city's western fringe. Companion bills (HB 9 and SB 27) filed in both chambers — and backed by all five Republican legislators from our area — would impose a statewide moratorium on involuntary, or forced, annexation until July 1, 2012. It would also delay annexation approved by municipalities but not yet in place.

How that bill affects Kinston's ongoing annexation isn't exactly clear. The annexation is still pending, but had an informal effective date of Nov. 30, 2009. It's been tied up in court since then and the city is no closer to taking those 500 acres and 1,200 people inside its limits than it was nearly two years ago. Still, anything can happen in the Legislature and Kinston — along with numerous other municipalities that have approved but not yet completed an annexation — could be given special consideration in any moratorium bill that wins approval.

There's no such confu-

Legislation that seems unfair and authoritarian is the best way to rectify an act by the city that is itself unfair and authoritarian.

sion with LaRoque's local bill. If it passes the House, then the Senate, Kinston's annexation plan is dead. It would be up to the city to take up the fight in court, not a likely prospect given the expense and the message emanating from Raleigh that the days are numbered for North Carolina's liberal involuntary annexation rules.

Still, HB 5, like similar bills that would block ongoing annexations in Lexington and Rocky Mount, can create heartburn even for foes of forced annexation. It's a matter of authority. The state set the rules for annexation, the city followed them and now the state, through this legislation, seeks to void that action. It seems unfair and perhaps even authoritarian.

But in the end, it yields the right result. Involuntary annexation is an affront to anyone's idea of personal freedom and it should be stopped. The moratorium legislation has enormous merit and should be passed, but its murky relationship to Kinston's pending annexation makes it the less desirable option.

Beside, the people of Crestview, Hickory Hills and Briarwood Terrace should not have to wait for statewide legislation to rescue them from an act of the city that is itself unfair and authoritarian. The problem is local and HB 5 is the fix.

Letters to the editor

Kinston shouldn't grow using force

On Monday night the Kinston City Council voted unanimously to oppose House Bill 5 entitled "Kinston Annexation Repealed." The current City Council makes a compelling argument that "House Bill 5 restricts the ability of locally elected officials to make the best decisions, based on current law, for the area they represent." However, as mayor of the City of Kinston, I disagree that House Bill 5 is intended to usurp the power of locally elected officials, but rather the bill is a means to end an undemocratic, but legal process used by the City of Kinston.

Although the current City Council is unanimous in its opposition to House Bill 5, the previous City Council, which approved the forced annexation, was not. Needless to say, our community does not unanimously support forced annexation as a tool for Kinston to grow.

According to the North Carolina Supreme Court, in a 2006 case called Nolan v. Village of Marvin, "The primary purpose of involuntary annexation, as regulated by these statutes, is to promote 'sound urban development' through the organized extension of municipal services to fringe geographical areas. These services must provide a meaningful benefit to newly annexed property owners and residents, who are now municipal taxpayers, and must also be extended in a nondiscriminatory fashion."

The current annexation by the City of Kinston does not promote "sound urban development" because the proposed annexation areas are primarily homes that were built 50 years ago. I do agree with our City Council that annexation reforms are needed. Forced annexation for too long has been used as a bullying tool for municipalities to gobble up parcels without the consent of the taxpayers of those parcels. The state of North Carolina needs a process that is fair to the municipalities and to the taxpayers targeted by those annexations.

BJ Murphy, Mayor
City of Kinston

Another sign of discord

City Council makes mayor's signature superfluous on 3-2 vote

By DAVID ANDERSON

Staff Writer

Kinston City Council members at odds with Mayor B.J. Murphy over involuntary annexation and other issues can't make him irrelevant, but they have taken a step to marginalize him.



Tyson

As of Monday, Murphy's signature on any council-approved document is unnecessary.

In a motion that passed 3-2, Councilman Joe Tyson proposed having City Manager Scott Stevens sign any document the council has approved by "a majority, plurality or unanimous vote."

City Attorney Jim Cauley advised there is no policy requiring the mayor to sign all council resolutions and ordinances, except in certain cases, such as cemetery documents.

Mayor B.J. Murphy irked the council twice in recent months by declining to sign council-approved measures that he did not support.

Coming from a constructive dialogue, the mayor is not elected by the council members but by the people," Murphy said Tuesday. "My positions on forced annexation

and many others have been widely known for many years. It is unfortunate that expressing a particular point of view has turned into not just political but personal attacks."

Last April, he disagreed with a measure to borrow more than \$1 million to purchase 21 new police, utility and construction vehicles, because

it did not seem prudent to him to take on more debt when the city's budget was so spare. The city manager signed in Murphy's place.

He also ran afoul of the council earlier this month when he refused to sign a resolution against a proposed N.C. House bill that would repeal the city's annexation. The council signed

instead.

"I'm not being vindictive," Tyson said Tuesday. "I need to know from now on things will be signed and there will be no more arguments."

Council members had also objected to Murphy writing a letter explaining his position on annexation and sending it to The Free Press and to local legislators, but not informing them. Tyson said members

who traveled to Raleigh to testify against the annexation bill were "ambushed" by the letter.

"He totally has the right to disagree in principle but when the majority of the council makes a decision then I feel that he is obligated to sign

the document," Tyson said. "Then he send a letter to The Free Press or the House."

They told Murphy of their objections during a recent council planning retreat and — while they insisted the two issues were not related — voted to remove the mayor from the U.S. 70 Corridor Commission, to which they appointed him just days earlier.

"It was fair to let them know (about the letter)," Murphy said. "But that would have just been a courtesy, but it wouldn't have changed my position or the action I took."

Murphy wrote a post about his removal from the commission on his Facebook page during the planning

retreat, to which Tyson also objected.

"This is the third mayor that I have had the opportunity to work with," said Tyson, who has been on the council since the late 1990s. "The first two and I, and the council, disagreed on a great many things. But they did the noble thing and signed the document, but our (current) mayor, it's as if he has decided to protest what we do by not signing and texting to his Facebook."

Council members Will Barker and Bobby Merritt voted against Tyson's motion. Merritt said during the meeting that it appeared that the city already had contingencies in place in case the mayor did

not want to sign a document, making the motion unnecessary.

"My thought process was, maybe if the mayor didn't want to sign it we had something in process for the city manager to sign right then," he explained Tuesday.

"What is interesting here," Murphy observed, "is that it has been long talked about how very little power the mayor has. For somebody who has very little power I have apparently upset the apple cart for stating an opinion in a public arena."

David Anderson can be reached at 252-559-1077 or danderson@freedomenc.com.

Wednesday, February 23, 2011

REP. LA ROQUE

"It is natural for men to aspire to power. It is the nature of mankind to be tyrannical; therefore, it is necessary for us to secure our rights and liberties as far as we can."--William Lenoir at the 1788 Hillsborough Convention.

ROLL CALL VOTE

19 11 = _____ (TOTAL)
YES NO

HB# 5
SB# _____

HOUSE STANDING COMMITTEE ON FINANCE

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Howard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rhyne
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Folwell	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ross
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Setzer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Samuelson
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Starnes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stam
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lewis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stone
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McComas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Warren
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Wainwright	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Weiss
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Alexander	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Womble
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Brandon	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brawley	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Carney	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Collins	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cotham	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Faison	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Gibson	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hackney	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hall	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hill	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jordan	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Luebke	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCormick	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGee	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moffitt	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moore	<input type="checkbox"/>	<input type="checkbox"/>	

19 YES
11 NO

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 37
Committee Substitute Favorable 2/10/11

Short Title: Lexington Annexations Repealed. (Local)

Sponsors:

Referred to:

February 7, 2011

A BILL TO BE ENTITLED

AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY WITHDRAWING THE DELEGATION OF AUTHORITY TO THE CITY OF LEXINGTON TO MAKE CERTAIN ANNEXATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Ordinances No. 09-02 (Biesecker Road Area), 09-03 (East Center Street Area), and 09-04 (Old Salisbury Road Area) adopted by the City Council of the City of Lexington on July 21, 2008, each entitled "AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF LEXINGTON, NORTH CAROLINA, UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 3 OF THE GENERAL STATUTES OF NORTH CAROLINA," are repealed.

SECTION 2. This act is effective from and after July 21, 2008.





HOUSE BILL 37: Lexington Annexations Repealed

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. R. Brown
Analysis of: Second Edition

Date: February 24, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 37 repeals three involuntary annexation ordinances adopted by the City of Lexington on July 21, 2008.*

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." Pursuant to this Section, the General Assembly enacted Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to involuntarily add territory to their municipal limits, if the area meets the statutory requirements. Generally speaking, a municipality may involuntarily annex property if:

1. It is adjacent or contiguous to the city.
2. 1/8 of the external boundary area coincides with the city boundary.
3. It is not part of another city.
4. It is developed for urban purposes.

BILL ANALYSIS: House Bill 37 repeals the following three involuntary annexation ordinances adopted by the City of Lexington on July 21, 2008:

- Ordinance No. 09-02 (Biesecker Road Area)
- Ordinance 09-03 (East Center Street Area)
- Ordinance 09-04 (Old Salisbury Road Area)

EFFECTIVE DATE: Effective from and after July 21, 2008.

BACKGROUND: Property owners in the annexation area sought judicial review of the City's annexation ordinances. In January 2011, the North Carolina Court of Appeals upheld the annexation. The property owners are currently seeking discretionary review in the North Carolina Supreme Court.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H37-SMSV-4(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 124*
PROPOSED COMMITTEE SUBSTITUTE H124-PCS30106-RBx-7

Short Title: IRC Update. (Public)

Sponsors:

Referred to:

February 17, 2011

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A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2010~~, January 1, 2011, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to

read:

"(15b) For taxable years 2010 through 2012, eighty-five percent (85%) of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service during the taxable year. In addition, for taxable year 2010, a taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 2.(b) G.S. 105-130.5(b) is amended by adding a new subdivision to

read:

"(21b) An amount equal to twenty percent (20%) of the amount added to federal taxable income as accelerated depreciation under subdivision (a)(15b) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2012. For the amount added to taxable income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013."

SECTION 2.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to

read:

1 "(8b) For taxable years 2010 through 2012, eighty-five percent (85%) of the
2 amount allowed as a special accelerated depreciation deduction under
3 section 168(k) or 168(n) of the Code for property placed in service during
4 the taxable year. In addition, for taxable year 2010, a taxpayer who placed
5 property in service during the 2009 taxable year and whose North Carolina
6 taxable income for the 2009 taxable year reflected a special accelerated
7 depreciation deduction allowed for the property under section 168(k) of the
8 Code must add eighty-five percent (85%) of the amount of the special
9 accelerated depreciation deduction. These adjustments do not result in a
10 difference in basis of the affected assets for State and federal income tax
11 purposes."

12 **SECTION 2.(d)** G.S. 105-134.6(b) is amended by adding a new subdivision to

13 read:

14 "(17b) An amount equal to twenty percent (20%) of the amount added to federal
15 taxable income as accelerated depreciation under subdivision (c)(8b) of this
16 section. For the amount added to taxable income in the 2010 taxable year,
17 the deduction allowed by this subdivision applies to the first five taxable
18 years beginning on or after January 1, 2011. For the amount added to taxable
19 income in the 2011 taxable year, the deduction allowed by this subdivision
20 applies to the first five taxable years beginning on or after January 1, 2012.
21 For the amount added to taxable income in the 2012 taxable year, the
22 deduction allowed by this subdivision applies to the first five taxable years
23 beginning on or after January 1, 2013."

24 **SECTION 3.(a)** G.S. 105-130.5(a) is amended by adding a new subdivision to

25 read:

26 "(23) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount
27 by which the taxpayer's expense deduction under section 179 of the Code for
28 property placed in service in taxable year 2010 or 2011 exceeds the amount
29 that would have been allowed for the respective taxable year under section
30 179 of the Code as of May 1, 2010. For purposes of this subdivision, the
31 definition of section 179 property has the same meaning as under section
32 179 of the Code as of January 1, 2011. These adjustments do not result in a
33 difference in basis of the affected assets for State and federal income tax
34 purposes."

35 **SECTION 3.(b)** G.S. 105-130.5(b) is amended by adding a new subdivision to

36 read:

37 "(26) An amount equal to twenty percent (20%) of the amount added to federal
38 taxable income under subdivision (a)(23) of this section. For the amount
39 added to taxable income in the 2010 taxable year, the deduction allowed by
40 this subdivision applies to the first five taxable years beginning on or after
41 January 1, 2011. For the amount added to taxable income in the 2011 taxable
42 year, the deduction allowed by this subdivision applies to the first five
43 taxable years beginning on or after January 1, 2012."

44 **SECTION 3.(c)** G.S. 105-134.6(c) is amended by adding a new subdivision to

45 read:

46 "(15) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount
47 by which the taxpayer's expense deduction under section 179 of the Code for
48 property placed in service in taxable year 2010 or 2011 exceeds the amount
49 that would have been allowed for the respective taxable year under section
50 179 of the Code as of May 1, 2010. For purposes of this subdivision, the
51 definition of section 179 property has the same meaning as under section

1 179 of the Code as of January 1, 2011. These adjustments do not result in a
2 difference in basis of the affected assets for State and federal income tax
3 purposes."

4 **SECTION 3.(d)** G.S. 105-134.6(b) is amended by adding a new subdivision to
5 read:

6 "(21) An amount equal to twenty percent (20%) of the amount added to federal
7 taxable income under subdivision (c)(15) of this section. For the amount
8 added to taxable income in the 2010 taxable year, the deduction allowed by
9 this subdivision applies to the first five taxable years beginning on or after
10 January 1, 2011. For the amount added to taxable income in the 2011 taxable
11 year, the deduction allowed by this subdivision applies to the first five
12 taxable years beginning on or after January 1, 2012."

13 **SECTION 4.** This act is effective when it becomes law. Notwithstanding Section 1
14 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2010, that
15 increase North Carolina taxable income for the 2010 taxable year become effective for taxable
16 years beginning on or after January 1, 2011.



HOUSE PCS 124: IRC Update

2011-2012 General Assembly

Committee:	House Finance	Date:	February 23, 2011
Introduced by:	Reps. Howard, Brubaker, Starnes, Setzer	Prepared by:	Cindy Avrette
Analysis of:	PCS to First Edition H124-CSRbx-7		Committee Counsel

SUMMARY: *House Bill 124¹ would update the reference to the Internal Revenue code used in defining and determining certain State tax provisions from May 1, 2010, to January 1, 2011. By doing so, North Carolina would conform to many of the changes made by the federal Small Business Jobs Act of 2010 and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, including part of the estate tax changes, a modified version of the enhanced section 179 expense deduction changes, and all of the business and individual income tax extenders from the Bush-era tax legislation of 2001. House Bill 124 would not conform to the bonus depreciation provisions. This bill is a recommendation of the Revenue Laws Study Committee. With the exception of the estate tax, the bill's impact on General Fund availability is minimal.*

The proposed committee substitute clarifies the State's conformity on two issues identified by practitioners and the Department of Revenue: the definition of qualifying property for purposes of the section 179 expense deduction and the basis of property passing through an estate.

CURRENT LAW: North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.² The General Assembly determines each year whether to update its reference to the Code.³ Updating the reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made. Maintaining conformity with federal tax law simplifies tax reporting because a taxpayer will not need to account for differing federal and State treatment of the same asset.

BILL ANALYSIS: The current reference to the Code is May 1, 2010.⁴ Since that time, Congress has enacted two Acts that make substantial changes to the tax code: the Small Business Jobs Act of 2010,

¹ The PCS for HB 124 is identical to SB 94, 2nd edition, as passed by Senate Finance at its meeting on February 23, 2011.

² North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

³ The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

⁴ Part 31 of S.L. 2010 31 updated the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2009, to May 1, 2010. However, S.L. 2010 31 did not conform to the five year carryback of net operating losses incurred by large businesses. S.L. 2010 31 incorporated tax changes made by five federal acts: the Worker, Homeownership, and Business Assistance Act (WHBA), P.L. 111-92; Acceleration of Income Tax Benefits for Haiti Relief, P.L. 111-126; the Patient Protection and Affordable Care Act, P.L. 111-148; the Health Care and Education Reconciliation Act, P.L. 111-152; and the Hiring Incentives to Restore Employment Act (HIRE), P.L. 111-147.

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enacted September 27, 2010, as P. L. 111-240 (2010 Jobs Act), and the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act, enacted December 17, 2010, as P. L. 111-312 (2010 Tax Relief Act). Both Acts contain provisions that became effective retroactively on January 1, 2010. Since the General Assembly will not have had an opportunity to enact legislation prior to the end of the 2010 taxable year, taxpayers may have to make adjustments on their 2010 State tax return for items included in, or excluded from, federal taxable income as a result of one of these two Acts.

The 2010 Jobs Act enhances existing business tax incentives and partially offsets this revenue loss with changes which are expected to increase revenue. The incentives in the 2010 Jobs Act are not limited to small businesses, and the accelerated deduction for depreciation represents a major benefit to large businesses. The 2010 Tax Relief Act boosts some of the business tax incentives in the 2010 Jobs Act and extends the Bush-era individual and business tax incentives, included in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)⁵, for two years.

Extension and Expansion of Bonus Depreciation for 2010, 2011, and 2012

Businesses may depreciate the cost of a new asset⁶ over a period of time, usually five to 15 years. Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal depreciation schedule. The federal Economic Stimulus Act of 2008⁷ provided a 50% first year bonus depreciation for qualified property acquired and placed in service in 2008. The federal American Recovery and Reinvestment Act of 2009 extended the 50% bonus depreciation provided to qualified property for an additional year through 2009.

The 2010 Jobs Act extends the bonus depreciation for 2010 and applies retroactively to property acquired and placed in service in 2010.⁸ The 2010 Tax Relief Act increases the 50% bonus depreciation extended under the 2010 Jobs Act to 100% for property acquired and placed in service after September 8, 2010, and before January 1, 2012. It also provides 50% bonus depreciation for qualified property placed in service after December 31, 2012, and before January 1, 2013. Under the 2010 Jobs Act, the bonus depreciation would have expired for the 2012 taxable year. Under the 2010 Tax Relief Act, the bonus depreciation expires for the 2013 taxable year.

The 2010 Jobs Act also allows taxpayers using the percentage of completion accounting method to benefit from bonus depreciation at the federal level for assets with a depreciable life of seven years or less. The percentage of completion accounting method might prevent taxpayers from receiving benefit from the bonus depreciation because the accounting method spreads expenses, including depreciation, throughout the life of a long-term contract. Under this accounting method, taxpayers could not deduct the bonus depreciation in the first year. Construction contractors use the percentage of completion accounting method. This provision is new.

North Carolina decoupled from the extension of the bonus depreciation provisions in 2008 and 2009. The State delayed the impact of the bonus depreciation deduction in a manner similar to what it has done in the past: State tax law provides that a taxpayer may deduct the same amount of an asset's basis under State law as under federal law, it is just that the timing of the deduction differs. Under State tax law, a

⁵ Most of the tax provisions in EGTRRA were scheduled to expire in 2010 or 2011 and revert to the provisions as they existed in 2001.

⁶ One important difference between bonus depreciation and section 179 expensing is that bonus depreciation applies only to new equipment, while section 179 expensing may apply to new and used equipment.

⁷ Congress has authorized bonus depreciation several times to encourage business investment, specifically after September 11, 2001. The Jobs Creation and Worker Assistance Act of 2002 provided a 30% bonus depreciation allowance. The Jobs and Growth Tax Relief Reconciliation Act of 2003 extended the sunset and increased the amount to 50%.

⁸ The property may be placed in service during 2011 for property with a recovery period of 10 years or longer and for transportation property (i.e., tangible personal property used to transport people or property).

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taxpayer must add back 85% of the accelerated depreciation amount⁹ in the year that it is claimed for federal purposes. Then, in subsequent tax years, the taxpayer may deduct from federal taxable income the total amount of the add-back, divided into five equal installments. This adjustment means that for State tax purposes, a taxpayer may deduct a greater depreciation amount in the outlying tax years, which will be the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back.

House Bill 124 would decouple from the bonus depreciation provisions for 2010, 2011, and 2012 in the same manner as it has decoupled from them in the past: A taxpayer would add-back 85% of the accelerated depreciation amount in the year that it is claimed for federal purposes. Then, in subsequent tax years, the taxpayer would deduct from federal taxable income the total amount of the add-back, divided into five equal installments. The cost to conform to the bonus depreciation provision would be approximately \$460 million.

Enhanced Section 179 Expensing for 2010, 2011, and 2012

Section 179 of the Code allows the expensing of the purchase price of some business assets¹⁰ in the year of purchase rather than taking depreciation¹¹ throughout the life of the asset. In other words, expensing trades a smaller yearly deduction over time for a larger deduction in year one.

Prior to the Emergency Economic Stabilization Act of 2008 (EESA), the deduction limit for section 179 expensing was \$128,000¹² of the cost of the property with a dollar for dollar phase-out of this amount whenever the total cost of qualifying property placed in service that year exceeded \$510,000.¹³ EESA increased the deduction limit from \$128,000 to \$250,000 with a phaseout at \$800,000 for the 2008 tax year. The American Recovery and Reinvestment Tax Act of 2009 (ARRTA) extended the temporary increase through 2009. The federal HIRE Act of 2010 extended the 2008 and 2009 increase through 2010. The limits were scheduled to revert to the prior levels of \$25,000 and \$200,000 in taxable year 2011. North Carolina conformed to those changes.

The 2010 Jobs Act not only delayed the reversion to the prior levels until the 2012 taxable year, it also increased the section 179 expensing deduction for tax years 2010 and 2011 from \$250,000 and \$500,000 to \$800,000 and \$2 million. In addition to the expansion of the limits, the Act broadened the definition of qualified property to include qualified leasehold improvement property, qualified restaurant property, qualified retail improvement property, and computer software.¹⁴ The enhancements made by the 2010 Jobs Act are set to expire for the 2012 taxable year. The 2010 Tax Relief Act does not continue the expansion of the types of property that may qualify for the deduction beyond the 2011 taxable year, but it does increase the limits for the 2012 taxable year from \$25,000 and \$200,000 to \$125,000 and \$500,000. Under the 2010 Tax Relief Act, the deduction limits are set to revert to their prior levels of \$25,000 and \$200,000 in 2013.

⁹ The accelerated depreciation amount for property placed in service in 2008 is 50%.

¹⁰ The business asset must be newly purchased tangible personal property that is used more than 50% for business purposes and is eligible to be depreciated under the Code. The newly purchased property may be new or used equipment.

¹¹ Generally, taxpayers take the Section 179 expensing deduction first and claim Section 168(k) depreciation on any remaining basis.

¹² Prior to the EESA, the dollar limits would have been \$125,000 with a phase-out beginning at \$500,000; both amounts would have been indexed for inflation resulting in the limits of \$128,000 and \$510,000.

¹³ For example, if the taxpayer placed in service during the taxable year one or more items of qualifying property totaling \$520,000, the amount that could be expensed under section 179 would be \$118,000 -- \$128,000 less \$10,000, which is the excess of \$520,000 over \$510,000.

¹⁴ Qualified real property is limited to a maximum deduction of \$250,000.

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North Carolina has conformed to the enhanced section 179 expense deduction provisions in the past. However, the enhancements made by the 2010 Jobs Act are the most expansive ever enacted. House Bill 124 would conform to the expanded definition of qualified property; it would maintain the 2010 deduction limits of \$250,000 and \$800,000 for taxable years 2010 and 2011; and it would decouple from the enhanced limits of \$500,000 and \$2,000,000 for taxable years 2010 and 2011. House Bill 124 would provide that the property's basis would be the same for federal and State purposes and would treat the difference in the same manner as State tax law has historically treated the bonus depreciation: A taxpayer would add-back 85% of the additional expensing taken under federal law in 2010 and 2011 and would deduct 20% of this amount over the succeeding five years. House Bill 124 would conform to the expensing limits of \$125,000 and \$500,000 for the taxable year 2012 and, like federal law, would revert to the prior expense limits of \$25,000 and \$200,000 for the tax year 2013. Full conformity to the section 179 expense deduction would be approximately \$97 million.

Estate Tax for 2010 - 2012

EGTRRA gradually reduced the federal estate tax over a period of years and abolished it for decedents dying in 2010. During the year of its repeal, the basis of property passing through an estate was determined by the modified carryover basis rules under EGTRRA. EGTRRA also repealed the state estate tax credit for decedents dying on or after 2004 and replaced the credit with a deduction. The estate tax was scheduled to revert to the 2001 law in 2011: the 2001 maximum estate tax rate of 55% and a \$1 million applicable exclusion amount.

The 2010 Tax Relief Act revives the estate tax retroactively for decedents dying on or after January 1, 2010, and thereby allows property passing through the estate to acquire a stepped-up basis. The maximum federal estate tax rate is 35% with an applicable exclusion amount of \$5 million. The 2010 Tax Relief Act also provides for portability between spouses of the exclusion amount. This portability means that any unused exclusion amount by one spouse is available to the surviving spouse, effectively allowing a married couple to exclude up to \$10 million from estate tax.¹⁵ The new estate tax law is scheduled to sunset on December 31, 2012, to the pre-EGTRRA amounts. The 2010 Tax Relief Act gives the estates of decedents dying in 2010 the option to pay no estate tax and assume the modified carryover basis in the property.

North Carolina imposes an estate tax on the estate of a decedent when a federal estate tax is imposed on the estate.¹⁶ By virtue of this language, the federal and state exclusion amounts are the same. The amount of the State's estate tax is the amount of the credit allowed on the federal estate tax return for state estate tax paid, as the federal law provided in 2001.¹⁷

Since the federal estate tax did not exist in 2010, North Carolina's estate tax was repealed for 2010. With the revival of the federal estate tax in 2011, North Carolina's estate tax is revived for decedents dying in 2011.¹⁸ House Bill 124, by conforming to the definition of federal taxable income for income tax purposes, also adopts the federal basis of any property passing through an estate. Unlike Congress,

¹⁵ The portability election is set to sunset December 31, 2012. Therefore the utility of the portability election is limited to situations where both spouses die within the two-year term (2011 and 2012).

¹⁶ North Carolina repealed its inheritance tax in 1998 and replaced it with an estate tax that was equivalent to the federal state estate tax credit allowed on a federal estate tax return. This type of state estate tax was known as a "pick up" tax because it picked up for the state the amount of federal estate tax that would otherwise be paid to the federal government.

¹⁷ When Congress phased out the state estate tax credit, beginning in 2002, North Carolina enacted legislation not to conform to the phase out of the credit. In other words, North Carolina began tying the amount of the State estate tax owed to the federal credit as it existed in 2001 rather than as it currently exists. Georgia, South Carolina, and Tennessee have not had an estate tax since January 1, 2005, because their estate tax equals the amount of the state estate tax credit allowed on the federal estate tax return. Virginia repealed its estate tax, effective July 1, 2007.

¹⁸ North Carolina's estate tax would have been revised in 2011 based upon the Code as written on May 1, 2010.

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North Carolina cannot the estate tax retroactively¹⁹ on the estates of decedents dying on or after January 1, 2010, and before January 1, 2011.

Business Tax Extenders for 2010 and 2011

The 2010 Tax Relief Act extended many of the tax incentives enacted in EGTRRA for two years. The business tax incentives included enhanced deduction and expensing items, charitable deductions, and tax credits. North Carolina conformed to these incentives in 2002²⁰; however, under existing North Carolina law, these incentives expired for the 2010 taxable year. House Bill 124 would conform to these extensions.

The 2010 Tax Relief Act extended the following business tax incentives that were set to expire for the 2010 taxable year for the 2010 and 2011 taxable years:

- 15-year recovery period for qualified leasehold improvements, restaurant building and improvements, and retail improvements
- Seven-year recovery period for motor sports entertainment costs recovery
- Expensing election for certain film and television production costs
- Brownfields remediation expensing.

The 2010 Tax Relief Act extends the Work Opportunity Tax Credit (WOTC) to include individuals who begin employment after August 31, 2011, and before January 1, 2012. The WOTC is equal to 40% of up to \$6,000 of the targeted employee's qualified first year wages. North Carolina's WOTC is equal to 6% of the federal WOTC for wages paid for positions located in this State. The federal WOTC was scheduled to expire September 1, 2011.

The 2010 Tax Relief Act extends the following charitable incentives for taxable years 2010 and 2011:

- Deduction for contributions of food inventory
- Deduction for contributions by C corporations of books to public schools
- Deduction for corporate contributions of computer equipment for educational purposes
- Basis adjustment to stock of S corporations making charitable contributions of property

Individual Income Tax Extenders for 2010, 2011, and 2012

The 2010 Tax Relief Act extends many of the Bush-era individual tax incentives included in the EGTRRA for two years. Some of the tax incentives expired in 2010 and others were scheduled to expire in 2011. North Carolina conformed to these incentives in 2002²¹; however, under existing North Carolina law, many of these incentives expired for the 2010 taxable year and others are scheduled to expire for the 2011 taxable year. House Bill 124 would conform to these extensions.

The following three individual income tax incentives were scheduled to expire in 2010, but the 2010 Tax Relief Act extends the incentives retroactively for the 2010 tax year and the 2011 tax year:

- Tax deduction for higher education tuition expenses
- Up to \$250 deduction for teacher's classroom expenses

¹⁹ Article I, Sec. 16 of the North Carolina Constitution.

²⁰ S.L. 2002-126.

²¹ S.L. 2002-126.

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- Charitable contribution of IRA proceeds

The following individual income tax incentives were scheduled to expire in 2011, but 2010 Tax Relief Act extends the incentives for the 2011 and 2012 taxable years:

- *No limitation on itemized deductions.* Section 68 of the Code, first added in 1990, established an overall limitation on itemized deductions. This limitation was gradually repealed starting in 2006, with the phase-out complete in taxable year 2010. The limitation was scheduled to revert in full in 2011. The 2010 Tax Relief Act extends the complete repeal of the limitation for 2011 and 2012.
- *Enhancements to the earned income tax credit (EITC).* The EITC is a refundable tax credit that varies depending on the number of the taxpayer's qualifying children. North Carolina's EITC is equal to 5% of the federal credit amount. EGTRRA increased the EITC from 40% to 45% of a family's first \$12,570 of earned income for families with three or more children and an increase in the beginning point of the phase-out range for married couples filing a joint return by \$1,880. The enhancements were set to expire for the 2011 taxable year. The 2010 Tax Relief Act extends the enhancements through the 2011 and 2012 taxable years.
- *Enhancements to the adoption tax credit.* EGTRRA increased the dollar limitation for the credit and the income exclusion for employer paid expenses to \$10,000, indexed for inflation. The Patient Protection and Affordable Care Act increased the credit and exclusion by another \$1,000 for 2010 and 2011. The credit cap was scheduled to return to \$5,000²² for taxable years beginning on or after January 1, 2012. North Carolina's adoption tax credit is equal to 50% of the federal credit amount. The 2010 Tax Relief Act extends the enhancements made by EGTRRA for one year. Under the Act, the credit caps will revert to their prior levels in taxable year 2013.
- *Deductibility of mortgage insurance premiums.* Mortgage insurance premiums became deductible in 2007. The insurance must be in connection with home acquisition debt for a first or second home. The deduction is subject to phase-out based on a taxpayer's income. The deductibility of mortgage insurance premiums was set to expire for taxable year 2011. The 2010 Tax Relief Act extends the deduction for one more year, through taxable year 2011.
- *Educational assistance exclusion.* EGTRRA allowed employees to exclude up to \$5,250 in employer-provided education assistance from income and employment taxes. The exclusion was set to expire for taxable year 2011. The 2010 Tax Relief Act extends the exclusion for taxable years 2011 and 2012.
- *Student loan interest deduction.* The student loan interest deduction is a deduction from gross income used to determine a taxpayer's adjusted gross income (AGI). The deduction is subject to a phase-out based on the taxpayer's AGI. EGTRRA eliminated the rule that the deduction only applies to payments made during the first 60 months that interest payments were required and it increased significantly the phase-out amounts. These changes were set to expire in 2011, but the 2010 Tax Relief Act extends the changes for taxable years 2011 and 2012.
- *Coverdale education savings accounts.* Coverdale education savings accounts allow a taxpayer to make nondeductible contributions and to withdraw the proceeds tax free if they

²²The limit is \$6,000 for a special needs child.
Research Division

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are used towards educational expenses. EGTRRA increased the amount that may be contributed to an account from \$500 to \$2,000 and it made elementary and secondary school expenses qualified expenses. The enhancements were set to expire for the 2011 taxable year. The 2010 Tax Relief Act extends the enhancements for taxable years 2011 and 2012.

- *Qualified scholarships.* Qualified scholarships may be excluded from taxable income. EGTRRA provided that the national Health Services Corps Scholarship Program and the Armed Forces Scholarship Program are qualified scholarships for exclusion for income purposes. These scholarships were scheduled to be included in a recipient's income in taxable year 2011. The 2010 Tax Relief Act extends the income exclusion for taxable years 2011 and 2012.

Miscellaneous Business Incentives

The 2010 Jobs Act provided several tax incentives for businesses. House Bill 124 would conform to these incentives.

- *Increase in amount allowed as a deduction for start-up expenditures.* The Code allows up to \$5,000 of start-up expenses to be deducted. The deduction is reduced by the amount of start-up costs that exceed \$50,000. The 2010 Jobs Act increased the deduction to \$10,000 for start-up and organization expenses of the taxpayer's trade or business in 2011 and increased the phase-out threshold to \$60,000.
- *Modification to exclusion for gain from certain small business stock.* Fifty percent of the gain realized on qualified small business stock may be excluded from income. To qualify, the stock must be purchased at its original issue and the aggregate gross assets of the issuing corporation may not exceed \$50 million and at least 80% of the value of its assets must be used in the active conduct of one or more trades or businesses. The exclusion is capped at the greater of 10 times the taxpayer's basis in the stock or \$10 million. ARRTA temporarily increased from 50% to 75% the exclusion for qualified small business stock sold by an individual. The increased exclusion percentage is applicable to stock acquired after February 17, 2009, and before January 1, 2011. North Carolina conformed to ARRTA's temporary increase of the exclusion. The 2010 Jobs Act increased the exclusion percentage to 100% for stock acquired after September 27, 2010, and before January 1, 2011.

Provisions in the 2010 Jobs Act Designed to Increase Revenue

The 2010 Jobs Act contained provisions to increase revenues. The provisions projected to raise the most revenue were related to higher federal tax penalty provisions. These provisions would not apply to North Carolina and would not increase any revenues payable to North Carolina. The Act also contained some retirement-friendly provisions that, if chosen by the taxpayer, would encourage up-front distributions that would be taxable. House Bill 124 would conform to these changes.

- *Deduction for health insurance costs in computing self-employment taxes.* The 2010 Jobs Act allows self-employed individuals to deduct the cost of health insurance for the individual and immediate family to determine income subject to federal self-employment taxes. Health insurance costs were already deductible for regular income tax purposes. The reduction in self-employment taxes affects North Carolina taxable income because self-employment taxes were deductible in determining State taxable income. Self-employed taxpayers with health insurance costs will have larger State taxable incomes because less self-employment taxes were imposed and deducted at the federal level.

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- *Allow participants in governmental 457 plans to treat elective deferrals as Roth contributions.* The 2010 Jobs Act gives participants the option to move retirement savings from government 457(b) plans to Roth accounts starting in 2011. The conversion will be taxable while the earnings and distributions from Roth accounts are generally tax free.
- *Allow rollovers from elective deferral plans to Roth designated accounts.* The 2010 Jobs Act allows retirement plans to offer participants the option starting September 27, 2010 to rollover distributions into Roth accounts within the same retirement plan. The rollover will be taxable while the earnings and distributions from the Roth account are generally tax free.
- *Permit partial annuitization of a nonqualified annuity contract.* The 2010 Jobs Act allows the owner of an annuity contract to begin receiving benefits based on a portion of the value of the annuity and leaving the balance of the annuity to accumulate earnings tax free. This option starts in 2011.
- *Source rules for income on guarantees.* The 2010 Jobs Act clarifies the federal tax treatment of guarantee fees as income sourced to the United States if connected to the United States by a domestic payer or by the conduct of a trade or business in the United States.

EFFECTIVE DATE: House Bill 124 would become effective when it becomes law. However, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year or impose an estate tax on the estate of a decedent dying in calendar year 2010 would become effective for taxable years beginning on or after January 1, 2011.

H124-SMRB-8(CSRBx-7) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 124*

Short Title: IRC Update.

(Public)

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

Referred to: Finance.

February 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

5 "(1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2010~~, January 1,
6 2011, including any provisions enacted as of that date that become effective
7 either before or after that date."

8 SECTION 2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to

9 read:

10 "(15b) For taxable years 2010 through 2012, eighty-five percent (85%) of the
11 amount allowed as a special accelerated depreciation deduction under
12 section 168(k) or 168(n) of the Code for property placed in service during
13 the taxable year. In addition, for taxable year 2010, a taxpayer who placed
14 property in service during the 2009 taxable year and whose North Carolina
15 taxable income for the 2009 taxable year reflected a special accelerated
16 depreciation deduction allowed for the property under section 168(k) of the
17 Code must add eighty-five percent (85%) of the amount of the special
18 accelerated depreciation deduction. These adjustments do not result in a
19 difference in basis of the affected assets for State and federal income tax
20 purposes."

21 SECTION 2.(b) G.S. 105-130.5(b) is amended by adding a new subdivision to

22 read:

23 "(21b) An amount equal to twenty percent (20%) of the amount added to federal
24 taxable income as accelerated depreciation under subdivision (a)(15b) of this
25 section. For the amount added to taxable income in the 2010 taxable year,
26 the deduction allowed by this subdivision applies to the first five taxable
27 years beginning on or after January 1, 2011. For the amount added to taxable
28 income in the 2011 taxable year, the deduction allowed by this subdivision
29 applies to the first five taxable years beginning on or after January 1, 2012.
30 For the amount added to taxable income in the 2012 taxable year, the
31 deduction allowed by this subdivision applies to the first five taxable years
32 beginning on or after January 1, 2013."

33 SECTION 2.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to

34 read:



* H 1 2 4 - V - 1 *

1 "(8b) For taxable years 2010 through 2012, eighty-five percent (85%) of the
2 amount allowed as a special accelerated depreciation deduction under
3 section 168(k) or 168(n) of the Code for property placed in service during
4 the taxable year. In addition, for taxable year 2010, a taxpayer who placed
5 property in service during the 2009 taxable year and whose North Carolina
6 taxable income for the 2009 taxable year reflected a special accelerated
7 depreciation deduction allowed for the property under section 168(k) of the
8 Code must add eighty-five percent (85%) of the amount of the special
9 accelerated depreciation deduction. These adjustments do not result in a
10 difference in basis of the affected assets for State and federal income tax
11 purposes."

12 **SECTION 2.(d)** G.S. 105-134.6(b) is amended by adding a new subdivision to
13 read:

14 "(17b) An amount equal to twenty percent (20%) of the amount added to federal
15 taxable income as accelerated depreciation under subdivision (c)(8b) of this
16 section. For the amount added to taxable income in the 2010 taxable year,
17 the deduction allowed by this subdivision applies to the first five taxable
18 years beginning on or after January 1, 2011. For the amount added to taxable
19 income in the 2011 taxable year, the deduction allowed by this subdivision
20 applies to the first five taxable years beginning on or after January 1, 2012.
21 For the amount added to taxable income in the 2012 taxable year, the
22 deduction allowed by this subdivision applies to the first five taxable years
23 beginning on or after January 1, 2013."

24 **SECTION 3.(a)** G.S. 105-130.5(a) is amended by adding a new subdivision to
25 read:

26 "(23) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount
27 by which the taxpayer's expense deduction under section 179 of the Code for
28 property placed in service in taxable year 2010 or 2011 exceeds the amount
29 that would have been allowed for the respective taxable year under section
30 179 of the Code as of May 1, 2010. These adjustments do not result in a
31 difference in basis of the affected assets for State and federal income tax
32 purposes."

33 **SECTION 3.(b)** G.S. 105-130.5(b) is amended by adding a new subdivision to
34 read:

35 "(26) An amount equal to twenty percent (20%) of the amount added to federal
36 taxable income under subdivision (a)(23) of this section. For the amount
37 added to taxable income in the 2010 taxable year, the deduction allowed by
38 this subdivision applies to the first five taxable years beginning on or after
39 January 1, 2011. For the amount added to taxable income in the 2011 taxable
40 year, the deduction allowed by this subdivision applies to the first five
41 taxable years beginning on or after January 1, 2012."

42 **SECTION 3.(c)** G.S. 105-134.6(c) is amended by adding a new subdivision to
43 read:

44 "(15) For taxable years 2010 and 2011, eighty-five percent (85%) of the amount
45 by which the taxpayer's expense deduction under section 179 of the Code for
46 property placed in service in taxable year 2010 or 2011 exceeds the amount
47 that would have been allowed for the respective taxable year under section
48 179 of the Code as of May 1, 2010. These adjustments do not result in a
49 difference in basis of the affected assets for State and federal income tax
50 purposes."

1 SECTION 3.(d) G.S. 105-134.6(b) is amended by adding a new subdivision to
2 read:

3 "(21) An amount equal to twenty percent (20%) of the amount added to federal
4 taxable income under subdivision (c)(15) of this section. For the amount
5 added to taxable income in the 2010 taxable year, the deduction allowed by
6 this subdivision applies to the first five taxable years beginning on or after
7 January 1, 2011. For the amount added to taxable income in the 2011 taxable
8 year, the deduction allowed by this subdivision applies to the first five
9 taxable years beginning on or after January 1, 2012."

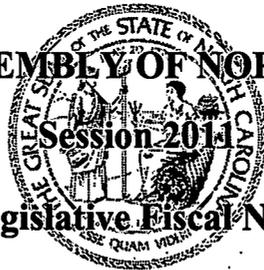
10 SECTION 4. Article 1A of Chapter 105 of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 105-32.2A. Election to receive stepped-up basis for 2010.**

13 A personal representative of an estate of a decedent dying in calendar year 2010 for which
14 the federal estate tax is paid may elect to conform the North Carolina basis of the property in
15 the estate to that of the federal stepped-up basis obtained by payment of the federal estate tax
16 by filing an election with the Secretary and paying the amount of tax that would have been
17 payable under this Article had the federal estate tax that was paid been in effect when the
18 decedent died. In the absence of this election and payment, the North Carolina basis of the
19 property differs from the federal basis. To make the election, an executor must file a return with
20 the Secretary within the time allowed for filing the federal estate tax return."

21 SECTION 5. This act is effective when it becomes law. Notwithstanding Section 1
22 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2010, that
23 increase North Carolina taxable income for the 2010 taxable year become effective for taxable
24 years beginning on or after January 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 124 (First Edition)

SHORT TITLE: IRC Update.

SPONSOR(S): Representatives Brubaker, Howard, Starnes, and Setzer

FISCAL IMPACT					
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>
REVENUES:					
(\$ millions)					
Decouple from Bonus depreciation	-5	-1.1	-2	1.1	.5
Decouple from Section 179 expensing for 2010 and 2011, keep 250k limit for 2011, conform to fed in 2012 and 2013	-.1	-4	-.3	.3	.4
Increase to capital gain exclusion for small business stock	0	0	0	0	-2
Increased start-up expense deduction	-2.5	-.8	.1	.2	.2
Deduction of health insurance for SE tax	2.8	1.2	.1	0	0
Allow 457 plan deferral to be treated as Roth	.1	.2	.2	.3	.4
Allow rollovers from elective deferral plans to Roth	1.6	4.3	4.7	3.9	4.4
Partial Annuitization of a nonqualified annuity contract	0	.2	.3	.5	.7
Source rules for income on guarantees	1.4	1.9	1.9	1.9	1.9
Tax Relief Act	0	0	0	5.4	3.1
Estate Tax	0	-59	-79	-20	0

Total	2.8	-57.1	-72.2	-6.4	9.6
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue					
EFFECTIVE DATE: Effective when it becomes law					

BILL SUMMARY: This proposal would update the reference to the Internal Revenue code used in defining and determining certain State tax provisions from May 1, 2010, to January 1, 2011. By doing so, North Carolina would conform to many of the changes made by the federal Small Business Jobs Act of 2010 (2010 Jobs Act) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (2010 Tax Relief Act). The proposal would not conform to the following federal tax law provisions:

- **Bonus depreciation.** – Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal depreciation schedule. Over the life of the asset, the taxpayer receives the same benefit. The normal depreciation schedule is usually five to 15 years, depending upon the asset. In the past, Congress has provided 50% bonus depreciation for qualified property to spur economic investment. The bonus depreciation provision was scheduled to expire for property acquired and placed in service in 2010. The 2010 Jobs Act extended the 50% bonus depreciation provision to property placed in service in taxable years 2010 and 2011. The 2010 Tax Relief Act boosted the 50% bonus depreciation to 100% for property acquired and placed in service after September 8, 2010, and before January 1, 2012, and it provided 50% bonus depreciation for property placed in service after December 31, 2012, and before January 1, 2013. Although the proposal decouples from bonus depreciation, it provides that the property's basis is the same for federal and State purposes. The taxpayer must add-back 85% of the accelerated depreciation amount in the year that it is claimed for federal tax purposes, and then deduct 20% of this amount, plus the normal depreciation amount, over the next five years.
- **Section 179 expensing.** – Section 179 expensing allows the expensing of the purchase price of some business assets in the year of purchase rather than taking depreciation over the life of the asset. Section 179 has a deduction limit that begins to phase out on a dollar for dollar scale once an investment limit is reached. The deduction limit is \$25,000 and the investment limit is \$200,000. In the past, Congress has increased both the deduction limit and the investment limit to spur economic investment. For the 2010 taxable year, the deduction limit was \$250,000 and the investment limit was \$800,000. The expensing limits were scheduled to revert to their prior levels in 2011. The 2010 Jobs Act expanded the section 179 deduction limits from \$250,000 to \$500,000 for the 2010 taxable year and from \$25,000 to \$500,000 for the 2011 taxable year; it expanded the investment limits from \$800,000 to \$2,000,000 for the 2010 taxable year and from \$200,000 to \$2,000,000 for the 2011 taxable year; the expensing limits were scheduled to revert to their prior levels in 2012. It also broadened the definition of qualified property to include certain real property investments for the 2010 and 2011 taxable years. The 2010 Tax Relief Act expanded the section 179 deduction limits for the 2012 taxable year from \$25,000/\$200,000 to \$125,000/\$500,000; the expensing limits are scheduled to revert to their prior levels of \$25,000/\$200,000 in 2013. The proposal would maintain the 2010

deduction limits of \$250,000 and \$800,000 for taxable years 2010 and 2011. It would decouple from the enhanced limits of \$500,000 and \$2,000,000 for taxable years 2010 and 2011 but provide that the property's basis would be the same for federal and State purposes. The proposal provides that a taxpayer must add-back 85% of the additional expensing taken under federal law in 2010 and 2011 and may deduct 20% of this amount over the succeeding five years. The proposal would conform to the expensing limits of \$125,000/\$500,000 for the 2012 taxable year.

- Estate tax. – The federal estate tax expired for decedents dying in 2010. The estate tax had been scheduled to reemerge in 2011 at the 2001 exclusion amount of \$1 million and the maximum estate tax rate of 55%. The 2010 Tax Relief Act revived the federal estate tax retroactively to January 1, 2010, with an exclusion amount of \$5 million (the portability provision effectively provides an exclusion amount of \$10 million for married couples) and a maximum estate tax rate of 35%. The estate of a decedent dying in 2010 may elect not to pay estate tax, and receive a modified carryover basis in the property passing through the estate. The estate tax provisions are scheduled to return to the 2001 rates and exclusion amounts for decedents dying on or after January 1, 2013. The proposal would conform to the higher exclusion amounts and give estates that chose to pay federal estate tax and receive the stepped-up basis in the property passing through the estate to elect to receive the stepped-up basis for NC purposes by paying the State estate tax for 2010.

The proposal would conform to all other provisions in the 2010 Jobs Act and the 2010 Tax Relief Act. The other provisions in the 2010 Jobs Act include the following:

- An increased exclusion amount of the gain realized on qualified small business stock. The exclusion amount is increased from 50% to 75% for stock acquired after February 17, 2009, and before January 1, 2011, and held for more than five years.
- An increased deduction limit for start-up expenses. The deduction is reduced by the amount of start-up costs that exceed a certain amount. The deduction limit is increased from \$5,000 to \$10,000 and the phase-out threshold is increased from \$50,000 to \$60,000.
- Various other small provisions that are intended to generate revenue. – Deduction for health insurance costs, 457 plans, 401(k) rollovers to Roth accounts, annuitization of a nonqualified annuity contract, sources rules for income on guarantees.

The 2010 Tax Relief Act extended many of the tax incentives enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 for two years. North Carolina conformed to these incentives in 2002; however, under existing North Carolina law, several of these incentives expired for the 2010 taxable year and many others are scheduled to expire for the 2011 taxable year. The proposal would conform to the federal effective date extensions.

The 2010 Tax Relief Act extended the following business tax incentives that were set to expire for the 2010 taxable year for the 2010 and 2011 taxable years:

- 15-year recovery period for qualified leasehold improvements, restaurant building and improvements, and retail improvements
- Seven-year recovery period for motor sports entertainment costs recovery
- Expensing election for certain film and television production costs
- Brownfields remediation expensing

The 2010 Tax Relief Act extended the Work Opportunity Tax Credit (WOTC) to include individuals who begin employment after August 31, 2011, and before January 1, 2012. North Carolina's WOTC is equal to 6% of the federal WOTC for wages paid for positions located in this State. The federal WOTC was scheduled to expire September 1, 2011.

The 2010 Tax Relief Act extended the following charitable incentives for taxable years 2010 and 2011:

- Deduction for contributions of food inventory
- Deduction for contributions by C corporations of books to public schools
- Deduction for corporate contributions of computer equipment for educational purposes
- Basis adjustment to stock of S corporations making charitable contributions of property

The 2010 Tax Relief Act extended the following individual income tax incentives retroactively for the 2010 taxable year and the 2011 taxable year:

- Tax deduction for higher education tuition expenses
- Up to \$250 deduction for teacher's classroom expenses
- Charitable contribution of IRA proceeds

The following individual income tax incentives were scheduled to expire in 2011, but 2010 Tax Relief Act extends the incentives for the 2011 and 2012 taxable years:

- No limitation on itemized deductions.
- Enhancements to the earned income tax credit (EITC). North Carolina's EITC is equal to 5% of the federal credit amount.
- Enhancements to the adoption tax credit. North Carolina's adoption tax credit is equal to 50% of the federal credit amount.
- Deductibility of mortgage insurance premiums.
- Educational assistance exclusion.
- Student loan interest deduction.
- Increased amount that may be contributed to Coverdale education savings accounts and expansion of qualified expenses to include elementary and secondary school expenses.
- Exclusion of scholarships received from the national Health Services Corps Scholarship Program and the Armed Forces Scholarship Program from income.

Source: Committee Counsel Bill Summary

ASSUMPTIONS AND METHODOLOGY:

Except as outlined below, the fiscal impact to the General Fund from partial conformity with the IRC update is based on the US Joint Committee on Taxation (JCT) estimates on changes to federal taxes from the update. The methodology used begins with these JCT estimates, which are calculated by federal fiscal year. Fiscal Research adjusts these numbers back to an approximate calendar year tax impact. Then the next step was to prorate the national numbers to the state impact. This adjustment involved two steps: accounting for the relative size of the state based on federal tax collections and then adjusting for the difference in federal and state marginal tax rates. Once North Carolina's share of the JCT estimates were determined, state tax liability changes were estimated and allocated to the appropriate fiscal year.

The estimate of the bonus depreciation provision is based on data obtained from the Department of Revenue from the 2004 and 2008 tax returns. The estimate is derived from the tax that would not have been paid had North Carolina not required an add-back for bonus depreciation in computing State taxable income for both of those years. In order to assess the impact of the 85% add-back of the bonus depreciation and the Section 179 deduction, a depreciation schedule was developed. The depreciation simulation was used to determine the impact of the bonus depreciation and the Section 179 deduction with the adoption of an 85% add-back rule and a 5 year deduction for each fiscal year.

The estimate to conform to the estate tax provision of the Tax Relief Act was prepared based on tax return data obtained from the Department of Revenue for the 2007, 2008, and 2009 tax years. The impact is estimated from the tax that would not have been received as a result of the increase in the federal exclusion amount.

The Tax Relief Act of 2010 included multiple extensions of tax credits and deductions which were first enacted under the Economic Growth and Tax Relief Reconciliation Act of 2001. Because the changes were extensive and the Act was in place for ten years, the revenue base was adjusted to include the impacts from the Act. If the Tax Relief Act had not been enacted, then the result would have been an increase in General Fund revenue as result of the various federal tax law changes expiring for the 2011 tax year. Because they were extended for two years, there is no impact for FY 2011-12 and FY 2012-13. In the out years, after the latest extensions expire there will be a net gain to General Fund revenues. As with other calculations related to federal tax changes, analysis from the JCT was used to determine state tax liability. General Fund revenue changes would occur in FY 2013-14 and FY 2014-15.

SOURCES OF DATA: US Joint Committee on Taxation, US Bureau of Economic Analysis, NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: February 22, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices

ROLL CALL VOTE

$\frac{21}{\text{YES}}$
 $\frac{2}{\text{NO}}$
 = _____ (TOTAL)

HB# 124
 SB# _____

HOUSE STANDING COMMITTEE ON FINANCE

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Howard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rhyne
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Folwell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ross
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Setzer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Samuelson
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Starnes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stam
<input type="checkbox"/>	<input type="checkbox"/>	Lewis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stone
<input type="checkbox"/>	<input type="checkbox"/>	McComas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Warren
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wainwright	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weiss
<input type="checkbox"/>	<input type="checkbox"/>	Alexander	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Womble
<input type="checkbox"/>	<input type="checkbox"/>	Brandon	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brawley	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Carney	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Collins	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Cotham	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Faison	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Gibson	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hackney	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hall	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Hill	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jordan	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Luebke	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCormick	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGee	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moffitt	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Moore	<input type="checkbox"/>	<input type="checkbox"/>	



North Carolina General Assembly
House Committee on Finance

Minutes

March 2, 2011

The House Committee on Finance met on Wednesday, March 2, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Gibson, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Howard called the meeting to order at 8:30 am and recognized the four (4) pages present: (1) Kyle Brown of Wake County sponsored by Representative Stam; (2) Lauren Lynn of Columbus County sponsored by Representative Hill; (3) Emily Hackett of Columbus County sponsored by Representative Hill; and (4) Madison Bryant of Wayne County sponsored by Representative Bell.

Chairwoman Howard recognized Treasurer Janet Cowell of the North Carolina State Treasurer. Following Treasurer Cowell's presentation, she answered questions from members.

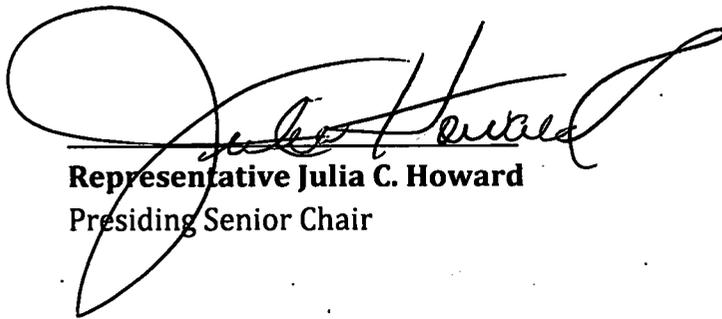
Chairwoman Howard recognized Shawn Wischmeier, Chief Investment Officer of the State Treasurer, to proceed with his presentation on the **State's Investments** (see **attachment 3**). Following Shawn's presentation, he answered questions from members.

Chairwoman Howard then recognized Vance Holloman, Deputy Treasurer of State and Local Finance of the State Treasurer, to proceed with his presentation on the **State's**

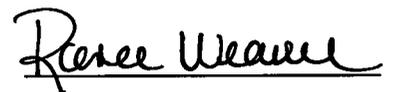
Affordability Study (see attachment 4). Due to time, Mr. Holloman was unable to completely finish his presentation.

Chairwoman Howard adjourned the meeting at 9:45 am.

Respectfully submitted,



Representative Julia C. Howard
Presiding Senior Chair



Renee Weaver
Clerk, House Committee on
Finance

#1

AGENDA
House Finance Committee

Wednesday, March 2, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Julia C. Howard

Call to Order

Introduction of Pages

State Treasurer
Janet Cowell

③ **Presentation on the State's Investments**
Shawn Wischmeier, Chief Investment Officer for the State

④ **Presentation on the State's Affordability Study**
Vance Holloman, Deputy Treasurer of State and Local Finance,

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: MAR. 2, 2011 Room: 544

House Sgt-At Arms:

1. Name: FRED HINES
2. Name: JOHN BRANDON
3. Name: EARL CUKER
4. Name: KEN KEN KIRBY
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE **FINANCE**

DATE **03-02-11**

1. Name: ^{Brown -} Kyle Brown

County: Wake

Sponsor: Stam

2. Name: Lauren Lynn

County: Columbus

Sponsor: Hill

3. Name: Emily Hackett

County: ~~Hill~~ Columbus

Sponsor: ↓ Hill

4. Name: Madison Bryant

County: Wayne

Sponsor: Bell

5. Name: _____

County: _____

Sponsor: _____

VISITOR REGISTRATION SHEET

House Finance Committee

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Dina Fazzani	DST
Sam Blinn	DST
Jason Sheppard	DST
Craig Demko	DST
Shawn Wischmeier	DST
Vince Holloman	NCAST
Cammie Hough	Electricity of NC
Will Culpepper	MVA
Janet Cowell	Treasurer
A. SOLARI	DST
Henry Hatfield	N.C.B.A.

VISITOR REGISTRATION SHEET

House Finance Committee

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Paul Sherman	NCFB
Mauri W. Ide	Novant
Amy McConkey	NC BEV
J M. R. H.	MWC LLC
Butch Gunnells	NC B A
Perry Parks	NCCPN
JOE LANIER	NELSON MULLINS
Cool Howell	OST

VISITOR REGISTRATION SHEET

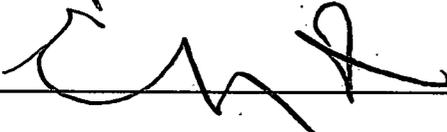
House Finance Committee

3-2-11

Name of Committee

Date

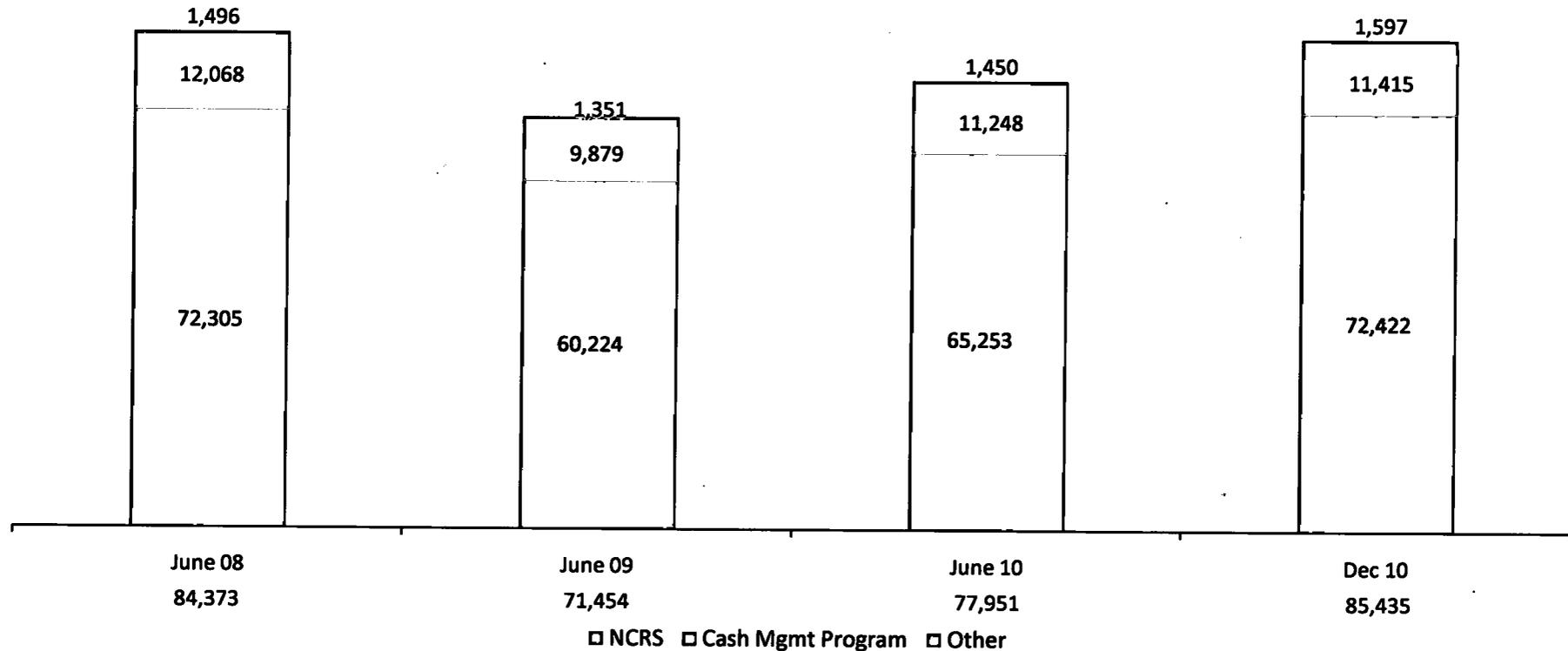
VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Sara Walker	Rep Kelly Alexander Intern
April Hays	NCLISA
Megan Davies	DPH DHHS
Evelyn Faust	DPH DHHS
	
Candey Pambu	Intern
Niklyn	DST
Pam Meyer	NCLM
Lisa Martin	NC Home Builders
	
David Starling	NC DST

**North Carolina Department of State Treasurer
2011 Legislative Session**

\$85 Billion in Total Assets Under Management

Assets Under Management (\$mil)
as of December 31, 2010



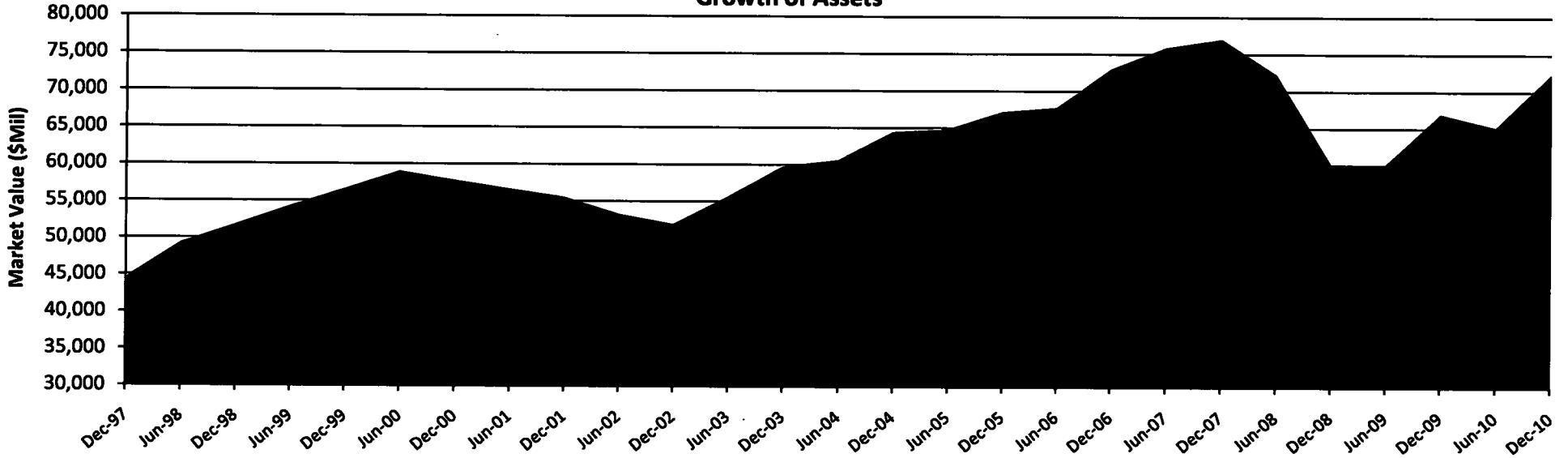
NCRS: The North Carolina Retirement System (also referred to as the Pension Plan) consists of seven retirement plans: Teachers' and State Employees', Consolidated Judicial, Firemen's and Rescue Workers, Local Governmental Employees, Legislative, and North Carolina National Guard.

Cash Management Program: Comprised mainly of the STIF (Short Term Investment Fund), the cash management program serves as the main operating account for state agencies. It's objective is the maximize income consistent with principals of preservation of capital and liquidity.

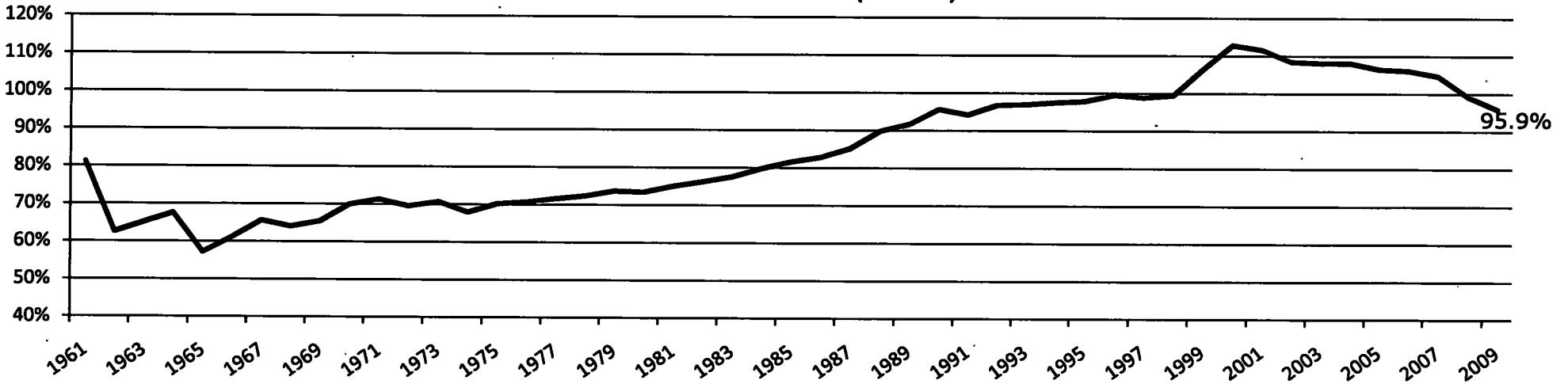
Other: Includes the Non-Pension participants in the LTIF, as well as investments of the Escheat Fund, UNC and Public Hospitals, and the Local Government Other Post-Employment Benefits Fund.

NCRS is Well Funded but Vulnerable

Growth of Assets



Historical Funded Status (TSERS)



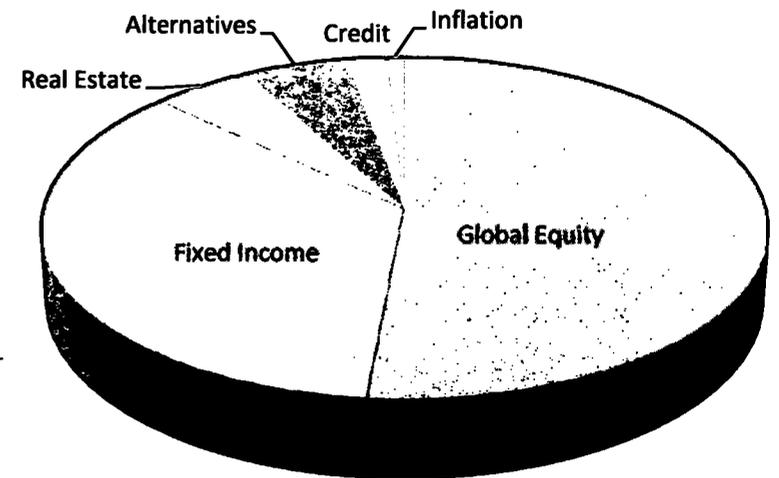
Overview of Team

Investment Management Division

- **27 Investment Professionals**
- **355 Total Years of Experience (15 Year Average)**
- **5 CFA (Chartered Financial Analyst) Charterholders; 3 Candidates in the CFA Program**
- **12 MBAs**
 - Harvard / Wharton / Northwestern / University of Chicago / UNC / Miami / Loyola / Pace / Appalachian State / Robert Morris
- **Depth of Prior Experience**
 - Duke Mgmt Co / State of Maryland / State Street Bank / Alliance Bernstein / BB&T / Citigroup / Credit Suisse / Eli Lilly / Indiana PERF / Goldman Sachs / JP Morgan / Progress / PIMCO / Lehman Brothers / Swiss Re / CIBC World Markets

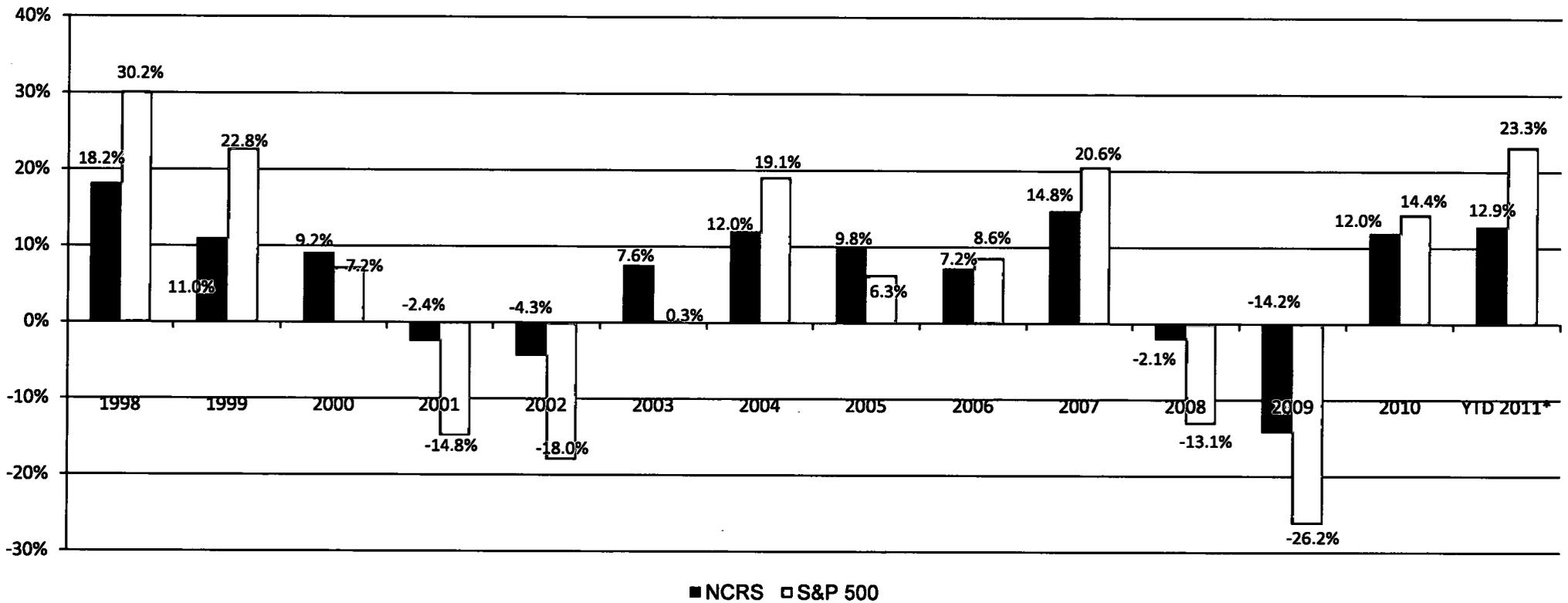
Assets Concentrated in Public Equity & Fixed Income

	Market Value (\$millions)	Current %	Target %
Global Equity	\$37,239	51.42%	40.50%
Fixed Income	\$25,723	35.52%	38.00%
Real Estate	\$3,632	5.02%	8.00%
Alternatives	\$3,716	5.13%	4.50%
Credit	\$1,429	1.97%	4.50%
Inflation	\$682	0.94%	4.50%
Total Fund	\$72,422	100%	100%



Portfolio Closely Mirrors Market Movements

Fiscal Year Performance vs. S&P 500



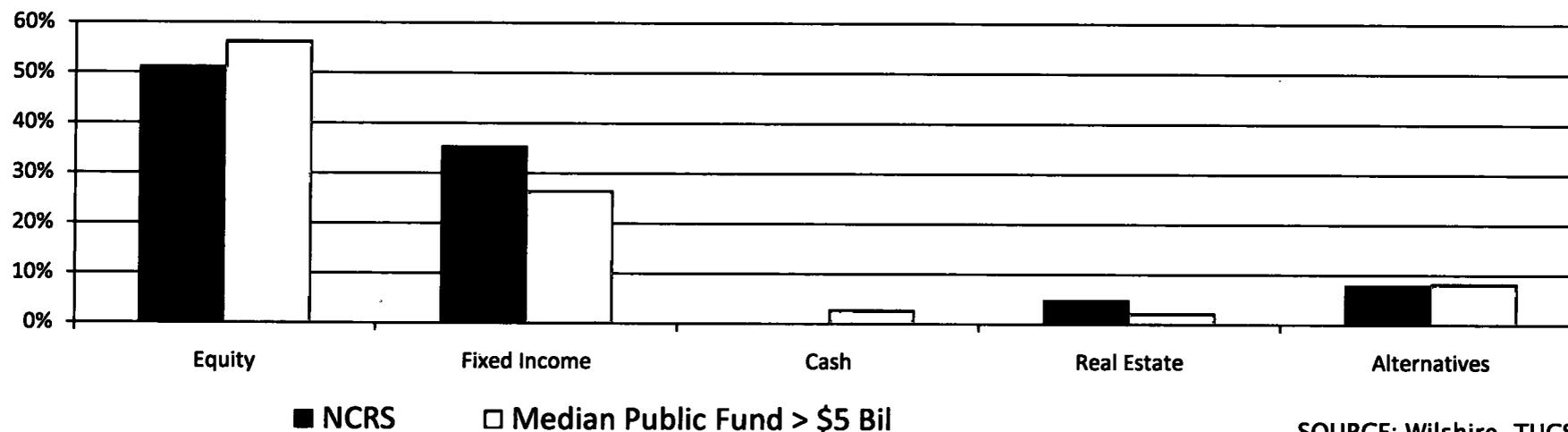
*as of 12/31/10

2009 Legislative Changes Helped Lower Portfolio Risk

2009 legislation allowed NCRS to invest in Credit and Inflation linked-strategies, which increased expected return and decreased expected risk of the total plan

Asset Class	Prior Target	Current Target
Global Equity	50.0%	40.5%
Fixed Income	39.5%	38.0%
Real Estate	6.0%	8.0%
Alternatives	4.5%	4.5%
Credit	0%	4.5%
Inflation	0%	4.5%
Expected Return	7.19%	7.30%
Expected Risk	10.05%	9.49%

Fixed Income Allocation Key Driver of Returns Versus Peers



SOURCE: Wilshire TUCS

Returns	1 Year	3 Year	5 Year	10 Year
25 th Percentile	14.26%	1.39%	5.21%	5.62%
Median	13.49%	0.37%	4.51%	5.15%
75 th Percentile	12.01%	-0.72%	3.94%	4.62%
NCRS	12.11%	1.43%	4.81%	5.20%
Risk				
25 th Percentile	9.12	13.16	10.74	9.26
Median	10.82	14.23	11.69	10.28
75 th Percentile	11.79	15.20	12.36	10.80
NCRS	8.85	12.03	9.84	8.73

Source: BNY Mellon Total Funds – Public Funds \$1+ Billion (Gross of Fees)

Three Proposed Legislative Changes in 2011 Session

- Expand the benchmark indices that may be used for internally managed equity
- Increase “Alternatives” maximum from 5% of assets to 10% of assets
- Allow long/short equity hedge fund strategies within the public equity portfolio

The key principle underlying these changes is to achieve the same or slightly better returns at a meaningfully lower level of risk.

S&P 500 Only 32% of Global Equity Universe

S&P 500

- Covers approximately 75% of the U.S. equity market
- Focuses on large cap stocks

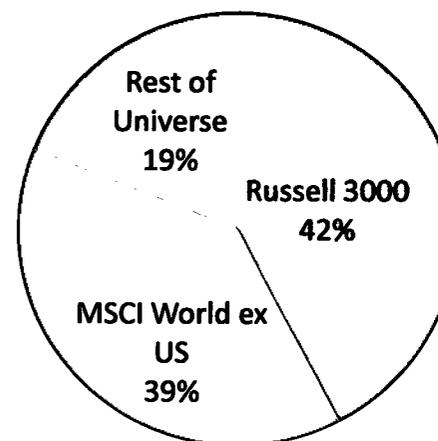
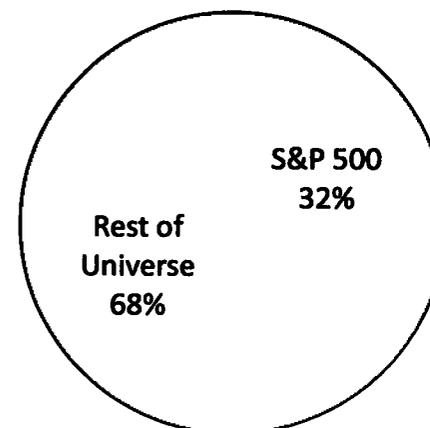
Russell 3000

- Covers approximately 98% of the U.S. equity market
- Coverage includes large cap, mid cap, and small cap stocks

MSCI World ex US

- Consists of 23 developed market countries outside of the United States

Global Equity Universe



Private Equity is Not Identical to Public Equity

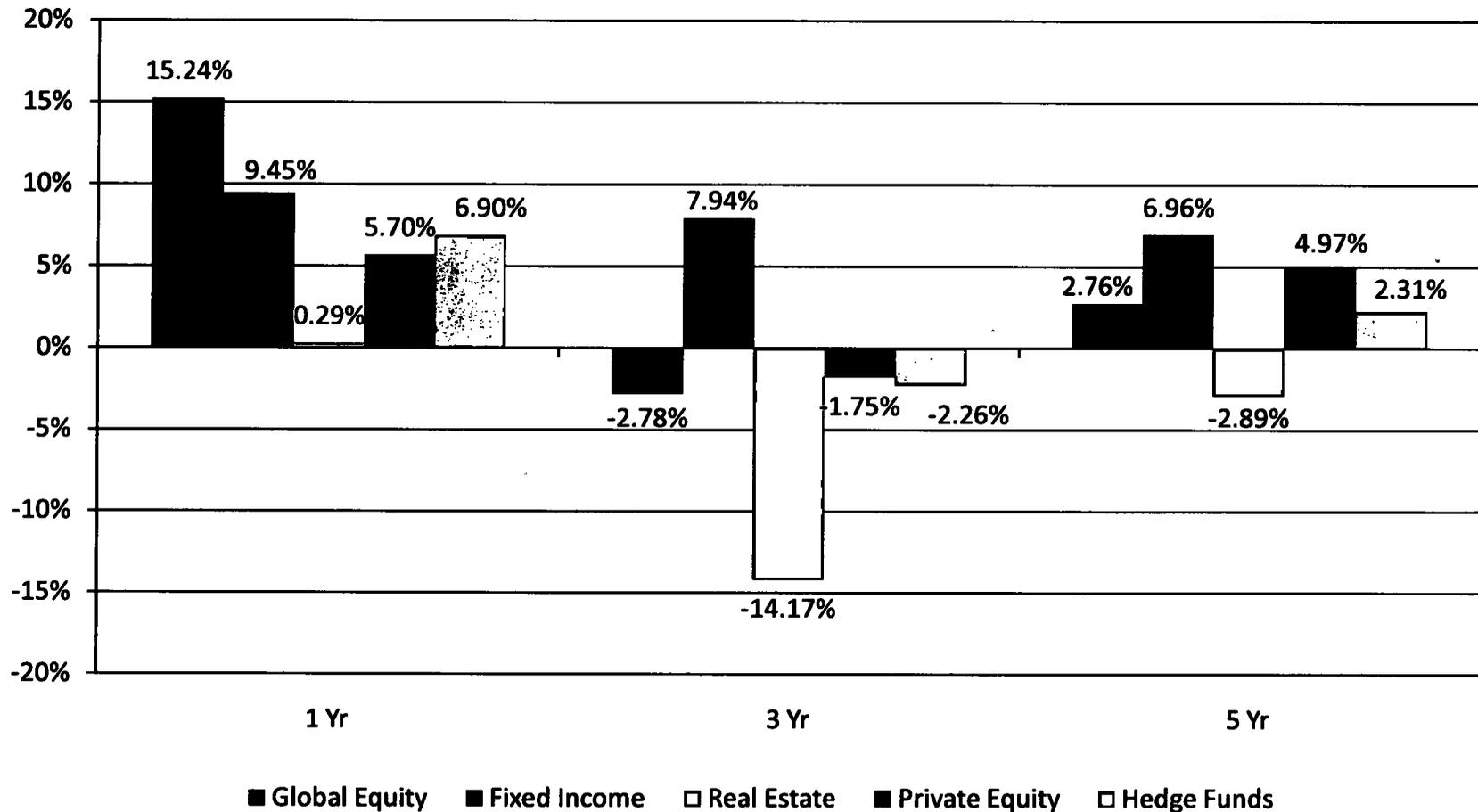
Correlation Matrix*

Asset Class	Fixed Income	High Yield	U.S. Large-Cap	U.S. Small-Cap	Non-U.S. Dev'd	Non-U.S. EM	Private Equity	Real Estate	Hedge Funds	Commodities	Timber	Infrastructure
Fixed Income	1.00											
High Yield	0.42	1.00										
U.S. Large-Cap	0.15	0.57	1.00									
U.S. Small-Cap	0.12	0.58	0.91	1.00								
Non-U.S. – Dev'd	0.14	0.56	0.80	0.78	1.00							
Non-U.S. – EM	0.03	0.50	0.68	0.70	0.76	1.00						
Private Equity	0.03	0.49	0.72	0.75	0.67	0.59	1.00					
Real Estate	0.16	0.42	0.43	0.44	0.40	0.31	0.32	1.00				
Hedge Funds	-0.01	0.40	0.49	0.54	0.56	0.52	0.43	0.26	1.00			
Commodities	-0.01	0.21	0.18	0.18	0.26	0.32	0.16	0.16	0.33	1.00		
Timber	0.01	0.10	0.08	0.08	0.13	0.12	0.12	0.11	0.19	0.17	1.00	
Infrastructure	0.18	0.39	0.47	0.46	0.48	0.41	0.37	0.28	0.39	0.35	0.19	1.00

Private Equity provides some diversification benefits

*Source: NCRS Asset Allocation Study 2010

Private Equity One of Best Asset Classes over Last Five Years

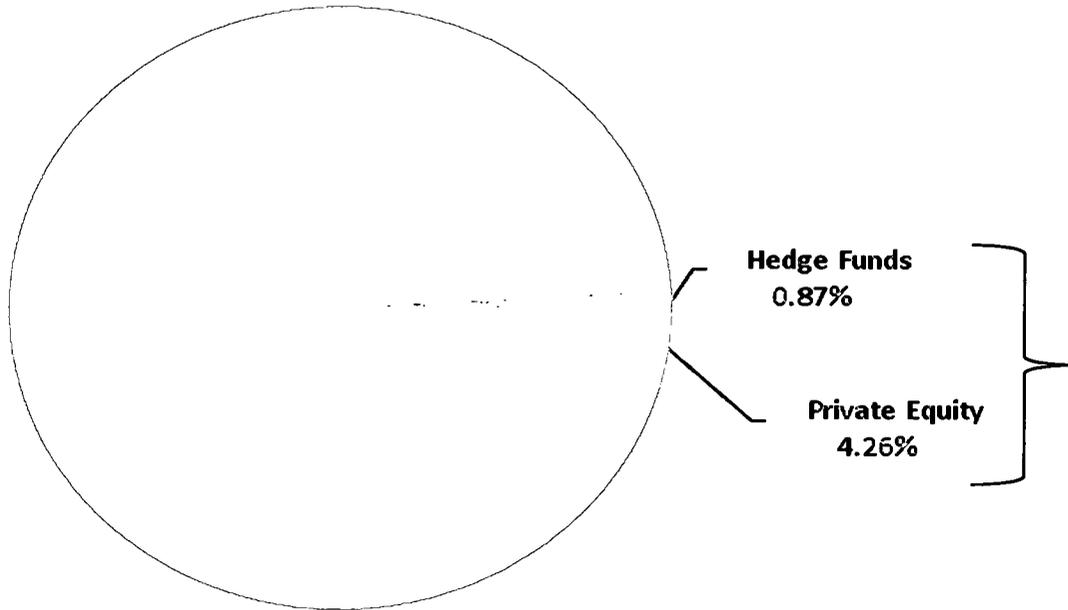


Private Equity provides some enhancement to portfolio returns

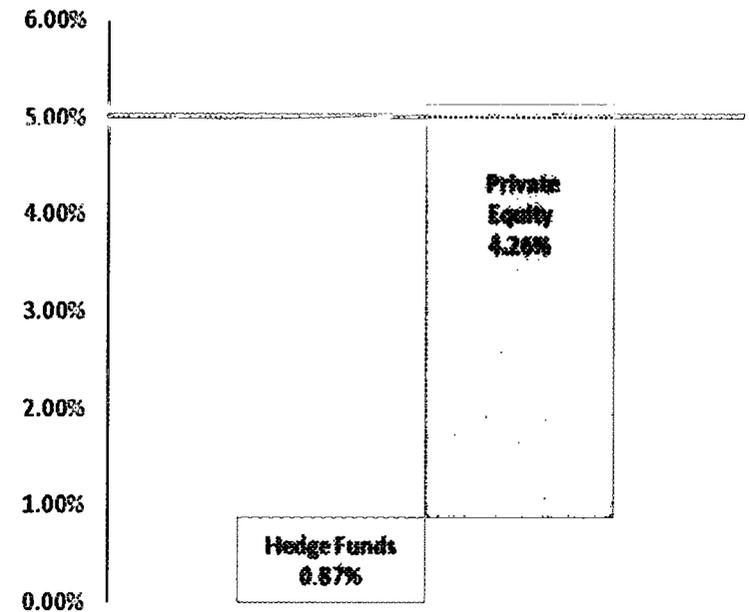
as of 12/31/2010

NCRS Managing to the Legislative Cap

NCRS Asset Allocation
based on 12/31/2010 market value



Alternatives represents 5.13% of the NCRS portfolio – exceeding its 5.0% Legislative Cap.*

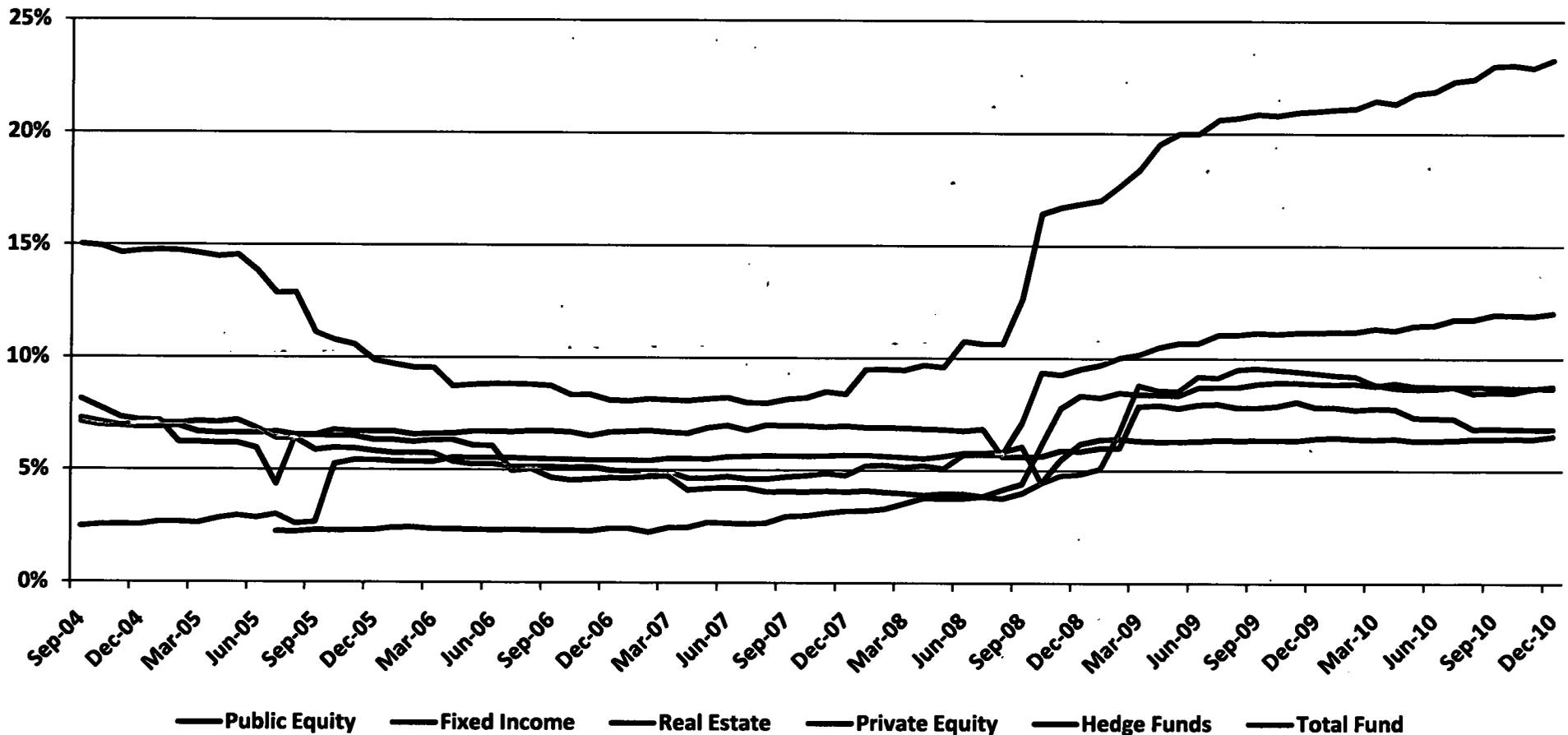


**as of 12/31/2010*

Long/Short Equity Strategies Reduce Portfolio Risk

Public Equity Portfolio is currently the riskiest asset class

NCRS Rolling 3 Year Volatility



Diversifying Portfolio Allocations Further Reduces Risk

Asset Class	Prior Target	Current Target	Proposed Target A	Proposed Target B
Global Equity	50.0%	40.5%	37.0%*	37.0%**
Fixed Income	39.5%	38.0%	38.0%	38.0%
Real Estate	6.0%	8.0%	8.0%	8.0%
Alternatives	4.5%	4.5%	8.0%	8.0%
Credit Strategies	0%	4.5%	4.5%	4.5%
Inflation Portfolio	0%	4.5%	4.5%	4.5%
Expected Return	7.19%	7.30%	7.38%	7.24%
Expected Risk	10.05%	9.49%	9.43%	8.54%

* 95% of Proposed Target in Long-Only Equities / 5% of Proposed Target in Hedge Funds

** 75% of Proposed Target in Long-Only Equities / 25% of Proposed Target in Hedge Funds



State of North Carolina Debt Affordability
Presented by *T. Vance Holloman*

March 1, 2011

North Carolina Department of State Treasurer
State and Local Government

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Debt Affordability Advisory Committee

About the Commission

The Committee is legislatively directed to:

- Annually advise the Governor and the General Assembly of the estimated debt capacity of the State (General Fund) for the upcoming ten years
- Annually advise the Governor and the General Assembly of the estimated debt capacity of the Transportation and Transportation Trust Funds for the upcoming ten years
- Recommend other debt management policies it considers desirable and consistent with the sound management of the State's debt



Study makes no recommendations regarding the use of available debt capacity.
Study is due February 1.

Debt Affordability Advisory Committee

Members of the Debt Affordability Committee

- Janet Cowell, State Treasurer
- Charles Perusse, State Budget Officer
- David Hoyle, Secretary of Revenue
- Beth Wood, State Auditor
- David McCoy, State Controller

Senate Appointees

- Stuart Bell
- J.W. Davis

House Appointees

- James V. Porto
- Jack Vogt

3

Review: What is Debt Affordability?

The amount of debt that may be prudently authorized and issued in a given period *without* negatively affecting the credit position or impairing the budget flexibility of the issuer.

- The amount of debt that is affordable ("capacity") is finite.
- Capacity can be measured and compared.
- Issuance beyond a prescribed level can erode credit ratings.
- The State measures its available capacity using tax-supported debt.

4



What is Tax-Supported Debt?

- The three bond rating agencies view all debt supported by state-wide taxes, fees, or levies as "tax-supported debt" and measure it on a combined basis. The measurement includes both General Fund and Transportation debt.
- For example, debt supported by both NC's Motor Fuels Tax and/or Vehicle registration and title fees would count as tax-supported debt.
- Debt supported by specifically pledged project revenues (e.g. tolls) would not count as tax-supported debt.

OPEB and ESC obligations are excluded.

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Outstanding Tax-Supported Debt by Type (at 6/30/2010)

General Obligation (GO) Bonds	
Highway Fund GO Bonds	\$527.9
General Fund GO Bonds	\$4,708.4
Total General Obligation Bonds	\$5,236.3
Special Indebtedness	
Net Tax-Supported Special Indebtedness (Limited Obligation Bonds; COPs, Lease Revenue Bonds, Installment Purchase Contracts)	\$1,375.6
Total General Fund Tax-Supported Debt	\$6,084.0
GARVEEs	\$434.8
Other (energy and other non-GF supported)	\$450.3

(millions)

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Authorized but Unissued Tax-Supported Debt (as of 2/16/2011)

Total	
General Obligation (GO)	\$0.0
Special Indebtedness	\$1,088.3
Total	\$1,088.3

Purpose	
Universities	\$544.2
Psychiatric Hospitals	\$218.0
R&R Projects	\$142.1
Correctional Facilities	\$56.1
State Projects and other	\$127.9

(millions)

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2010 GA Session New Debt Authorizations

New Debt Authorizations	
Repair and Renovation Projects	\$120
Equipment	\$55
Total New Authorizations	\$175

(millions)

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"Triple-Triple A" States

"Triple-Triple A" States are those achieving the highest rating from each of the three major bond rating agencies.

Our peer group is comprised of these 8 states (including Iowa):

- Delaware
- Georgia
- Maryland
- Missouri
- North Carolina
- Utah
- Virginia
- Iowa*

North Carolina
 One of only 7 states in the U.S. to have GO debt rated "AAA" by all three agencies

* Iowa has non-GO debt rated "double A plus" and has been awarded an implied "AAA".

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"AAA" States Debt Comparisons

State	Debt/Personal Income	Debt per Capita	DS % Gov Expenditures
Delaware	6.2%	\$2,489	5.2%
Georgia	3.3%	1,120	5.3%
Iowa	.2%	73	0.7%
Maryland	3.4%	1,608	4.3%
Missouri	2.2%	780	3.0%
North Carolina	2.3%	765	2.0%
Utah	3.2%	957	3.9%
Virginia	2.1%	895	3.4%
Median	2.8%	\$926	3.7%

Source: Moody's 2010 State Debt Medians and S&P 2009 State Debt Review
 Note: Rating Agency comparisons are historic in nature and do not include authorized but unissued debt.

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Not "Apples to Apples"

- States develop debt affordability guidelines that are applicable to their individual situations and needs.
- Not all states utilize debt service as a percentage of revenues as the main metric, but a majority of the "AAA" rated states do.
- This calculation is most valuable because both numerator and denominator are directly controlled by policymakers.

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GF Model Assumptions

- Tax-Supported Debt Service as a percentage of DAAC Revenues is the preferred calculation because both numerator and denominator directly controlled by policymakers.
 - 4% Guideline
 - 4.75% Ceiling
- Other Measures Evaluated:
 - Debt to Personal Income (2.5%/3.0%)
 - 10-year Payout Ratio (55%/50%)
 - Level of GF Unreserved Fund Balance and/or reserves
 - Debt per Capita

When NC adopted its limits (2003), policymakers were concerned that the State not become over-leveraged in a time of revenue uncertainty and negative fund balances.

In hindsight, that decision provided a measure of fiscal discipline that has served the State well in the current downturn and has helped it to regain its "AAA" rating from Moody's in 2007 and maintain its "AAA" rating from Fitch and S&P.

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February 2011 DAAC Study

North Carolina General Fund Tax-Supported Debt Statistics

Projected as of	Debt to Personal Income	Debt per Capita	Debt Service as % DAAC Revenues	10-Year Payout Ratio
6/30/10 (actual)	1.8%	\$638	3.61%	59%
6/30/11	1.8%	\$663	3.62%	63%
6/30/12	1.8%	\$672	4.12%	66%
6/30/13	1.7%	\$641	4.22%	70%

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February 1, 2011 DAAC Study

General Fund Results

4%	2011	2012	2013	2014	2015
Total Capacity	\$0.0	\$0.0	\$54.2	\$314.2	\$422.1
Annual Capacity*	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Actual Ratios	3.6%	4.1%	4.2%	3.9%	3.8%
Debt Service Overage		\$21.5	\$42.6		

* Amount available each and every year

(millions)

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Transportation Debt Capacity

- Highway and Highway Trust Fund capacity combined
- All State-level transportation revenues used (DOT projection)
- Federal revenues and GARVEES excluded
- Guideline adopted: transportation-related debt service should not exceed 6% of the State's transportation revenues

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Transportation Liabilities

- Outstanding Highway General Obligations
- "Gap Funding" support for NCTA (\$25 million - \$112 million/year)
- P3 and/or "design/build/finance" obligations count depending upon revenue source
- **Transportation debt service is projected to exceed its limits and capacity has been exhausted until FY 2014**

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*Presentation
ended*

February 1, 2011 DAAC Study

Transportation Results

	2011	2012	2013	2014	2015
Total Capacity	\$0.0	\$0.0	\$0.0	\$83.8	\$161.0
Annual Capacity*	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Actual Ratios	6.2%	6.3%	6.5%	6.3%	5.8%
Debt Service Coverage	\$5.0	\$8.9	\$15.1	\$8.4	

* Amount available each and every year

(millions)

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Tax-Supported Debt Burden

Combined General Fund and Transportation Tax-Supported Debt Burden

2013 actual projection	Target D.S. % Revenues*	Ceiling*
General Fund (4.22%)	4.0%	4.75%
Transportation (6.51%)	6.0%	6.0%
Combined Result (4.53%)	4.27%	4.92%

* Based on 2007 revenues

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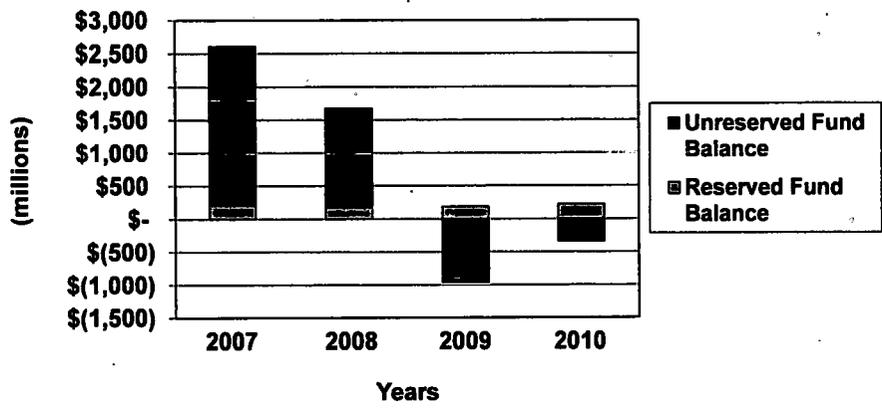
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2011 DAAC Other Recommendations

- Achieve structural budget balance and replenish reserves.
Tax reform may need to be considered.
- Establish a preference for General Obligation debt (versus special indebtedness).
- State should maintain its historically conservative debt management practices, including:
 - Centralized authorization, issuance and management of debt
 - Inclusion of all debt and debt-like obligations in calculations
 - GA clarification regarding individual agencies' ability to enter into alternative financings that may include debt and debt-like obligations
- Other Liabilities that do not impact debt capacity directly will need to be addressed:
 - OPEB
 - ESC Borrowings
 - Pension Funding

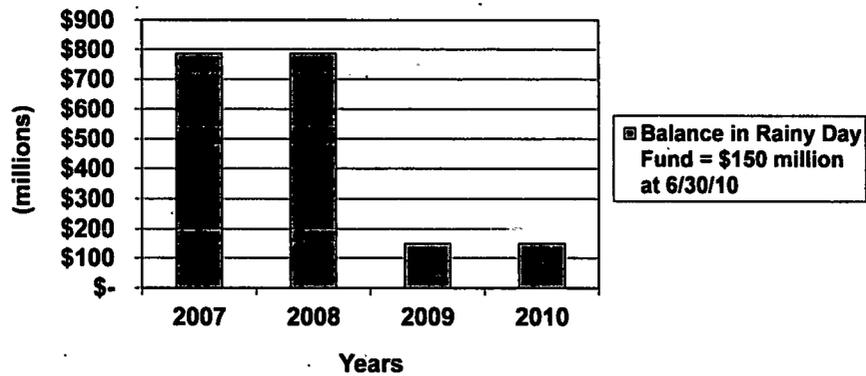
19

Structured Budget Balance and Replenish Reserves



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Rainy Day Fund



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General Obligation versus Special Indebtedness

- Since 2000, the State has relied extensively on the authorization of Special Indebtedness (Limited Obligation Bonds, COPs, other)
- Special Indebtedness as a percentage of all tax-supported debt will exceed 40% in FY 2014
- Peer group around 26%

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Conservative Debt Management Practices

- Conservative Debt Management Practices include:
 - Centralized debt authorization
 - Centralized debt management and issuance
 - All debt and debt-like obligations counted in debt burden
- Recommendation is that General Assembly clarify its intent regarding individual agencies' ability to borrow by adopting limits, terms and taking into consideration the impact on debt burden.

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Other Debt and Debt-Like Obligations

Debt Affordability Treatment

- Depends upon source of repayment
 - "General Governmental Funds" versus pledged revenue stream
- Public Private Partnerships
 - Financing costs higher
 - May count against debt affordability
 - Process to evaluate variables

Speed
Control

Quality
Public Access
Compensation

Priority of Project
Financing Costs

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Other Liabilities

- The Committee recommended that the General Assembly determine the best course of action to address:
 - OPEB Liabilities
 - ESC Borrowings
 - Pension System Funding
- Although these liabilities do not impact debt capacity directly, they could have a negative impact upon the bond ratings of the State.

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A collage of four images: a lighthouse, a bridge, a city skyline, and a bar chart with an upward arrow.

Thank you!

Together, we can build and maintain a fiscally strong and prosperous North Carolina.

www.NCTreasurer.com

The logo for the North Carolina Department of State Treasurer, featuring a stylized outline of the state of North Carolina.

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North Carolina General Assembly House Committee on Finance

Minutes

March 3, 2011

The House Committee on Finance met on Thursday, March 3, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Brandon, Brawley, Carney, Collins, Cotham, Faison, Gibson, Hackney, Hill, Jordan, Luebke, McCormick, McGee, Moffitt, Moore, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Jesse Hayes and Fred Hines. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson Starnes called the meeting to order at 8:30 am and recognized the three (3) pages present: (1) Julia Chavis of Wake County sponsored by Representative Ross; (2) Aqueelan Beyan of Wake County sponsored by Representative Hall; and (3) Chris Haskins of Cumberland County sponsored by Representative Floyd.

The first bill considered by the Committee was **HB 45 Accelerate Cleanup of Industrial Properties** (see **attachment 3**). The Chair recognized Representative Gillespie to explain the bill. Following the explanation, the Chair recognized Representative Warren who offered an amendment. Chairperson Starnes then invited Dexter Matthews of the Waste Management Division with the NC Department of Environmental and Natural Resources to speak. Chairperson Starnes requested a show of hands in support and against amendment. The vote came to 19 for and 10 against. The amendment was approved. Representative Moore moved that HB 45 be given a favorable report; the motion carried.

The next bill considered by the Committee was **SB 32 Hospital Medicaid Assessment/Payment Program** (see **attachment 4**). The Chair recognized Senator Brunstetter to explain the bill. Following the explanation, the Chair invited anyone

representing the Department of Health and Human Services to speak, none were present. The Chair then invited Hugh Tilson who represents the North Carolina Hospital Association who stated they were fully supportive of the bill. Representative Carney moved that SB 32 be given a favorable report; the motion carried. The bill was re-referred to the Committee on Appropriations.

HB 92 Repeal Land Transfer Tax (see attachment 5) was the next bill to be considered. Chairperson Starnes recognized Representative Howard to explain the bill. The Chair then recognized Rebecca Troutman of the North Carolina Association of County Commissioners to speak in opposition of the bill. Representative Faison moved that HB 92 be given a favorable report; the motion carried.

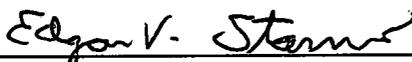
The next bill to be considered was **SB 97 Clarify Refunds of Tax Overpayments** (see attachment 6). The Chair recognized Senator Rucho to explain the bill. Following the explanation, Representative McCormick moved that SB 97 be given a favorable report; the motion carried.

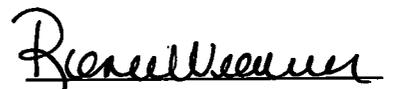
SB 76 TC: Eligibility: Indus Facil/Fix Uwharrie Com (see attachment 7) was the next bill to be heard. The Chair recognized Senator Hartsell to explain the bill. Following the explanation, Representative Moore moved that SB 76 be given a favorable report; the motion carried.

Due to time, **HB 93 Modify Refundability of EITC** was unable to be heard and is scheduled to be heard on Wednesday, March 9, 2011

There being no further business presently before the Committee, Chairperson Starnes adjourned the meeting at 9:39 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 45 A BILL TO BE ENTITLED AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 92 A BILL TO BE ENTITLED AN ACT TO REPEAL THE LAND TRANSFER TAX.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 32 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR HOSPITAL ASSESSMENTS TO BE USED TO OBTAIN MATCHING FEDERAL MEDICAID FUNDS TO REDUCE THE LOSSES HOSPITALS SUSTAIN WHEN TREATING MEDICAID AND UNINSURED PATIENTS, TO REDUCE THE INEQUITY IN MEDICAID PAYMENTS BETWEEN PUBLIC AND NONPUBLIC HOSPITALS, AND TO PROVIDE FORTY-THREE MILLION DOLLARS IN ADDITIONAL FUNDING FOR THE STATE OF NORTH CAROLINA.

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

(FOR JOURNAL USE ONLY)

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 76 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE INDUSTRIAL FACILITIES SALES TAX REFUND, A TECHNICAL CORRECTION TO THE MEMBERSHIP COUNT OF THE UWHARRIE COMMISSION, TO PROVIDE INTEREST ON OVERPAYMENT OF PROPERTY TAX, AND TO PROVIDE DELAY OF THE COLLECTION OF PROPERTY TAX PENDING APPEAL.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 97 A BILL TO BE ENTITLED AN ACT TO CLARIFY WHEN THE DEPARTMENT OF REVENUE IS REQUIRED TO INITIATE A REFUND OF AN OVERPAYMENT OF TAX AND TO AUTHORIZE THE ISSUANCE OF REFUNDS OF OVERPAYMENTS THAT HAVE BEEN IDENTIFIED BY THE DEPARTMENT CONSISTENT WITH THIS CLARIFICATION.

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 _____.

AGENDA
House Finance Committee

Thursday, March 3, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Starnes

Call to Order

Introduction of Pages

Bills:

HB 45 Accelerate Cleanup of Industrial Properties
Representatives Gillespie, Cook, Gibson

HB 92 Repeal Land Transfer Tax
Representatives Howard, Starnes, Brawley, Jordan

HB 93 Modify Refundability of EITC
Representatives Howard, Setzer, Brubaker, Starnes

SB 32 Hospital Medicaid Assessment/Payment Program
Senators Brunstetter, Clodfelter

SB 76 TC: Eligibility: Indus Facil/Fix Uwharrie Com
Senators Hartsell, Rucho, Clary

SB 97 Clarify Refunds of Tax Overpayments
Senators Rucho, Hartsell, Daniel

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: MARCH 3, 2011 Room: 544

House Sgt-At Arms:

- 1. Name: FRED HINES
- 2. Name: JOHN BRANDON
- 3. Name: JESSE HAYES
- 4. Name: EARL COKER
- 5. Name: _____

Senate Sgt-At Arms:

- 1. Name: _____
- 2. Name: _____
- 3. Name: _____
- 4. Name: _____
- 5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE FINANCE DATE 03-03-11

1. Name: Julia Chavis

County: Wake

Sponsor: Rep. Ross

2. Name: Aqueelah Beyah

County: Wake

Sponsor: Rep. Hall

3. Name: Chris Haskins

County: Cumberland

Sponsor: Rep. Floyd

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

VISITOR REGISTRATION SHEET

House Finance Committee

3-3-17

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Alexandra Sirota	NC Justice Center
Mandy Ablesinger	Action for Children NC
Jill K Cox	United Way of NC
Sherry Bradsher	DHHS / DSS
Rebecca Trout	NCACC
Dexter Matthews	DEWR Waste Mgmt
Charlotte Jesneck	NC DEWR
Canaan Huie	NC DOR
Eire Warren	NC DOR
Michael Houser	NC DOR
Amy Baorn	NCACC

VISITOR REGISTRATION SHEET

House Finance Committee

3-8-11

Name of Committee

Date

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NAME	FIRM OR AGENCY AND ADDRESS
Bill Rowe	NC Justice Center
Edwin McLoughan	NC Justice Center
Robin Smith	DEJR
Molly Diggs	Srena Club
Calley Pitt	NCHC
David Hohen	NC Center for Nonprofits
Paul Meyer	NCLM
Lucy Gorham	MDC
David Crawford	AIA NC
Kate Mitchell	MDC
TIKI WINDLEY	MDC

VISITOR REGISTRATION SHEET

House Finance Committee
Name of Committee

MARCH 3, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Facteau	NCASIA
Candy Pambou	Intern
Sam Walker	Intern
Jeff Show	NC Justice
Michael DeLos Santos	CRA-NC
Katie Stanley	Dept of Commerce
Camryn Honly	Electricity
Ed Regan	NC RGEA
A. Solhaki	DST
Jason Skoffitzel	DST
Andrew Lynch	DST

VISITOR REGISTRATION SHEET

House Finance Committee

Name of Committee

Date

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John Merritt	Poetry Group
Carlton Hoffman	NCGA
Will Culpeper	MVA
Henry Jones	Jordan Price etz.
MIKE WATERS	NCRPA
Paul Sherman	NK FB
Kristen Laster	FOTZER Strategic
A Shuill	Mission Keep
Presid Lewis	MCIC
George Everett	Duke Energy
Kathy Haker	Duke

VISITOR REGISTRATION SHEET

House Finance Committee

Name of Committee

Date

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NAME	FIRM OR AGENCY AND ADDRESS
Julia Kaplan	Kaplan Law Firm
J Goodman	RC Chambers
Kellie Sledge	JLF
Trena Washington	ION - Asst Building Collaborative of NC
Donna Gallagher	u 17
Faust Gilliam	Governor's Office
BJ Miller	Moses Cone Health System
Mari Wildy	Norant Health
Michelle Frazier	METS
Pat Wagner	Covenant of NC's Children
Todd Brantley	MDC

VISITOR REGISTRATION SHEET

House Finance Committee
Name of Committee

MARCH 3, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
JOE LANIER	NELSON MULLINS
Sam Seels	wm
Andrew Meehan	Capstrat
Thom Jansen	Pw.c /
ZEB ALLEY	N M A S
Dan Clark	Self
Thom Meehan	Fda : Meehan
Harry Payne	NC Justice Center
Lori Ann Andrews	ZAAA
Chuck Greene	AT+T
Tom Meehan	mccl

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 45*

Short Title: Accelerate Cleanup of Industrial Properties. (Public)

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

Referred to: Environment.

February 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a remediation process that requires that contaminated industrial sites be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that there are contaminated industrial sites in North Carolina, including land and other property, surface water, and groundwater, that are adversely affected by environmental contamination due to the presence of drilling waste; hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes, contaminants, and regulated substances; and

Whereas, the General Assembly finds that the presence of environmental contamination on industrial sites creates both potential and actual harm to public health, safety, and welfare and to the environment; and

Whereas, the General Assembly finds that this potential and actual harm results in substantial economic losses, including reduced property values and tax revenues, decreased ability to develop and expand the beneficial use of these sites, and other opportunity costs because of the uncertainties and concerns that result from the environmental contamination of these sites; and

Whereas, the General Assembly finds that it is in the public interest that contaminated industrial sites are cleaned up or managed in a manner that protects public health, safety, and welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987; the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976; the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988; the Brownfields Property Reuse Act of 1997; the Dry-Cleaning Solvent Cleanup Act of 1997; the federal



1 Superfund program administered in part by the State pursuant to the Comprehensive
2 Environmental Response, Compensation, and Liability Act of 1980 and the Superfund
3 Amendments and Reauthorization Act of 1986; and the groundwater protection rules adopted
4 by the Environmental Management Commission; and

5 Whereas, the General Assembly finds that the expenditure of public and private
6 resources on unnecessary remediation could better be channeled to other purposes, including
7 new development, renovation and repair, research and development, training and education,
8 and other activities that maintain and enhance North Carolina's competitive position in the
9 world and the excellent quality of life enjoyed by the citizens of North Carolina; and

10 Whereas, the General Assembly finds that North Carolina's groundwater is a
11 valuable public and private resource, serving as the drinking water source for one-half of the
12 State's population and also as a water supply for industrial and commercial uses; and

13 Whereas, the General Assembly finds that maintenance of North Carolina's surface
14 water and groundwater resources will become increasingly important to the continued
15 economic vitality of the State in the future; and

16 Whereas, the General Assembly finds that use of site-specific remediation standards
17 based on an objective, scientific, and uniform approach to the evaluation of the risk posed by
18 each contaminated site can be protective of public health, safety, and welfare and the
19 environment; and

20 Whereas, the General Assembly finds that use of site-specific remediation standards
21 in appropriate circumstances may encourage accelerated cleanup of contaminated industrial
22 sites; and

23 Whereas, the General Assembly intends that the levels of remediation that are
24 established for each contaminated site are to be applicable or relevant under federal remediation
25 programs; and

26 Whereas, the General Assembly intends that the protections afforded to public
27 health, safety, and welfare and to the environment by existing environmental, health, and safety
28 standards that apply to ongoing activities not be diminished in any way, in order that those
29 standards will continue to protect against the discharge or release of contaminants to the
30 environment that would result in additional contaminated sites; Now, therefore,
31 The General Assembly of North Carolina enacts:

32 **SECTION 1.** G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future
33 codification purposes.

34 **SECTION 2.** Article 9 of Chapter 130A of the General Statutes is amended by
35 adding a new Part to read:

36 "Part 8. Risk-Based Environmental Remediation of Industrial Sites.

37 "§ 130A-310.65. Definitions.

38 As used in this Part:

- 39 (1) "Background standard" means the naturally occurring concentration of a
40 substance in the absence of the release of a contaminant.
41 (2) "Commission" means the Environmental Management Commission created
42 pursuant to G.S. 143B-282.
43 (3) "Contaminant" means any substance regulated under any program listed in
44 G.S. 130A-310.67(a).
45 (4) "Contaminated industrial site" or "site" means any real property that meets
46 all of the following criteria:
47 a. The property is contaminated and may be subject to remediation
48 under any of the programs or requirements set out in
49 G.S. 130A-310.67(a).
50 b. The property is or has been used primarily for manufacturing or other
51 industrial activities for the production of a commercial product. This

1 includes a property used primarily for the generation of electricity.
2 This does not include a property used primarily for service industry
3 activities.

4 c. No contaminant associated with activities at the property has
5 migrated or will migrate to any adjacent properties above
6 unrestricted use standards for the contaminant.

7 (5) "Contamination" means a contaminant released into an environmental
8 medium that has resulted in or has the potential to result in an increase in the
9 concentration of the contaminant in the environmental medium in excess of
10 unrestricted use standards.

11 (6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established
12 pursuant to G.S. 130A-310.11.

13 (7) "Institutional controls" means nonengineered measures used to prevent
14 unsafe exposure to contamination, such as land-use restrictions.

15 (8) "Registered environmental consultant" means an environmental consulting
16 or engineering firm approved to implement and oversee voluntary remedial
17 actions pursuant to Part 3 of Article 9 of Chapter 130A of the General
18 Statutes and rules adopted to implement the Part.

19 (9) "Remedial action plan" means a plan for eliminating or reducing
20 contamination or exposure to contamination.

21 (10) "Remediation" means all actions that are necessary or appropriate to clean
22 up, mitigate, correct, abate, minimize, eliminate, control, or prevent the
23 spreading, migration, leaking, leaching, volatilization, spilling, transport, or
24 further release of a contaminant into the environment in order to protect
25 public health, safety, or welfare or the environment.

26 (11) "Systemic toxicant" means any substance that may enter the body and have a
27 harmful effect other than causing cancer.

28 (12) "Unrestricted use standards" means contaminant concentrations for each
29 environmental medium that are acceptable for all uses; that are protective of
30 public health, safety, and welfare and the environment; and that comply with
31 generally applicable standards, guidance, or methods established by statute
32 or adopted, published, or implemented by the Commission, the Commission
33 for Public Health, or the Department.

34 **"§ 130A-310.66. Purpose.**

35 It is the purpose of this Part to authorize the Department to approve the remediation of
36 contaminated industrial sites based on site-specific remediation standards in circumstances
37 where site-specific remediation standards are adequate to protect public health, safety, and
38 welfare and the environment and are consistent with protection of current and anticipated future
39 use of groundwater and surface water affected or potentially affected by the contamination.

40 **"§ 130A-310.67. Applicability.**

41 (a) This Part applies to contaminated industrial sites subject to remediation pursuant to
42 any of the following programs or requirements:

43 (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9
44 of Chapter 130A of the General Statutes, including voluntary actions under
45 G.S. 130A-310.9 of that act, and rules promulgated pursuant to those
46 statutes.

47 (2) The hazardous waste management program administered by the State
48 pursuant to the federal Resource Conservation and Recovery Act of 1976,
49 Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,
50 and Article 9 of Chapter 130A of the General Statutes.

- 1 (3) The solid waste management program administered pursuant to Article 9 of
2 Chapter 130A of the General Statutes.
- 3 (4) The federal Superfund program administered in part by the State pursuant to
4 the Comprehensive Environmental Response, Compensation, and Liability
5 Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as
6 amended, the Superfund Amendments and Reauthorization Act of 1986,
7 Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article
8 9 of Chapter 130A of the General Statutes.
- 9 (5) The groundwater protection corrective action requirements adopted by the
10 Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
- 11 (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2
12 of Article 21A of Chapter 143 of the General Statutes.
- 13 (b) This Part shall not apply to contaminated industrial sites subject to remediation
14 pursuant to any of the following programs or requirements:

15 (1) The Leaking Petroleum Underground Storage Tank Cleanup program under
16 Part 2A of Article 21A of Chapter 143 of the General Statutes and rules
17 promulgated pursuant to that statute.

18 (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of
19 Chapter 143 of the General Statutes and rules promulgated pursuant to that
20 statute.

21 (3) The pre-1983 landfill assessment and remediation program established under
22 G.S. 130A-310.6(c) through (g).

23 (c) This Part shall apply only to sites where a discharge, spill, or release of
24 contamination has been reported to the Department prior to March 1, 2011.

25 **§ 130A-310.68. Remediation standards.**

26 (a) When conducting remediation activities pursuant to this Part, a person who proposes
27 to or is required to respond to the release of a contaminant at a contaminated industrial site
28 shall comply with one of the following standards:

- 29 (1) The unrestricted use standards applicable to each affected medium.
- 30 (2) The background standard, if the background standard exceeds the
31 unrestricted use standards.
- 32 (3) A site-specific remediation standard developed in accordance with
33 subsection (b) of this section that is approved by the Department.
- 34 (4) Any combination of remediation standards described in this subsection that
35 is approved by the Department.

36 (b) Site-specific remediation standards shall be developed for each medium as provided
37 in this subsection to achieve remediation that eliminates or reduces to protective levels any
38 substantial present or probable future risk to human health, including sensitive subgroups, and
39 the environment based upon the present or currently planned future use of the property
40 comprising the site. Site-specific remediation standards shall be developed in accordance with
41 all of the following:

- 42 (1) Remediation methods and technologies that result in emissions of air
43 pollutants shall comply with applicable air quality standards adopted by the
44 Commission.
- 45 (2) The site-specific remediation standard for surface waters shall be the water
46 quality standards adopted by the Commission.
- 47 (3) The current and probable future use of groundwater shall be identified and
48 protected. Site-specific sources of contaminants and potential receptors shall
49 be identified. Potential receptors must be protected, controlled, or eliminated
50 whether the receptors are located on or off the site where the source of
51 contamination is located. Natural environmental conditions affecting the fate

1 and transport of contaminants, such as natural attenuation, shall be
2 determined by appropriate scientific methods.

3 (4) Permits for facilities located at sites covered by any of the programs or
4 requirements set out in G.S. 130A-310.67(a) shall contain conditions to
5 avoid exceedances of applicable groundwater standards adopted by the
6 Commission pursuant to Article 21 of Chapter 143 of the General Statutes
7 due to operation of the facility.

8 (5) Soil shall be remediated to levels that no longer constitute a continuing
9 source of groundwater contamination in excess of the site-specific
10 groundwater remediation standards approved under this Part.

11 (6) Soil shall be remediated to unrestricted use standards on residential property
12 with the following exceptions:

13 a. For mixed-use developments where the ground level uses are
14 nonresidential and where all potential exposure to contaminated soil
15 has been eliminated, the Department may allow soil to remain on the
16 site in excess of unrestricted use standards.

17 b. If soil remediation is impracticable because of the presence of
18 preexisting structures or impracticability of removal, all areas of the
19 real property at which a person may come into contact with soil shall
20 be remediated to unrestricted use standards, and, on all other areas of
21 the real property, engineering and institutional controls that are
22 sufficient to protect public health, safety, and welfare and the
23 environment shall be implemented and maintained.

24 (7) The potential for human inhalation of contaminants from the outdoor air and
25 other site-specific indoor air exposure pathways shall be considered, if
26 applicable.

27 (8) The site-specific remediation standard shall protect against human exposure
28 to contamination through the consumption of contaminated fish or wildlife
29 and through the ingestion of contaminants in surface water or groundwater
30 supplies.

31 (9) For known or suspected carcinogens, site-specific remediation standards
32 shall be established at exposures that represent an excess lifetime cancer risk
33 of one in 1,000,000. The site-specific remediation standard may depart from
34 the one-in-1,000,000 risk level based on the criteria set out in 40 Code of
35 Federal Regulations § 300.430(e)(9) (July 1, 2003 Edition). The cumulative
36 excess lifetime cancer risk to an exposed individual shall not be greater than
37 one in 10,000 based on the sum of carcinogenic risk posed by each
38 contaminant present.

39 (10) For systemic toxicants, site-specific remediation standards shall represent
40 levels to which the human population, including sensitive subgroups, may be
41 exposed without any adverse health effect during a lifetime or part of a
42 lifetime. Site-specific remediation standards for systemic toxicants shall
43 incorporate an adequate margin of safety and shall take into account cases
44 where two or more systemic toxicants affect the same organ or organ
45 system.

46 (11) The site-specific remediation standards for each medium shall be adequate to
47 avoid foreseeable adverse effects to other media or the environment that are
48 inconsistent with the risk-based approach under this Part.

49 **§ 130A-310.69. Remedial investigation report; remedial action plans.**

50 (a) A person who proposes to conduct remediation pursuant to this Part shall submit a
51 remedial investigation report to the Department prior to submitting a remedial action plan. The

1 remedial investigation report shall include, but is not limited to, a legal description of the
2 location of the site; a map showing the location of the site; a description of the contaminants
3 involved and their concentration in the media of the site; a narrative description of the
4 methodology used in the investigation; a description of all on-site releases of contamination; a
5 site map, drawn to scale, showing benchmarks, directional arrow, location of property
6 boundaries, buildings, structures, all perennial and nonperennial surface water features,
7 drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities,
8 storage vessels, and existing on-site wells; identification of adjacent property owners and
9 adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the
10 site and adjacent properties for the existence of environmentally sensitive areas; a description
11 of groundwater monitoring well design and installation procedures; a map, drawn to scale, that
12 shows all groundwater sample locations; a description of field and laboratory quality control
13 and quality assurance procedures followed during the remedial investigation; a description of
14 methods used to manage investigation-derived wastes; tabulation of analytical results for all
15 sampling; copies of all laboratory reports; a description of procedures and the results of any
16 special assessments; and any other information required by the Department or considered
17 relevant by the investigator. The remedial investigation shall assess all contaminated areas of
18 the site, including types and levels of contamination, and the risk that the contamination poses
19 to public health, safety, and welfare and to the environment.

20 (b) A person who proposes to conduct remediation pursuant to this Part shall develop
21 and submit a proposed remedial action plan to the Department. A remedial action plan shall
22 provide for the protection of public health, safety, and welfare and the environment. A remedial
23 action plan shall do all of the following:

- 24 (1) Identify actions required to remove, treat, or otherwise appropriately
25 mitigate or isolate the source of contamination to ensure that the source will
26 not cause unrestricted use standards to be exceeded in any medium.
- 27 (2) Address contamination that moves from one medium to another in order to
28 prevent a violation of the remediation standards established under
29 G.S. 130A-310.68. A more stringent remediation standard may be required
30 for a particular medium to control impact on other media.
- 31 (3) Identify the current and anticipated future uses of property comprising the
32 contaminated site and address any concerns raised in public comment on the
33 proposed remedial action plan as to the proposed future uses of the property.
- 34 (4) Identify the current and anticipated future uses of groundwater in the
35 contaminated site and address any concerns raised in public comment on the
36 proposed remedial action plan as to the future uses of groundwater.
- 37 (5) Determine the appropriate method of remediation to achieve the site-specific
38 remediation standards.
- 39 (6) Specify any measures that may be necessary to prevent adverse effects to the
40 environment that may occur at levels of contamination that are lower than
41 the standard necessary to protect human health.
- 42 (7) Specify any measures that may be necessary to prevent any discharge into
43 surface waters during implementation of the remedial action plan that
44 violates applicable surface water quality standards adopted by the
45 Commission.
- 46 (8) Specify any measures that may be necessary to prevent any air emission
47 during implementation of the remedial action plan that violates applicable air
48 quality standards adopted by the Commission.
- 49 (9) Provide for attainment and maintenance of the remediation standards
50 established under G.S. 130A-310.68.

- 1 (10) Provide for methods and procedures to verify that the quantity,
2 concentration, range, or other measure of each contaminant remaining at the
3 contaminated site at the conclusion of the contaminant-reduction phase of
4 remediation meets the remediation standards established for the site, that an
5 acceptable level of risk has been achieved, and that no further remediation is
6 required.
- 7 (11) Provide for the imposition and recordation of land-use restrictions as
8 provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8,
9 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan
10 allows contamination in excess of the greater of unrestricted use standards or
11 background standards to remain on any real property or in groundwater that
12 underlies any real property.
- 13 (12) Provide for submission of an annual certification to the Department by the
14 property owner that land use at the site is in compliance with land-use
15 restrictions recorded pursuant to this Part and that the land-use restrictions
16 are still properly recorded in the chain of title for the property.
- 17 (13) Provide a detailed description of the proposed remedial action to be taken;
18 the results of any treatability studies and additional site characterization
19 needed to support the proposed remedial action; plans for postremedial and
20 confirmatory sampling; a project schedule; a schedule for progress reports to
21 the Department; and any other information required by the Department or
22 considered relevant by the person who submits the proposed remedial action
23 plan.
- 24 (14) Provide a description of measures that will be employed to ensure that the
25 safety and health of persons on properties in the vicinity of the site and
26 persons visiting or doing business on the site will not be adversely affected
27 by any remediation activity.
- 28 (15) Provide a reasonable estimate of the probable cost of the remedial action
29 sufficient for the Department to determine an acceptable level of financial
30 assurance.
- 31 (16) Provide proof of financial assurance as required by G.S. 130A-310.72.
- 32 (c) A remedial action plan shall also include an analysis of each of the following
33 factors:
- 34 (1) Long-term risks and effectiveness of the proposed remediation, including an
35 evaluation of all of the following:
- 36 a. The magnitude of risks remaining after completion of the
37 remediation.
- 38 b. The type, degree, frequency, and duration of any postremediation
39 activity that may be required, including, but not limited to, operation
40 and maintenance, monitoring, inspection, reports, and other activities
41 necessary to protect public health, safety, and welfare and the
42 environment.
- 43 c. Potential for exposure of human and environmental receptors to
44 contaminants remaining at the site.
- 45 d. Long-term reliability of any engineering and voluntary institutional
46 controls, including repair, maintenance, or replacement of
47 components.
- 48 e. Time required to achieve remediation standards.
- 49 (2) Toxicity, mobility, and volume of contaminants, including the amount of
50 contaminants that will be removed, contained, treated, or destroyed; the
51 degree of expected reduction in toxicity, mobility, and volume; and the type,

1 quantity, toxicity, and mobility of contaminants that will remain after
2 implementation of the remedial action plan.

3 (3) Short-term risks and effectiveness of the remediation, including the
4 short-term risks that may be posed to the community, workers, or the
5 environment during implementation of the remedial action plan, and the
6 effectiveness and reliability of protective measures to address short-term
7 risks.

8 (4) The ease or difficulty of implementing the remedial action plan, including
9 commercially available remedial measures; expected operational reliability;
10 available capacity and location of needed treatment, storage, and disposal
11 services for wastes; time to initiate remediation; and approvals necessary to
12 implement the remediation.

13 (d) The development of a remedial action plan may require supplemental submissions
14 and revisions based on Department review, remedial action pilot studies, and public comment
15 from local government and citizens.

16 **"§ 130A-310.70. Notice of intent to remediate.**

17 In addition to the public participation requirements of the individual programs listed in
18 G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a
19 notice of intent to remediate to all local governments having taxing or land-use jurisdiction
20 over the site, and to all adjoining landowners. The notice shall include all of the information
21 required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to
22 site-specific remediation standards. The person shall submit to the Department a copy of the
23 notice of intent provided to local governments and adjoining landowners, a certification that the
24 notice of intent to remediate was so provided to those parties, and all information and
25 comments that the person received in response to the notice. In addition, the person shall, when
26 appropriate, describe how the remediation plan was modified to address comments received in
27 response to the notice.

28 **"§ 130A-310.71. Review and approval of proposed remedial action plans.**

29 (a) The Department shall review and approve a proposed remedial action plan
30 consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set
31 out in this section. In its review of a proposed remedial action plan, the Department shall do all
32 of the following:

33 (1) Determine whether site-specific remediation standards are appropriate for a
34 particular contaminated site. In making this determination, the Department
35 shall consider proximity of the contamination to water supply wells or other
36 receptors; current and probable future reliance on the groundwater as a water
37 supply; current and anticipated future land use; environmental impacts; and
38 the feasibility of remediation to unrestricted use standards.

39 (2) Determine whether the party conducting the remediation has adequately
40 demonstrated through modeling or other scientific means acceptable to the
41 Department that no contamination will migrate to adjacent property at levels
42 above unrestricted use standards.

43 (3) Determine whether the proposed remedial action plan meets the
44 requirements of G.S. 130A-310.69.

45 (4) Determine whether the proposed remedial action plan meets the
46 requirements of any other applicable remediation program except those
47 pertaining to remediation standards.

48 (5) Establish the acceptable level or range of levels of risk to public health,
49 safety, and welfare and to the environment.

50 (6) Establish, for each contaminant, the maximum allowable quantity,
51 concentration, range, or other measures of contamination that will remain at

1 the contaminated site at the conclusion of the contaminant-reduction phase
2 of the remediation.

3 (7) Consider the technical performance, effectiveness, and reliability of the
4 proposed remedial action plan in attaining and maintaining compliance with
5 applicable remediation standards.

6 (8) Consider the ability of the person who proposes to remediate the site to
7 implement the proposed remedial action plan within a reasonable time and
8 without jeopardizing public health, safety, or welfare or the environment.

9 (9) Determine whether the proposed remedial action plan adequately provides
10 for the imposition and maintenance of engineering and institutional controls
11 and for sampling, monitoring, and reporting requirements necessary to
12 protect public health, safety, and welfare and the environment.

13 (10) Approve the circumstances under which no further remediation is required.

14 (b) The person who proposes a remedial action plan has the burden of demonstrating
15 that contamination from the site will not likely migrate in the reasonably foreseeable future to
16 adjacent property and that the remedial action plan is protective of public health, safety, and
17 welfare and the environment by virtue of its compliance with this Part.

18 (c) The Department may require a person who proposes a remedial action plan to
19 supply any additional information necessary for the Department to approve or disapprove the
20 plan.

21 (d) In making a determination on a proposed remedial action plan, the Department shall
22 consider the information provided by the person who proposes the remedial action plan as well
23 as information provided by local governments and adjoining landowners pursuant to
24 G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the
25 Department finds that the plan is protective of public health, safety, and welfare and the
26 environment and complies with the requirements of this Part. If the Department disapproves a
27 proposed remedial action plan, the person who submitted the plan may seek review as provided
28 in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or
29 disapprove a proposed remedial action plan within 120 days after a complete plan has been
30 submitted, the person who submitted the plan may treat the plan as having been disapproved at
31 the end of that time period.

32 **"§ 130A-310.72. Financial assurance requirement.**

33 The person conducting remediation of a contaminated industrial site pursuant to the
34 provisions of this Part shall establish financial assurance that will ensure that sufficient funds
35 are available to implement and maintain the actions or controls specified in the remedial action
36 plan for the site. The person conducting remediation of a site may establish financial assurance
37 through one of the following mechanisms, or any combination of the following mechanisms, in
38 a form specified or approved by the Department: insurance products issued from entities having
39 no corporate or ownership association with the person conducting the remediation; funded
40 trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local
41 government financial tests; corporate guarantees; local government guarantees; capital reserve
42 funds; or any other financial mechanism authorized for the demonstration of financial
43 assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition)
44 and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
45 Administrative Code.

46 **"§ 130A-310.73. Attainment of the remediation standard.**

47 (a) Compliance with the approved remediation standards is attained for a site or portion
48 of a site when a remedial action plan approved by the Department has been implemented and
49 applicable soil, groundwater, surface water, and air emission standards have been attained. The
50 remediation standards may be attained through a combination of remediation activities that can
51 include treatment, removal, engineering, or institutional controls, except that the person

1 conducting the remediation may not demonstrate attainment of an unrestricted use standard or a
2 background standard through the use of institutional controls alone. When the remedial action
3 plan has been fully implemented, the person conducting the remediation shall submit a final
4 report to the Department, with notice to all local governments with taxing and land-use
5 jurisdiction over the site, that demonstrates that the remedial action plan has been fully
6 implemented, that any land-use restrictions have been certified on an annual basis, and that the
7 remediation standards have been attained. The final report shall be accompanied by a request
8 that the Department issue a determination that no further remediation beyond that specified in
9 the approved remedial action plan is required.

10 (b) The person conducting the remediation has the burden of demonstrating that the
11 remedial action plan has been fully implemented and that the remediation standards have been
12 attained in compliance with the requirements of this Part. The Department may require a person
13 who implements the remedial action plan to supply any additional information necessary for
14 the Department to determine whether the remediation standards have been attained.

15 (c) The Department shall review the final report, and, upon determining that the person
16 conducting the remediation has completed remediation to the approved remediation standard
17 and met all the requirements of the approved remedial action plan, the Department shall issue a
18 determination that no further remediation beyond that specified in the approved remedial action
19 plan is required at the site. Once the Department has issued a no further action determination,
20 the Department may require additional remedial action by the responsible party only upon
21 finding any of the following:

- 22 (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the
23 no further action determination indicates that the remediation standards and
24 objectives were not achieved or are not being maintained.
- 25 (2) One or more of the conditions, restrictions, or limitations imposed on the site
26 as part of the remediation have been violated.
- 27 (3) Site monitoring or operation and maintenance activities that are required as
28 part of the remedial action plan or no further action determination for the site
29 are not adequately funded or are not adequately implemented.
- 30 (4) A contaminant or hazardous substance release is discovered at the site that
31 was not the subject of the remedial investigation report or the remedial
32 action plan.
- 33 (5) A material change in the facts known to the Department at the time the
34 written no further action determination was issued, or new facts, cause the
35 Department to find that further assessment or remediation is necessary to
36 prevent a significant risk to human health and safety or to the environment.
- 37 (6) The no further action determination was based on fraud, misrepresentation,
38 or intentional nondisclosure of information by the person conducting the
39 remediation.
- 40 (7) Installation or use of wells would induce the flow of contaminated
41 groundwater off the site.

42 (d) The Department shall issue a final decision on a request for a determination that
43 remediation has been completed to approved standards and that no further remediation beyond
44 that specified in the approved remedial action plan is required within 180 days after receipt of a
45 complete final report. Failure of the Department to issue a final decision on a no further
46 remediation determination within 180 days after receipt of a complete final report and request
47 for a determination of no further remediation may be treated as a denial of the request for a no
48 further remediation determination. The responsible person may seek review of a denial of a
49 request for a release from further remediation as provided in Article 3 of Chapter 150B of the
50 General Statutes.

1 (e) Once the Department issues a determination that no further remediation is required
2 beyond that specified in the approved remedial action plan for the site, any person who changes
3 the use of the property causing the level of risk to increase beyond the acceptable risk range
4 shall be required by the Department to undertake additional remediation measures.

5 **"§ 130A-310.74. Compliance with other laws.**

6 Where a site is covered by an agreement under the Brownfields Property Reuse Act of
7 1997, as codified as Part 5 of Article 9 Chapter 130A of the General Statutes, any work
8 performed by the prospective developer pursuant to that agreement is not required to comply
9 with this Part, but any work not covered by such agreement and performed at the site by
10 another person not a party to that agreement may be performed pursuant to this Part.

11 **"§ 130A-310.75. Use of registered environmental consultants.**

12 The Department may approve the use of a registered environmental consultant to provide
13 oversight for the assessment and remediation of a site under this Part. If remediation under this
14 Part is not undertaken voluntarily, the Department may not require the use of a registered
15 environmental consultant to provide oversight for the assessment and remediation of a site
16 under this Part.

17 **"§ 130A-310.76. Fees; permissible uses of fees.**

18 (a) A person who undertakes remediation of environmental contamination under
19 site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund
20 in an amount equal to four thousand five hundred dollars (\$4,500) for each acre or portion of an
21 acre of contamination, including any area that will become contaminated as a result of the
22 release; however, no person shall be required to pay more than one hundred twenty-five
23 thousand dollars (\$125,000) to the Fund for any individual site, regardless of its size. This
24 one-time fee shall be payable at the time the person undertaking remediation submits the
25 remedial action plan to the Department.

26 (b) Funds collected pursuant to subsection (a) of this section may be used only for the
27 following purposes:

- 28 (1) To pay for administrative and operating expenses necessary to implement
29 this Part.
30 (2) To establish, administer, and maintain a system for the tracking of land-use
31 restrictions recorded at sites that are remediated pursuant to this Part.

32 **"§ 130A-310.77. Construction of Part.**

33 This Part shall not be construed or implemented in any of the following ways:

- 34 (1) In any manner that would jeopardize federal authorization under any of the
35 federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or
36 would otherwise conflict with federal authority under those statutes,
37 programs, and requirements. This Part is supplemental to the programs and
38 requirements set out in G.S. 130A-310.67(a) that would otherwise govern
39 the remediation of a contaminated industrial site. Where the definitions,
40 provisions, or requirements of this Part conflict with the definitions,
41 provisions, or requirements of an otherwise applicable remediation program,
42 this Part shall control, unless expressly stated to the contrary.
43 (2) To limit the authority of the Department to require investigation, initial
44 response, or remediation of environmental contamination under any other
45 provision of State or federal law necessary to address an imminent threat to
46 public health, safety, or welfare or the environment.
47 (3) To alter the requirements of programs to prevent or mitigate the release or
48 discharge of contaminants to the environment, including permitting
49 requirements that regulate the handling of hazardous substances or wastes.
50 (4) To supersede or otherwise affect or prevent the enforcement of any land-use
51 or development regulation or ordinance adopted by a municipality pursuant

1 to Article 19 of Chapter 160A of the General Statutes or adopted by a county
2 pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a
3 site and any land-use restrictions imposed as part of a remedial action plan
4 shall comply with land-use and development controls adopted by a
5 municipality pursuant to Article 19 of Chapter 160A of the General Statutes
6 or adopted by a county pursuant to Article 18 of Chapter 153A of the
7 General Statutes."

8 **SECTION 3.** G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future
9 codification purposes.

10 **SECTION 4.** G.S. 130A-310.10(a) reads as rewritten:

11 "(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative
12 Commission on Governmental Operations, the Environmental Review Commission, and the
13 Fiscal Research Division on or before 1 October of each year. The report shall include at
14 least the following:

- 15 (1) The Inactive Hazardous Waste Sites Priority ~~List~~; List.
16 (2) A list of remedial action plans requiring State funding through the Inactive
17 Hazardous Sites Cleanup ~~Fund~~; Fund.
18 (3) A comprehensive budget to implement these remedial action plans and the
19 adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of
20 said ~~plans~~; plans.
21 (4) A prioritized list of sites that are eligible for remedial action under
22 CERCLA/SARA together with recommended remedial action plans and a
23 comprehensive budget to implement such plans. The budget for
24 implementing a remedial action plan under CERCLA/SARA shall include a
25 statement as to any appropriation that may be necessary to pay the State's
26 share of such ~~plan~~; plan.
27 (5) A list of sites and remedial action plans undergoing voluntary cleanup with
28 Departmental ~~approval~~; approval.
29 (6) A list of sites and remedial action plans that may require State funding, a
30 comprehensive budget if implementation of these possible remedial action
31 plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup
32 Fund to fund the possible costs of said ~~plans~~; plans.
33 (7) A list of sites that pose an imminent ~~hazard~~; hazard.
34 (8) A comprehensive budget to develop and implement remedial action plans for
35 sites that pose imminent hazards and that may require State funding, and the
36 adequacy of the Inactive Hazardous Sites Cleanup ~~Fund~~; and Fund.
37 (8a) The amounts and sources of funds collected by year received under
38 G.S. 130A-310.76, the amounts and sources of those funds paid into the
39 Inactive Hazardous Sites Cleanup Fund established pursuant to
40 G.S. 130A-310.11, the number of acres of contamination for which funds
41 have been received pursuant to G.S. 130A-310.76, and a detailed annual
42 accounting of how the funds collected pursuant to G.S. 130A-310.76 have
43 been utilized by the Department to advance the purposes of Part 8 of Article
44 9 of Chapter 130A of the General Statutes.
45 (9) Any other information requested by the General Assembly or the
46 Environmental Review Commission."

47 **SECTION 5.** The Secretary of Environment and Natural Resources shall make all
48 reasonable efforts to obtain a written agreement from the United States Environmental
49 Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted
50 by Section 2 of this act, is consistent with the Comprehensive Environmental Response,
51 Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601,

1 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public
2 Law 99-499, 100 Stat. 1613, as amended.

3 **SECTION 6.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 45*
PROPOSED COMMITTEE SUBSTITUTE H45-PCS30123-RIxf-3

Short Title: Accelerate Cleanup of Industrial Properties. (Public)

Sponsors:

Referred to:

February 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a remediation process that requires that contaminated industrial sites be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that there are contaminated industrial sites in North Carolina, including land and other property, surface water, and groundwater, that are adversely affected by environmental contamination due to the presence of drilling waste; hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes, contaminants, and regulated substances; and

Whereas, the General Assembly finds that the presence of environmental contamination on industrial sites creates both potential and actual harm to public health, safety, and welfare and to the environment; and

Whereas, the General Assembly finds that this potential and actual harm results in substantial economic losses, including reduced property values and tax revenues, decreased ability to develop and expand the beneficial use of these sites, and other opportunity costs because of the uncertainties and concerns that result from the environmental contamination of these sites; and

Whereas, the General Assembly finds that it is in the public interest that contaminated industrial sites are cleaned up or managed in a manner that protects public health, safety, and welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987; the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976; the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988; the Brownfields



1 Property Reuse Act of 1997; the Dry-Cleaning Solvent Cleanup Act of 1997; the federal
2 Superfund program administered in part by the State pursuant to the Comprehensive
3 Environmental Response, Compensation, and Liability Act of 1980 and the Superfund
4 Amendments and Reauthorization Act of 1986; and the groundwater protection rules adopted
5 by the Environmental Management Commission; and

6 Whereas, the General Assembly finds that the expenditure of public and private
7 resources on unnecessary remediation could better be channeled to other purposes, including
8 new development, renovation and repair, research and development, training and education,
9 and other activities that maintain and enhance North Carolina's competitive position in the
10 world and the excellent quality of life enjoyed by the citizens of North Carolina; and

11 Whereas, the General Assembly finds that North Carolina's groundwater is a
12 valuable public and private resource, serving as the drinking water source for one-half of the
13 State's population and also as a water supply for industrial and commercial uses; and

14 Whereas, the General Assembly finds that maintenance of North Carolina's surface
15 water and groundwater resources will become increasingly important to the continued
16 economic vitality of the State in the future; and

17 Whereas, the General Assembly finds that use of site-specific remediation standards
18 based on an objective, scientific, and uniform approach to the evaluation of the risk posed by
19 each contaminated site can be protective of public health, safety, and welfare and the
20 environment; and

21 Whereas, the General Assembly finds that use of site-specific remediation standards
22 in appropriate circumstances may encourage accelerated cleanup of contaminated industrial
23 sites; and

24 Whereas, the General Assembly intends that the levels of remediation that are
25 established for each contaminated site are to be applicable or relevant under federal remediation
26 programs; and

27 Whereas, the General Assembly intends that the protections afforded to public
28 health, safety, and welfare and to the environment by existing environmental, health, and safety
29 standards that apply to ongoing activities not be diminished in any way, in order that those
30 standards will continue to protect against the discharge or release of contaminants to the
31 environment that would result in additional contaminated sites; Now, therefore,

32 The General Assembly of North Carolina enacts:

33 **SECTION 1.** G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future
34 codification purposes.

35 **SECTION 2.** Article 9 of Chapter 130A of the General Statutes is amended by
36 adding a new Part to read:

37 "Part 8. Risk-Based Environmental Remediation of Industrial Sites.

38 "§ 130A-310.65. Definitions.

39 As used in this Part:

40 (1) "Background standard" means the naturally occurring concentration of a
41 substance in the absence of the release of a contaminant.

42 (2) "Commission" means the Environmental Management Commission created
43 pursuant to G.S. 143B-282.

44 (3) "Contaminant" means any substance regulated under any program listed in
45 G.S. 130A-310.67(a).

46 (4) "Contaminated industrial site" or "site" means any real property that meets
47 all of the following criteria:

48 a. The property is contaminated and may be subject to remediation
49 under any of the programs or requirements set out in
50 G.S. 130A-310.67(a).

1 b. The property is or has been used primarily for manufacturing or other
2 industrial activities for the production of a commercial product. This
3 includes a property used primarily for the generation of electricity.
4 This does not include a property used primarily for service industry
5 activities.

6 c. No contaminant associated with activities at the property has
7 migrated or will migrate to any adjacent properties above
8 unrestricted use standards for the contaminant.

9 (5) "Contamination" means a contaminant released into an environmental
10 medium that has resulted in or has the potential to result in an increase in the
11 concentration of the contaminant in the environmental medium in excess of
12 unrestricted use standards.

13 (6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established
14 pursuant to G.S. 130A-310.11.

15 (7) "Institutional controls" means nonengineered measures used to prevent
16 unsafe exposure to contamination, such as land-use restrictions.

17 (8) "Registered environmental consultant" means an environmental consulting
18 or engineering firm approved to implement and oversee voluntary remedial
19 actions pursuant to Part 3 of Article 9 of Chapter 130A of the General
20 Statutes and rules adopted to implement the Part.

21 (9) "Remedial action plan" means a plan for eliminating or reducing
22 contamination or exposure to contamination.

23 (10) "Remediation" means all actions that are necessary or appropriate to clean
24 up, mitigate, correct, abate, minimize, eliminate, control, or prevent the
25 spreading, migration, leaking, leaching, volatilization, spilling, transport, or
26 further release of a contaminant into the environment in order to protect
27 public health, safety, or welfare or the environment.

28 (11) "Systemic toxicant" means any substance that may enter the body and have a
29 harmful effect other than causing cancer.

30 (12) "Unrestricted use standards" means contaminant concentrations for each
31 environmental medium that are acceptable for all uses; that are protective of
32 public health, safety, and welfare and the environment; and that comply with
33 generally applicable standards, guidance, or methods established by statute
34 or adopted, published, or implemented by the Commission, the Commission
35 for Public Health, or the Department.

36 **"§ 130A-310.66. Purpose.**

37 It is the purpose of this Part to authorize the Department to approve the remediation of
38 contaminated industrial sites based on site-specific remediation standards in circumstances
39 where site-specific remediation standards are adequate to protect public health, safety, and
40 welfare and the environment and are consistent with protection of current and anticipated future
41 use of groundwater and surface water affected or potentially affected by the contamination.

42 **"§ 130A-310.67. Applicability.**

43 (a) This Part applies to contaminated industrial sites subject to remediation pursuant to
44 any of the following programs or requirements:

45 (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9
46 of Chapter 130A of the General Statutes, including voluntary actions under
47 G.S. 130A-310.9 of that act, and rules promulgated pursuant to those
48 statutes.

49 (2) The hazardous waste management program administered by the State
50 pursuant to the federal Resource Conservation and Recovery Act of 1976,

- 1 Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,
2 and Article 9 of Chapter 130A of the General Statutes.
- 3 (3) The solid waste management program administered pursuant to Article 9 of
4 Chapter 130A of the General Statutes.
- 5 (4) The federal Superfund program administered in part by the State pursuant to
6 the Comprehensive Environmental Response, Compensation, and Liability
7 Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as
8 amended, the Superfund Amendments and Reauthorization Act of 1986,
9 Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article
10 9 of Chapter 130A of the General Statutes.
- 11 (5) The groundwater protection corrective action requirements adopted by the
12 Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
- 13 (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2
14 of Article 21A of Chapter 143 of the General Statutes.
- 15 (b) This Part shall not apply to contaminated industrial sites subject to remediation
16 pursuant to any of the following programs or requirements:
- 17 (1) The Leaking Petroleum Underground Storage Tank Cleanup program under
18 Part 2A of Article 21A of Chapter 143 of the General Statutes and rules
19 promulgated pursuant to that statute.
- 20 (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of
21 Chapter 143 of the General Statutes and rules promulgated pursuant to that
22 statute.
- 23 (3) The pre-1983 landfill assessment and remediation program established under
24 G.S. 130A-310.6(c) through (g).
- 25 (c) This Part shall apply only to sites where a discharge, spill, or release of
26 contamination has been reported to the Department prior to March 1, 2011.
- 27 **§ 130A-310.68. Remediation standards.**
- 28 (a) When conducting remediation activities pursuant to this Part, a person who proposes
29 to or is required to respond to the release of a contaminant at a contaminated industrial site
30 shall comply with one of the following standards:
- 31 (1) The unrestricted use standards applicable to each affected medium.
- 32 (2) The background standard, if the background standard exceeds the
33 unrestricted use standards.
- 34 (3) A site-specific remediation standard developed in accordance with
35 subsection (b) of this section that is approved by the Department.
- 36 (4) Any combination of remediation standards described in this subsection that
37 is approved by the Department.
- 38 (b) Site-specific remediation standards shall be developed for each medium as provided
39 in this subsection to achieve remediation that eliminates or reduces to protective levels any
40 substantial present or probable future risk to human health, including sensitive subgroups, and
41 the environment based upon the present or currently planned future use of the property
42 comprising the site. Site-specific remediation standards shall be developed in accordance with
43 all of the following:
- 44 (1) Remediation methods and technologies that result in emissions of air
45 pollutants shall comply with applicable air quality standards adopted by the
46 Commission.
- 47 (2) The site-specific remediation standard for surface waters shall be the water
48 quality standards adopted by the Commission.
- 49 (3) The current and probable future use of groundwater shall be identified and
50 protected. Site-specific sources of contaminants and potential receptors shall
51 be identified. Potential receptors must be protected, controlled, or eliminated

1 whether the receptors are located on or off the site where the source of
2 contamination is located. Natural environmental conditions affecting the fate
3 and transport of contaminants, such as natural attenuation, shall be
4 determined by appropriate scientific methods.

5 (4) Permits for facilities located at sites covered by any of the programs or
6 requirements set out in G.S. 130A-310.67(a) shall contain conditions to
7 avoid exceedances of applicable groundwater standards adopted by the
8 Commission pursuant to Article 21 of Chapter 143 of the General Statutes
9 due to operation of the facility.

10 (5) Soil shall be remediated to levels that no longer constitute a continuing
11 source of groundwater contamination in excess of the site-specific
12 groundwater remediation standards approved under this Part.

13 (6) Soil shall be remediated to unrestricted use standards on residential property
14 with the following exceptions:

15 a. For mixed-use developments where the ground level uses are
16 nonresidential and where all potential exposure to contaminated soil
17 has been eliminated, the Department may allow soil to remain on the
18 site in excess of unrestricted use standards.

19 b. If soil remediation is impracticable because of the presence of
20 preexisting structures or impracticability of removal, all areas of the
21 real property at which a person may come into contact with soil shall
22 be remediated to unrestricted use standards, and, on all other areas of
23 the real property, engineering and institutional controls that are
24 sufficient to protect public health, safety, and welfare and the
25 environment shall be implemented and maintained.

26 (7) The potential for human inhalation of contaminants from the outdoor air and
27 other site-specific indoor air exposure pathways shall be considered, if
28 applicable.

29 (8) The site-specific remediation standard shall protect against human exposure
30 to contamination through the consumption of contaminated fish or wildlife
31 and through the ingestion of contaminants in surface water or groundwater
32 supplies.

33 (9) For known or suspected carcinogens, site-specific remediation standards
34 shall be established at exposures that represent an excess lifetime cancer risk
35 of one in 1,000,000. The site-specific remediation standard may depart from
36 the one-in-1,000,000 risk level based on the criteria set out in 40 Code of
37 Federal Regulations § 300.430(e)(9) (July 1, 2003 Edition). The cumulative
38 excess lifetime cancer risk to an exposed individual shall not be greater than
39 one in 10,000 based on the sum of carcinogenic risk posed by each
40 contaminant present.

41 (10) For systemic toxicants, site-specific remediation standards shall represent
42 levels to which the human population, including sensitive subgroups, may be
43 exposed without any adverse health effect during a lifetime or part of a
44 lifetime. Site-specific remediation standards for systemic toxicants shall
45 incorporate an adequate margin of safety and shall take into account cases
46 where two or more systemic toxicants affect the same organ or organ
47 system.

48 (11) The site-specific remediation standards for each medium shall be adequate to
49 avoid foreseeable adverse effects to other media or the environment that are
50 inconsistent with the risk-based approach under this Part.

51 **§ 130A-310.69. Remedial investigation report; remedial action plans.**

1 (a) A person who proposes to conduct remediation pursuant to this Part shall submit a
2 remedial investigation report to the Department prior to submitting a remedial action plan. The
3 remedial investigation report shall include, but is not limited to, a legal description of the
4 location of the site; a map showing the location of the site; a description of the contaminants
5 involved and their concentration in the media of the site; a narrative description of the
6 methodology used in the investigation; a description of all on-site releases of contamination; a
7 site map, drawn to scale, showing benchmarks, directional arrow, location of property
8 boundaries, buildings, structures, all perennial and nonperennial surface water features,
9 drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities,
10 storage vessels, and existing on-site wells; identification of adjacent property owners and
11 adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the
12 site and adjacent properties for the existence of environmentally sensitive areas; a description
13 of groundwater monitoring well design and installation procedures; a map, drawn to scale, that
14 shows all groundwater sample locations; a description of field and laboratory quality control
15 and quality assurance procedures followed during the remedial investigation; a description of
16 methods used to manage investigation-derived wastes; tabulation of analytical results for all
17 sampling; copies of all laboratory reports; a description of procedures and the results of any
18 special assessments; and any other information required by the Department or considered
19 relevant by the investigator. The remedial investigation shall assess all contaminated areas of
20 the site, including types and levels of contamination, and the risk that the contamination poses
21 to public health, safety, and welfare and to the environment.

22 (b) A person who proposes to conduct remediation pursuant to this Part shall develop
23 and submit a proposed remedial action plan to the Department. A remedial action plan shall
24 provide for the protection of public health, safety, and welfare and the environment. A remedial
25 action plan shall do all of the following:

- 26 (1) Identify actions required to remove, treat, or otherwise appropriately
27 mitigate or isolate the source of contamination to ensure that the source will
28 not cause unrestricted use standards to be exceeded in any medium.
- 29 (2) Address contamination that moves from one medium to another in order to
30 prevent a violation of the remediation standards established under
31 G.S. 130A-310.68. A more stringent remediation standard may be required
32 for a particular medium to control impact on other media.
- 33 (3) Identify the current and anticipated future uses of property comprising the
34 contaminated site and address any concerns raised in public comment on the
35 proposed remedial action plan as to the proposed future uses of the property.
- 36 (4) Identify the current and anticipated future uses of groundwater in the
37 contaminated site and address any concerns raised in public comment on the
38 proposed remedial action plan as to the future uses of groundwater.
- 39 (5) Determine the appropriate method of remediation to achieve the site-specific
40 remediation standards.
- 41 (6) Specify any measures that may be necessary to prevent adverse effects to the
42 environment that may occur at levels of contamination that are lower than
43 the standard necessary to protect human health.
- 44 (7) Specify any measures that may be necessary to prevent any discharge into
45 surface waters during implementation of the remedial action plan that
46 violates applicable surface water quality standards adopted by the
47 Commission.
- 48 (8) Specify any measures that may be necessary to prevent any air emission
49 during implementation of the remedial action plan that violates applicable air
50 quality standards adopted by the Commission.

- 1 (9) Provide for attainment and maintenance of the remediation standards
2 established under G.S. 130A-310.68.
- 3 (10) Provide for methods and procedures to verify that the quantity,
4 concentration, range, or other measure of each contaminant remaining at the
5 contaminated site at the conclusion of the contaminant-reduction phase of
6 remediation meets the remediation standards established for the site, that an
7 acceptable level of risk has been achieved, and that no further remediation is
8 required.
- 9 (11) Provide for the imposition and recordation of land-use restrictions as
10 provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8,
11 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan
12 allows contamination in excess of the greater of unrestricted use standards or
13 background standards to remain on any real property or in groundwater that
14 underlies any real property.
- 15 (12) Provide for submission of an annual certification to the Department by the
16 property owner that land use at the site is in compliance with land-use
17 restrictions recorded pursuant to this Part and that the land-use restrictions
18 are still properly recorded in the chain of title for the property.
- 19 (13) Provide a detailed description of the proposed remedial action to be taken;
20 the results of any treatability studies and additional site characterization
21 needed to support the proposed remedial action; plans for postremedial and
22 confirmatory sampling; a project schedule; a schedule for progress reports to
23 the Department; and any other information required by the Department or
24 considered relevant by the person who submits the proposed remedial action
25 plan.
- 26 (14) Provide a description of measures that will be employed to ensure that the
27 safety and health of persons on properties in the vicinity of the site and
28 persons visiting or doing business on the site will not be adversely affected
29 by any remediation activity.
- 30 (15) Provide a reasonable estimate of the probable cost of the remedial action
31 sufficient for the Department to determine an acceptable level of financial
32 assurance.
- 33 (16) Provide proof of financial assurance as required by G.S. 130A-310.72.
- 34 (c) A remedial action plan shall also include an analysis of each of the following
35 factors:
- 36 (1) Long-term risks and effectiveness of the proposed remediation, including an
37 evaluation of all of the following:
- 38 a. The magnitude of risks remaining after completion of the
39 remediation.
- 40 b. The type, degree, frequency, and duration of any postremediation
41 activity that may be required, including, but not limited to, operation
42 and maintenance, monitoring, inspection, reports, and other activities
43 necessary to protect public health, safety, and welfare and the
44 environment.
- 45 c. Potential for exposure of human and environmental receptors to
46 contaminants remaining at the site.
- 47 d. Long-term reliability of any engineering and voluntary institutional
48 controls, including repair, maintenance, or replacement of
49 components.
- 50 e. Time required to achieve remediation standards.

- 1 (2) Toxicity, mobility, and volume of contaminants, including the amount of
2 contaminants that will be removed, contained, treated, or destroyed; the
3 degree of expected reduction in toxicity, mobility, and volume; and the type,
4 quantity, toxicity, and mobility of contaminants that will remain after
5 implementation of the remedial action plan.
- 6 (3) Short-term risks and effectiveness of the remediation, including the
7 short-term risks that may be posed to the community, workers, or the
8 environment during implementation of the remedial action plan, and the
9 effectiveness and reliability of protective measures to address short-term
10 risks.
- 11 (4) The ease or difficulty of implementing the remedial action plan, including
12 commercially available remedial measures; expected operational reliability;
13 available capacity and location of needed treatment, storage, and disposal
14 services for wastes; time to initiate remediation; and approvals necessary to
15 implement the remediation.

16 (d) The development of a remedial action plan may require supplemental submissions
17 and revisions based on Department review, remedial action pilot studies, and public comment
18 from local government and citizens.

19 **"§ 130A-310.70. Notice of intent to remediate.**

20 In addition to the public participation requirements of the individual programs listed in
21 G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a
22 notice of intent to remediate to all local governments having taxing or land-use jurisdiction
23 over the site, and to all adjoining landowners. The notice shall include all of the information
24 required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to
25 site-specific remediation standards. The person shall submit to the Department a copy of the
26 notice of intent provided to local governments and adjoining landowners, a certification that the
27 notice of intent to remediate was so provided to those parties, and all information and
28 comments that the person received in response to the notice. In addition, the person shall, when
29 appropriate, describe how the remediation plan was modified to address comments received in
30 response to the notice.

31 **"§ 130A-310.71. Review and approval of proposed remedial action plans.**

32 (a) The Department shall review and approve a proposed remedial action plan
33 consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set
34 out in this section. In its review of a proposed remedial action plan, the Department shall do all
35 of the following:

- 36 (1) Determine whether site-specific remediation standards are appropriate for a
37 particular contaminated site. In making this determination, the Department
38 shall consider proximity of the contamination to water supply wells or other
39 receptors; current and probable future reliance on the groundwater as a water
40 supply; current and anticipated future land use; environmental impacts; and
41 the feasibility of remediation to unrestricted use standards.
- 42 (2) Determine whether the party conducting the remediation has adequately
43 demonstrated through modeling or other scientific means acceptable to the
44 Department that no contamination will migrate to adjacent property at levels
45 above unrestricted use standards.
- 46 (3) Determine whether the proposed remedial action plan meets the
47 requirements of G.S. 130A-310.69.
- 48 (4) Determine whether the proposed remedial action plan meets the
49 requirements of any other applicable remediation program except those
50 pertaining to remediation standards.

- 1 (5) Establish the acceptable level or range of levels of risk to public health,
2 safety, and welfare and to the environment.
- 3 (6) Establish, for each contaminant, the maximum allowable quantity,
4 concentration, range, or other measures of contamination that will remain at
5 the contaminated site at the conclusion of the contaminant-reduction phase
6 of the remediation.
- 7 (7) Consider the technical performance, effectiveness, and reliability of the
8 proposed remedial action plan in attaining and maintaining compliance with
9 applicable remediation standards.
- 10 (8) Consider the ability of the person who proposes to remediate the site to
11 implement the proposed remedial action plan within a reasonable time and
12 without jeopardizing public health, safety, or welfare or the environment.
- 13 (9) Determine whether the proposed remedial action plan adequately provides
14 for the imposition and maintenance of engineering and institutional controls
15 and for sampling, monitoring, and reporting requirements necessary to
16 protect public health, safety, and welfare and the environment.
- 17 (10) Approve the circumstances under which no further remediation is required.

18 (b) The person who proposes a remedial action plan has the burden of demonstrating
19 that contamination from the site will not likely migrate in the reasonably foreseeable future to
20 adjacent property and that the remedial action plan is protective of public health, safety, and
21 welfare and the environment by virtue of its compliance with this Part.

22 (c) The Department may require a person who proposes a remedial action plan to
23 supply any additional information necessary for the Department to approve or disapprove the
24 plan.

25 (d) In making a determination on a proposed remedial action plan, the Department shall
26 consider the information provided by the person who proposes the remedial action plan as well
27 as information provided by local governments and adjoining landowners pursuant to
28 G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the
29 Department finds that the plan is protective of public health, safety, and welfare and the
30 environment and complies with the requirements of this Part. If the Department disapproves a
31 proposed remedial action plan, the person who submitted the plan may seek review as provided
32 in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or
33 disapprove a proposed remedial action plan within 120 days after a complete plan has been
34 submitted, the person who submitted the plan may treat the plan as having been disapproved at
35 the end of that time period.

36 **"§ 130A-310.72. Financial assurance requirement.**

37 The person conducting remediation of a contaminated industrial site pursuant to the
38 provisions of this Part shall establish financial assurance that will ensure that sufficient funds
39 are available to implement and maintain the actions or controls specified in the remedial action
40 plan for the site. The person conducting remediation of a site may establish financial assurance
41 through one of the following mechanisms, or any combination of the following mechanisms, in
42 a form specified or approved by the Department: insurance products issued from entities having
43 no corporate or ownership association with the person conducting the remediation; funded
44 trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local
45 government financial tests; corporate guarantees; local government guarantees; capital reserve
46 funds; or any other financial mechanism authorized for the demonstration of financial
47 assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition)
48 and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
49 Administrative Code.

50 **"§ 130A-310.73. Attainment of the remediation standard.**

1 (a) Compliance with the approved remediation standards is attained for a site or portion
2 of a site when a remedial action plan approved by the Department has been implemented and
3 applicable soil, groundwater, surface water, and air emission standards have been attained. The
4 remediation standards may be attained through a combination of remediation activities that can
5 include treatment, removal, engineering, or institutional controls, except that the person
6 conducting the remediation may not demonstrate attainment of an unrestricted use standard or a
7 background standard through the use of institutional controls alone. When the remedial action
8 plan has been fully implemented, the person conducting the remediation shall submit a final
9 report to the Department, with notice to all local governments with taxing and land-use
10 jurisdiction over the site, that demonstrates that the remedial action plan has been fully
11 implemented, that any land-use restrictions have been certified on an annual basis, and that the
12 remediation standards have been attained. The final report shall be accompanied by a request
13 that the Department issue a determination that no further remediation beyond that specified in
14 the approved remedial action plan is required.

15 (b) The person conducting the remediation has the burden of demonstrating that the
16 remedial action plan has been fully implemented and that the remediation standards have been
17 attained in compliance with the requirements of this Part. The Department may require a person
18 who implements the remedial action plan to supply any additional information necessary for
19 the Department to determine whether the remediation standards have been attained.

20 (c) The Department shall review the final report, and, upon determining that the person
21 conducting the remediation has completed remediation to the approved remediation standard
22 and met all the requirements of the approved remedial action plan, the Department shall issue a
23 determination that no further remediation beyond that specified in the approved remedial action
24 plan is required at the site. Once the Department has issued a no further action determination,
25 the Department may require additional remedial action by the responsible party only upon
26 finding any of the following:

- 27 (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the
28 no further action determination indicates that the remediation standards and
29 objectives were not achieved or are not being maintained.
- 30 (2) One or more of the conditions, restrictions, or limitations imposed on the site
31 as part of the remediation have been violated.
- 32 (3) Site monitoring or operation and maintenance activities that are required as
33 part of the remedial action plan or no further action determination for the site
34 are not adequately funded or are not adequately implemented.
- 35 (4) A contaminant or hazardous substance release is discovered at the site that
36 was not the subject of the remedial investigation report or the remedial
37 action plan.
- 38 (5) A material change in the facts known to the Department at the time the
39 written no further action determination was issued, or new facts, cause the
40 Department to find that further assessment or remediation is necessary to
41 prevent a significant risk to human health and safety or to the environment.
- 42 (6) The no further action determination was based on fraud, misrepresentation,
43 or intentional nondisclosure of information by the person conducting the
44 remediation.
- 45 (7) Installation or use of wells would induce the flow of contaminated
46 groundwater off the site.

47 (d) The Department shall issue a final decision on a request for a determination that
48 remediation has been completed to approved standards and that no further remediation beyond
49 that specified in the approved remedial action plan is required within 180 days after receipt of a
50 complete final report. Failure of the Department to issue a final decision on a no further
51 remediation determination within 180 days after receipt of a complete final report and request

1 for a determination of no further remediation may be treated as a denial of the request for a no
2 further remediation determination. The responsible person may seek review of a denial of a
3 request for a release from further remediation as provided in Article 3 of Chapter 150B of the
4 General Statutes.

5 (e) Once the Department issues a determination that no further remediation is required
6 beyond that specified in the approved remedial action plan for the site, any person who changes
7 the use of the property causing the level of risk to increase beyond the acceptable risk range
8 shall be required by the Department to undertake additional remediation measures.

9 **"§ 130A-310.74. Compliance with other laws.**

10 Where a site is covered by an agreement under the Brownfields Property Reuse Act of
11 1997, as codified as Part 5 of Article 9 Chapter 130A of the General Statutes, any work
12 performed by the prospective developer pursuant to that agreement is not required to comply
13 with this Part, but any work not covered by such agreement and performed at the site by
14 another person not a party to that agreement may be performed pursuant to this Part.

15 **"§ 130A-310.75. Use of registered environmental consultants.**

16 The Department may approve the use of a registered environmental consultant to provide
17 oversight for the assessment and remediation of a site under this Part. If remediation under this
18 Part is not undertaken voluntarily, the Department may not require the use of a registered
19 environmental consultant to provide oversight for the assessment and remediation of a site
20 under this Part.

21 **"§ 130A-310.76. Fees; permissible uses of fees.**

22 (a) A person who undertakes remediation of environmental contamination under
23 site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund
24 in an amount equal to three thousand five hundred dollars (\$3,500) for each acre or portion of
25 an acre of contamination, including any area that will become contaminated as a result of the
26 release; however, no person shall be required to pay more than one hundred twenty-five
27 thousand dollars (\$125,000) to the Fund for any individual site, regardless of its size. This
28 one-time fee shall be payable at the time the person undertaking remediation submits the
29 remedial action plan to the Department.

30 (b) Funds collected pursuant to subsection (a) of this section may be used only for the
31 following purposes:

32 (1) To pay for administrative and operating expenses necessary to implement
33 this Part.

34 (2) To establish, administer, and maintain a system for the tracking of land-use
35 restrictions recorded at sites that are remediated pursuant to this Part.

36 **"§ 130A-310.77. Construction of Part.**

37 This Part shall not be construed or implemented in any of the following ways:

38 (1) In any manner that would jeopardize federal authorization under any of the
39 federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or
40 would otherwise conflict with federal authority under those statutes,
41 programs, and requirements. This Part is supplemental to the programs and
42 requirements set out in G.S. 130A-310.67(a) that would otherwise govern
43 the remediation of a contaminated industrial site. Where the definitions,
44 provisions, or requirements of this Part conflict with the definitions,
45 provisions, or requirements of an otherwise applicable remediation program,
46 this Part shall control, unless expressly stated to the contrary.

47 (2) To limit the authority of the Department to require investigation, initial
48 response, or remediation of environmental contamination under any other
49 provision of State or federal law necessary to address an imminent threat to
50 public health, safety, or welfare or the environment.

- 1 (3) To alter the requirements of programs to prevent or mitigate the release or
 2 discharge of contaminants to the environment, including permitting
 3 requirements that regulate the handling of hazardous substances or wastes.
 4 (4) To supersede or otherwise affect or prevent the enforcement of any land-use
 5 or development regulation or ordinance adopted by a municipality pursuant
 6 to Article 19 of Chapter 160A of the General Statutes or adopted by a county
 7 pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a
 8 site and any land-use restrictions imposed as part of a remedial action plan
 9 shall comply with land-use and development controls adopted by a
 10 municipality pursuant to Article 19 of Chapter 160A of the General Statutes
 11 or adopted by a county pursuant to Article 18 of Chapter 153A of the
 12 General Statutes."

13 **SECTION 3.** G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future
 14 codification purposes.

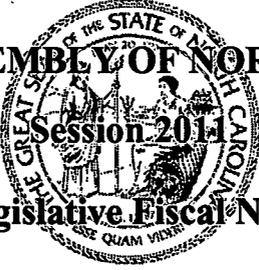
15 **SECTION 4.** G.S. 130A-310.10(a) reads as rewritten:

16 "(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative
 17 Commission on Governmental Operations, the Environmental Review Commission, and the
 18 Fiscal Research Division on or before 1 October of each year. The report shall include at
 19 ~~least~~least the following:

- 20 (1) The Inactive Hazardous Waste Sites Priority ~~List~~List.
 21 (2) A list of remedial action plans requiring State funding through the Inactive
 22 Hazardous Sites Cleanup ~~Fund~~Fund.
 23 (3) A comprehensive budget to implement these remedial action plans and the
 24 adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of
 25 said ~~plans~~plans.
 26 (4) A prioritized list of sites that are eligible for remedial action under
 27 CERCLA/SARA together with recommended remedial action plans and a
 28 comprehensive budget to implement such plans. The budget for
 29 implementing a remedial action plan under CERCLA/SARA shall include a
 30 statement as to any appropriation that may be necessary to pay the State's
 31 share of such ~~plan~~plan.
 32 (5) A list of sites and remedial action plans undergoing voluntary cleanup with
 33 Departmental ~~approval~~approval.
 34 (6) A list of sites and remedial action plans that may require State funding, a
 35 comprehensive budget if implementation of these possible remedial action
 36 plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup
 37 Fund to fund the possible costs of said ~~plans~~plans.
 38 (7) A list of sites that pose an imminent ~~hazard~~hazard.
 39 (8) A comprehensive budget to develop and implement remedial action plans for
 40 sites that pose imminent hazards and that may require State funding, and the
 41 adequacy of the Inactive Hazardous Sites Cleanup ~~Fund~~and Fund.
 42 (8a) The amounts and sources of funds collected by year received under
 43 G.S. 130A-310.76, the amounts and sources of those funds paid into the
 44 Inactive Hazardous Sites Cleanup Fund established pursuant to
 45 G.S. 130A-310.11, the number of acres of contamination for which funds
 46 have been received pursuant to G.S. 130A-310.76, and a detailed annual
 47 accounting of how the funds collected pursuant to G.S. 130A-310.76 have
 48 been utilized by the Department to advance the purposes of Part 8 of Article
 49 9 of Chapter 130A of the General Statutes.
 50 (9) Any other information requested by the General Assembly or the
 51 Environmental Review Commission."

1 **SECTION 5.** The Secretary of Environment and Natural Resources shall make all
2 reasonable efforts to obtain a written agreement from the United States Environmental
3 Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted
4 by Section 2 of this act, is consistent with the Comprehensive Environmental Response,
5 Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601,
6 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public
7 Law 99-499, 100 Stat. 1613, as amended.

8 **SECTION 6.** This act is effective when it becomes law.


GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note**BILL NUMBER:** House Bill 45 (First Edition)**SHORT TITLE:** Accelerate Cleanup of Industrial Properties.**SPONSOR(S):** Representatives Gibson, Gillespie, and Cook**FISCAL IMPACT**

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	\$540,000	\$540,000	\$540,000	\$540,000	\$540,000
EXPENDITURES	\$321,131	\$310,562	\$331,734	\$346,842	\$359,555
POSITIONS (cumulative):	3	3	3	3	3

PRINCIPAL DEPARTMENT(S) &**PROGRAM(S) AFFECTED:** Department of Environment and Natural Resources**EFFECTIVE DATE:** This bill is effective when it becomes law.**BILL SUMMARY:**

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site. The bill would require payment of a fee by a person undertaking a risk-based cleanup, the amount of which would be based on the size of the site to be remediated. The fee would be used by the Department of Environment and Natural Resources for expenses necessary to implement a risk-based cleanup program, and to establish and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated under such a program

(Source: Committee Counsel, Research Division)

ASSUMPTIONS AND METHODOLOGY:

In conjunction with the federal government, DENR's Division of Waste Management has several programs that address remediation or cleanup of environmental contamination. Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning

contaminant concentrations present at a location are acceptable for all uses, protect public health, safety, and welfare and the environment, and comply with applicable standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or DENR. Some State programs for cleanup of environmental contamination, however, allow cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards. These programs include the Petroleum Underground Storage Tank Cleanup Program, the Dry-Cleaning Solvent Cleanup Program, and the State's Brownfields Property Reuse Act.

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site. Risk-based cleanup would be available for contaminated industrial sites that are governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control and where the release of contamination was reported to the Department of Environment and Natural Resources (DENR) prior to March 1, 2011. Risk-based cleanup would not be available for contaminated industrial sites that are governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

Site-specific remediation or cleanup standards would be developed for contaminated industrial sites to eliminate or reduce any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site.

A person who proposes a risk-based cleanup must prepare and submit: a remedial investigation report and a remedial action plan to DENR; a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners; and certification to DENR that the notice of intent was properly distributed and responses processed.

When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may only require additional cleanup under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

The fee for participation in a risk-based cleanup is \$4,500 for each acre or portion of an acre of contamination, with a cap of \$125,000. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

DENR expects that approximately 12 industrial sites per year would qualify for risk-based cleanup as defined in this legislation. This estimate is based on the assumption that current levels of voluntary cleanup participation would remain constant, and that approximately half of those sites would meet the legislation's criteria. DENR noted that participation in the first few years is expected to be much greater than subsequent years, as current remedial action projects would likely

petition to change their statuses to the risk-based remedial option as defined in this legislation.

Expenditures

According to DENR, there would be no increase in voluntary cleanup participation, and therefore existing project managers and the Registered Environmental Consultant Program(which provides oversight under the Inactive Hazardous Sites Program) would be sufficient to oversee the remediation projects affected by this legislation.

However, House Bill 45 also introduces new demands for special reviews from toxicologists, financial analysts, and hydrogeologists to examine the transportation of groundwater contamination as well as to oversee land use restriction compliance and tracking. DENR estimated that a total of five new positions would be needed in order to meet the demands of this bill: a Hydrogeologist, an Engineer, an Industrial Hygiene Consultant (Toxicologist), a Financial Analyst, and an Environmental Program Supervisor II. Fiscal Research concurs that there will be sufficient increased workload to require three of these five positions, as follows:

- A Hydrogeologist to perform fate and transport modeling of contaminant migration, which are special reviews beyond that which the Division currently conducts.
- An Environmental Engineer position to develop and maintain a Geographic Information System, to track recorded land use restrictions, and to inspect compliance with those restrictions.
- A Toxicologist to conduct site-specific risk assessments at much higher levels of toxicological review than are currently conducted by existing staff.

Position Title	Annual Salary	Soc Sec	Ret	Health	Total Salary & Benefits FY 2011-12
Hydrogeologist-J	\$ 61,956	\$ 4,740	\$ 6,512	\$ 4,930	\$ 78,137
Engineer-J	\$ 62,523	\$ 4,783	\$ 6,571	\$ 4,930	\$ 78,807
Industrial Hygiene Consultant (Toxicologist)	\$ 67,816	\$ 5,188	\$ 7,127	\$ 4,930	\$ 85,061
				Total	\$ 242,006

Although DENR estimated that an additional Financial Analyst and Environmental Program Supervisor II would also be needed to fulfill the requirements of House Bill 45, Fiscal Research estimates that DENR’s existing staff can absorb the remainder of the work required by this bill. At this time, 19 staff are working on the 290 sites addressed by the Inactive Hazardous Sites Program. Based on the Department’s estimate that only 12 sites would be affected by this legislation, Fiscal Research concludes that the additional supervisory and financial work required by this bill could be absorbed by existing staff.

The total salaries and benefits of positions required by this legislation are calculated to include inflationary increases for each year. Additional operating costs, including travel, supplies, maintenance agreements and communications, would be \$79,125 in FY 2011-12 and \$54,500 in subsequent years. The initial costs in FY 2011-12 are due to the contractual services, computer hardware and software costs related to establishing the GIS system required by the legislation; additionally, travel for the three new positions will be extensive due to required training and

multiple visits to projects statewide. The total amount required by DENR for FY 2011-12, including salaries, benefits, and operating costs, is estimated to be \$321,131.

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Salaries and Fringes	\$ 242,006	\$ 256,062	\$ 277,234	\$ 292,342	\$ 305,055
Operating Costs	\$ 79,125	\$ 54,500	\$ 54,500	\$ 54,500	\$ 54,500
Total	\$ 321,131	\$ 310,562	\$ 331,734	\$ 346,842	\$ 359,555

Revenues

The revenues gained by fees included in this legislation may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions. The fee for participation in a risk-based cleanup is \$4,500 for each acre or portion of an acre of contamination, with a cap of \$125,000 regardless of the size of the site.

Based on DENR's data on existing groundwater contaminant plume sites, the average site size is 10 acres. Twelve sites per year multiplied by 10 acres per site totals 120 acres that would be affected by this legislation. The average amount per site that could be realized as revenue from fees would be \$45,000 (10 acres * \$4,500 per acre). The total amount of annual revenue that could be realized from fees would be \$540,000 (12 sites * \$45,000 per site). The revenues realized from this fee would be deposited in the existing Inactive Hazardous Sites Cleanup Fund, within which an account specifically designated for tracking these funds would need to be established.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS:

House Bill 45 provides that the fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program. Based on DENR's estimate of 12 sites per year at an average of 10 acres each, the \$4,500 fee in House Bill 45 would generate significantly more revenue than needed to support the staff and operating costs estimated to be required by the legislation.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Claire Hester

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 2, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 45: Accelerate Cleanup of Industrial Properties

2011-2012 General Assembly

Committee:	House Finance	Date:	March 3, 2011
Introduced by:	Reps. Gillespie, Cook, Gibson	Prepared by:	Jeff Hudson and Jennifer McGinnis Staff Attorneys
Analysis of:	First Edition		

SUMMARY: *House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.*

The bill would require payment of a fee by a person undertaking a risk-based cleanup, the amount of which would be based on the size of the site to be remediated (p. 11). The fee would be used by the Department of Environment and Natural Resources for expenses necessary to implement a risk-based cleanup program, and to establish and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated under such a program.

[As introduced, this bill was identical to S48, as introduced by Sen. Allran, which is currently in Senate Agriculture/Environment/Natural Resources.]

CURRENT LAW AND BACKGROUND:

North Carolina, in conjunction with the federal government, has implemented a number of programs to address remediation or cleanup of environmental contamination. Based on the source, location, and nature of the contaminants present, requirements for oversight and cleanup are established within an applicable program. Each program has its own standards, methods, and requirements. In some cases, a contaminated site may come under the authority of multiple programs.

Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses; are protective of public health, safety, and welfare and the environment; and comply with an applicable program's standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or the Department of Environment and Natural Resources (DENR). Some State programs for cleanup of environmental contamination, however, allow cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards. These programs include the Petroleum Underground Storage Tank Cleanup Program, the Dry-Cleaning Solvent Cleanup Program, and the State's Brownfields Property Reuse Act.

BILL ANALYSIS:

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.

Applicability:

Risk-based cleanup would be available for contaminated industrial sites that are governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control and where the release of contamination was reported to DENR prior to March 1, 2011. Risk-based cleanup would not be available for contaminated industrial sites that are governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

House Bill 45

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Site-specific Remediation Standards:

Site-specific remediation or cleanup standards would be developed for contaminated industrial sites to eliminate or reduce to protective levels any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site. The standards would have to be developed in accordance with a number of specific requirements for the protection of air quality, surface water and groundwater quality, and human health.

Remedial Investigation Report and Remedial Action Plan:

A person who proposes a risk-based cleanup must prepare and submit to DENR a remedial investigation report that provides detailed information on the site, contamination at the site, risks posed by the contamination, adjacent properties, and any other information required by DENR. The person would then prepare and submit to DENR a proposed remedial action plan that provides for how the site would be cleaned up in order to protect public health, safety, and welfare and the environment and proof of financial assurance that sufficient funds are available to carry out the cleanup.

Notice of Intent to Remediate:

A person who proposes a risk-based cleanup must send a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners. The notice must include all of the information contained in the remedial investigation report. The person must also submit to DENR a certification that the notice of intent was properly distributed, information and comments received in response to the notice, and a description of how the remedial action plan was modified in response to the comments.

Review and Approval of Proposed Remedial Action Plans:

DENR must review each proposed remedial action plan and make a number of determinations prior to approving a plan, including whether the site-specific cleanup standards are appropriate for the site, that no unauthorized levels of contaminants will migrate from the site to adjacent properties, and that the plan is protective of public health, safety, and welfare and the environment. In its review and consideration of the proposed plan, DENR must consider information provided by the person who proposes the plan as well as information provided by the local governments and adjoining landowners.

Attainment of the Remediation Standard:

When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may only require additional cleanup under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

Fees:

The fee for participation in a risk-based cleanup is \$4,500 for each acre or portion of an acre of contamination, with a cap of \$125,000 regardless of the size of the site. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

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Construction of the Act:

The Act may not be construed or implemented to jeopardize federal authorization under any of the federal statutes, programs, or requirements for the cleanup of contamination; limit the authority of DENR to require investigation, response, or cleanup of environmental contamination necessary to address an imminent threat to public health, safety, or welfare or the environment; or to affect or prevent the enforcement of any local government land-use or development regulation or ordinance.

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

H45-SMSB-4(e1) v2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 45

DATE 3/3/11

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Warren
Sen.) _____

1 moves to amend the bill on page 11, line 20

2 () WHICH CHANGES THE TITLE
3 by deleting "four thousand five hundred
4 dollars (\$4,500)" and substituting
5 "three thousand five hundred dollars
6 (\$3,500)".

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 32
Finance Committee Substitute Adopted 2/22/11

Short Title: Hospital Medicaid Assessment/Payment Program. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR HOSPITAL ASSESSMENTS TO BE USED TO OBTAIN MATCHING FEDERAL MEDICAID FUNDS TO REDUCE THE LOSSES HOSPITALS SUSTAIN WHEN TREATING MEDICAID AND UNINSURED PATIENTS, TO REDUCE THE INEQUITY IN MEDICAID PAYMENTS BETWEEN PUBLIC AND NONPUBLIC HOSPITALS, AND TO PROVIDE FORTY-THREE MILLION DOLLARS IN ADDITIONAL FUNDING FOR THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 108A of the General Statutes is amended by adding a new Article to read:

"Article 7.

"Hospital Provider Assessment Act.

"§ 108A-120. Short title and purpose.

This Article shall be known as the 'Hospital Provider Assessment Act.' The assessments imposed by this Article are to provide revenue to improve funding for payments for hospital services provided to Medicaid and uninsured patients. All assessment proceeds and corresponding matching federal funds must be used to make the payments required under G.S. 108A-124. This Article does not authorize a political subdivision of the State to license a hospital for revenue or impose a tax or assessment on a hospital.

"§ 108A-121. Definitions.

The following definitions apply in this Article:

- (1) CMS. – Centers for Medicare and Medicaid Services.
- (2) Critical access hospital. – Defined in 42 C.F.R. § 400.202.
- (3) Department. – The Department of Health and Human Services.
- (4) Equity assessment. – The assessment payable under G.S. 108A-123.
- (5) Medicaid equity payment. – The amount required to be paid under G.S. 108A-124.
- (6) Public hospital. – A hospital that certifies its public expenditures to the Department pursuant to 42 C.F.R. § 433.51(b) during the fiscal year for which the assessment applies.
- (7) Secretary. – The Secretary of Health and Human Services.
- (8) State's annual Medicaid payment. – Forty-three million dollars (\$43,000,000).
- (9) Total hospital costs. – The costs as calculated using the most recent available Hospital Cost Report Information Systems cost report data, available through CMS, or other comparable data.



1 (10) Upper pay limit (UPL). – The maximum ceiling imposed by federal
2 regulation on hospital Medicaid payments under 42 C.F.R. § 447.272 for
3 inpatient services.

4 (11) UPL assessment. – The assessment payable under G.S. 108A-123.

5 (12) UPL gap. – The difference between the UPL attributable to hospital inpatient
6 services and the reasonable costs of inpatient hospital services as defined in
7 Section (f)(2)(A) on page 11 of Attachment 4.19-A of the State Medicaid
8 Plan as approved on December 15, 2005.

9 (13) UPL payment. – The amount required to be paid under G.S. 108A-124.

10 **"§ 108A-122. Assessment.**

11 (a) Assessment Imposed. – Except as provided in this section, the assessments
12 authorized under this Article are imposed as a percentage of total hospital costs on all licensed
13 North Carolina hospitals. The assessments are due quarterly in the time and manner prescribed
14 by the Secretary. Payment of an assessment is considered delinquent if not paid within seven
15 days of the due date. With respect to any past-due assessment, the Department may withhold
16 the unpaid amount from Medicaid payments otherwise due or impose a late-payment penalty.
17 The Secretary may waive a penalty for good cause shown.

18 (b) Allowable Cost. – An assessment paid under this Article may be included as
19 allowable costs of a hospital for purposes of any applicable Medicaid reimbursement formula.
20 An assessment imposed under this Article may not be added as a surtax or assessment on a
21 patient's bill.

22 (c) Full Exemption. – The following hospitals are exempt from both the equity
23 assessment and the UPL assessment:

24 (1) State-owned and State-operated hospitals.

25 (2) The primary affiliated teaching hospital for each University of North
26 Carolina medical school.

27 (3) Critical access hospitals.

28 (4) Long-term care hospitals.

29 (5) Freestanding psychiatric hospitals.

30 (6) Freestanding rehabilitation hospitals.

31 (d) Partial Exemption. – A public hospital is exempt from the equity assessment.

32 **"§ 108A-123. Assessment amount.**

33 (a) Annual Calculation. – The Secretary must annually calculate the equity assessment
34 amount and the UPL assessment amount for each hospital subject to the respective assessment.
35 Each assessment must comply with applicable federal regulations and may be prorated for any
36 partial year. The Secretary must notify each hospital that is assessed the amount of its UPL
37 assessment and, if applicable, its equity assessment. The notice must include all of the
38 following:

39 (1) The applicable assessment rates.

40 (2) The hospital costs on which the hospital's assessments are based.

41 (3) The elements of the calculation of the hospital's UPL.

42 (b) Equity Assessment. – The equity assessment consists of both inpatient and
43 outpatient components. The equity assessment percentage rate must be calculated to produce an
44 aggregate annual amount equal to the following:

45 (1) The amount needed to make the Medicaid equity payments under
46 G.S. 108-124.

47 (2) The applicable portion of the State's annual Medicaid payment, as provided
48 in subsection (d) of this section.

49 (c) UPL Assessment. – The UPL assessment consists of both inpatient and outpatient
50 components. The UPL assessment percentage rate must be calculated to produce an aggregate
51 annual amount equal to the following:

1 (1) The amount needed to make the UPL payments under G.S. 108A-124.

2 (2) The applicable portion of the State's annual Medicaid payment, as provided
3 in subsection (d) of this section.

4 (d) State's Annual Medicaid Payment. – The State's annual Medicaid payment must be
5 allocated between the equity assessment and the UPL assessment based on the amount of gross
6 payments received by hospitals under G.S. 108A-124.

7 (e) Appeal. – A hospital may appeal an assessment determination through a
8 reconsideration review. The pendency of an appeal does not relieve a hospital from its
9 obligation to pay an assessment amount when due.

10 "§ 108A-124. Use of assessment proceeds.

11 (a) Use. – The proceeds of the assessments imposed under this Article and all
12 corresponding matching federal funds must be used to make the State annual Medicaid
13 payment to the State and the Medicaid equity payments and UPL payments to hospitals.

14 (b) Quarterly Payments. – Within seven days of the due date for each quarterly
15 assessment imposed under G.S. 108A-123, the Secretary must do the following:

16 (1) Transfer to the State Controller twenty-five percent (25%) of the State's
17 annual Medicaid payment amount.

18 (2) Pay to each hospital that has paid its equity assessment for the respective
19 quarter twenty-five percent (25%) of its Medicaid equity payment amount. A
20 hospital's Medicaid equity payment amount is the sum of the hospital's
21 Medicaid inpatient and outpatient deficits after calculating all other
22 Medicaid payments, excluding disproportionate share hospital payments and
23 the UPL payment remitted to the hospital under subdivision (3) of this
24 subsection.

25 (3) Pay to the primary affiliated teaching hospital for the East Carolina
26 University Brody School of Medicine, to the critical access hospitals, and to
27 each hospital that has paid its UPL assessment for the respective quarter
28 twenty-five percent (25%) of its UPL payment amount, as determined under
29 subsection (c) of this section.

30 (c) UPL Payment Amount. – The aggregate UPL payments made to eligible hospitals
31 that are public hospitals is the sum of the UPL gaps for all public hospitals. The aggregate UPL
32 payments made to eligible hospitals that are not public hospitals is the sum of the UPL gaps for
33 these hospitals. UPL payments are payable to the individual hospitals in the ratio of each
34 hospital's Medicaid inpatient costs to the total Medicaid inpatient costs for the respective group.

35 (d) Refund of Assessment. – If all or any part of a payment required to be made under
36 this section is not made to one or more hospitals when due, the Secretary must promptly refund
37 to each such hospital the corresponding assessment proceeds collected in proportion to the
38 amount of assessment paid by that hospital.

39 "§ 108A-125. Deferral of assessment due date.

40 In the event the data necessary to calculate the assessments required under G.S. 108A-123
41 or the payments required under G.S. 108A-124 is not available to the Secretary in time to
42 impose the quarterly assessments for a payment year, the Secretary may defer the due date for
43 the assessments and payments to a subsequent quarter.

44 "§ 108A-126. Approval of assessment program.

45 The Department must file a State plan amendment with the CMS that incorporates the
46 assessment payments and distributions consistent with the provisions of this Article. Upon
47 CMS approval, the Secretary may impose the initial assessment retroactive to the first day of
48 the quarter in which the State Plan amended was filed, provided the Secretary remits the
49 corresponding payments to hospitals required under G.S. 108A-124 for that quarter. If CMS
50 approves only one component of the equity assessment, the Secretary may adjust the
51 percentage rate on the approved component to produce the required aggregate Medicaid equity

1 payment amounts under G.S. 108A-124. If CMS approves only one component of the UPL
2 assessment, the Secretary may adjust the percentage rate on the approved component to
3 produce the required aggregate UPL payment amounts under G.S. 108A-124. The Secretary
4 may adopt rules as necessary to implement the assessment program under this Article.

5 **"§ 108A-127. Repeal.**

6 . The authority to impose an assessment under this Article is repealed in the event that CMS
7 determines that the assessment or payment methodologies described in this Article are
8 impermissible or CMS revokes approval of any portion of the State Plan amendment
9 authorizing the payments required under G.S. 108A-124."

10 **SECTION 2.** The Department of Health and Human Services must file with the
11 Centers for Medicare and Medicaid Services a State Plan amendment as required under Article
12 7 of Chapter 108A of the General Statutes, as enacted by this act, by March 31, 2011.

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

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 32 (First Edition)

SHORT TITLE: Hospital Medicaid Assessment/Payment Program.

SPONSOR(S): Senators Clodfelter and Brunstetter

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES					
Assessments	\$215,615,530		See Assumptions and Methodology		
Federal Medicaid Funds	\$413,347,075		See Assumptions and Methodology		
EXPENDITURES					
Hospital Reimbursements	\$585,962,605		See Assumptions and Methodology		
DHHS State Medicaid Program	\$43,000,000	\$43,000,000	\$43,000,000	\$43,000,000	\$43,000,000
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health & Human Service, Division of Medical Assistance					
EFFECTIVE DATE: Upon enactment					

BILL SUMMARY:

Senate Bill 32 proposes to establish assessments on hospitals and use the revenue derived from the assessments to obtain Federal Medicaid funds. The purpose of these funds would be to address the difference between hospitals' cost of treating Medicaid recipients and what hospitals are reimbursed.

ASSUMPTIONS AND METHODOLOGY:

Background

Healthcare Provider Assessments

Provider-specific assessments have been used by States since 1990 to help pay for the costs of States' Medicaid programs. The assessments, proposed by State policymakers and enacted by State legislatures, must meet the requirements of federal laws and regulations. In 2010 the number of states with some type of Medicaid-related provider assessment increased to 46 states.

States with Provider Assessments—2010	
Provider being Assessed	States with Assessment
Hospitals	34
ICF/MR-DD	34
Nursing Facility	38
Managed Care Facility	11
Other	15

Source: Kaiser Family Foundation, 2010

Currently, North Carolina utilizes provider assessments to enhance payment rates for 1) Intermediate Care Facilities for the Mentally Retarded and Developmentally Disabled and 2) Nursing Facilities by providing the state share of increases or offsets to recent year's rate decreases.

Example of a Provider Assessment Program

Federal regulations (42 CFR 433.56) allow for an assessment of up to 5.5% to be made against a healthcare provider's non-Medicare net revenue.

- *Initial assessment on health care services.* The first step in the process is to adopt an assessment on health care services.
- *Increased Medicaid payments.* The second step is to use the increased revenue to enhance the state's Medicaid program, e.g. through Medicaid reimbursements, generating additional Federal matching payments at the rate of nearly 2:1, in the case of North Carolina in SFY 2011-12.
- *Net impact on providers and the State.* The new Medicaid reimbursements can be split between providers who contributed to the assessment, other healthcare providers who were not assessed, and the state.
 - *Assessed providers.* Most providers end up net winners due to the increase in Medicaid reimbursement. The Federal government requires that the assessment result in some redistribution of funds on net, so that some providers will inevitably lose.

- *Non-assessed providers.* Non-assessed providers who benefit from the increase in Medicaid reimbursements are pure winners.

Hospital Medicaid Costs and Reimbursements

Medicaid's reimbursement of a hospital's inpatient treatment costs are based on Diagnostic Related Groups (DRGs). These DRG payment rates are based on the 1994 cost for each hospital, indexed forward based on General Assembly's approved changes in provider rates. Each year North Carolina's Medicaid program adjusts the Medicaid DRG reimbursement rate for any inflation or decrease approved by the General Assembly. However, during the past 15 years the North Carolina General Assembly has often foregone an inflationary increase in Medicaid provider rates.

According to the North Carolina Hospital Association (NCHA), which represents public and private hospitals in the state, the current North Carolina Medicaid DRG reimbursement rate for inpatient costs is 50% of the cost of delivering care to a Medicaid recipient. Medicaid's reimbursement of a hospital's outpatient and emergency treatment costs are at 80% of cost. In the aggregate, the NCHA asserts that its hospitals are reimbursed by Medicaid at 63% of their combined inpatient and outpatient costs. NCHA acknowledges that this percentage increases to 85% when the Disproportionate Share Hospital payment to North Carolina hospitals is factored in.

Analysis of Senate Bill 32

Under the applicable Federal regulations (42 CFR 433.56), SB 32 directs the Secretary of the Department of Health and Human Services (DHHS) to implement a hospital assessment program for eligible hospitals to improve funding for payments for hospital services provided to Medicaid and uninsured patients. The program proposed in SB 32 includes two different assessments on hospitals:

1. Equity Assessments
2. Upper Payment Limit Assessments

The assessments are to be levied as a percent of total hospital cost calculated using the most recent available Hospital Cost Report Information Systems cost report or comparable data. The receipts derived from these assessments would be used by the Department's Division of Medical Assistance to draw down Federal matching funds at an approximate rate of \$2 Federal for every \$1 State, beginning in July 2011. If the assessment is implemented prior to July 1, 2011, the federal match (FMAP) rate will be higher due to ARRA, requiring a lower assessment rate. The rate will have to be adjusted in July 2011 to compensate for the change in FMAP.

Equity Assessments/Medicaid Equity Payment

DHHS is to levy an Equity Assessment on the inpatient and outpatient Medicaid costs of each private hospital. The percentage of this assessment is to be calculated by DHHS so that the amount generated from assessment when matched with Federal funds in the Medicaid program is sufficient to reimburse the 67 private hospitals for their Medicaid costs consistent with the Medicaid reimbursements received by the 43 public hospitals and to fund an additional amount for the State's Medicaid program.

To fulfill the purpose of reimbursing the private hospitals, the rate must be set at 1.45% and would generate \$118,317,394 for the first year, according to data from NCHA and DHHS.

As noted above, in order to maintain the payments at this level, the percentage would have to increase effective July 1, 2011, when the enhanced ARRA FMAP ends. At the end of each year, DHHS will be required to evaluate the amount of the Equity Assessment on Medicaid costs, to ensure that it does not exceed the Federal provider assessment guidelines, which permit an assessment on non-Medicare inpatient and outpatient revenue of up to 5.5%.

Upper Payment Limit Assessment/Upper Limit Payment

The bill also provides that DHHS levy an Upper Payment Limit (UPL) Assessment on the inpatient Medicaid costs of public and private hospitals, excluding:

- State-operated hospitals,
- Teaching Hospitals of the University of North Carolina Medical School,
- Critical Access Hospitals,
- Long-term Care Hospitals, and
- Free-standing Psychiatric and Rehabilitation Hospitals.

The percentage of this assessment is to be calculated by DHHS so that the amount generated from the assessment when matched with Federal funds in the Medicaid program is sufficient to reduce the losses that both public and private hospitals sustain when treating Medicaid and uninsured patients and to fund an additional amount for the State's Medicaid program.

To fulfill the purpose of reimbursing the public and private hospitals, the rate must be set at 0.76% and generate \$ 97,298,136 for the first year, according to data from NCHA and DHHS.

Here again, in order to maintain the payments at this level, the percentage would have to increase effective July 1, 2011, due to the expiration of the enhanced FMAP. As with the Equity Assessment, DHHS will be required to evaluate the amount of the assessment on Medicaid costs, to ensure that it does not exceed the Federal provider assessment guidelines, which permit an assessment on non-Medicare inpatient and outpatient revenue.

Total Amount of Assessments

The combined Equity and UPL assessments in SB 32 will generate \$215,615,530 in receipts the first year. This amount should be sufficient to cover the nonfederal share of the Equity and Upper Limit payments, as well as the \$43 million payment for the State Medicaid program also provided for in the bill.

Payments to Hospitals

Of the nearly \$216 million in receipts collected from the combined assessment, DHHS would use \$173 million in the Medicaid program to draw down and an additional \$413 million, for a total of \$586 million Medicaid funds on an annual basis based on the current FMAP. DHHS would pay out this amount to the hospitals. The legislation calls for DHHS to disburse the Medicaid funds derived from these assessments on a quarterly basis.

In the aggregate, the public and private hospitals in North Carolina would net \$370 million in payments over the assessments they paid (\$586 million, less \$216 million) for the first year. The total amount of the assessments and payments will more than likely change each year as hospital cost changes each year. However, because of the uncertainty of the changes in these costs, reasonable estimates of the assessments and payments to hospitals in future years cannot be determined.

SB32—Hospital Assessment Plan					
Assessments to Hospitals	Amount to DHHS	State Share Medicaid	Federal Matching	Payments to Hospitals	Net Benefit to Hospitals
\$215,615,530	\$43,000,000	\$172,615,530	\$413,347,075	\$585,962,605	\$370,347,074

Source: Department of Health and Human Services

With the proposed assessments, receipts, and resultant Medicaid funds, all North Carolina acute care hospitals included in SB 32 would be paid at the Medicare UPL for inpatient services for Medicaid patients, using hospital assessments to generate the additional needed federal matching funds. As a result, hospitals will have 86% of Medicaid allowable costs covered on an actual, net cash received basis and 27% of uninsured costs covered on the same basis, according to NCHA.

Payment to DHHS

SB 32 calls for \$43 million of the amount collected from the Equity and UPL assessments each year to go to the State’s Medicaid program. DHHS can use these funds as it chooses. If it were to use them for the Medicaid program, the \$43 million would draw down an additional \$86 million, approximately, in Federal matching funds for a total of \$129 million in SFY 2011-12.

Each year the receipts derived from the two assessments in SB 32 will increase as hospital inpatient and outpatient costs increase. However, the amount DHHS is to receive will remain at \$43 million.

Summary

SB 32 provides for the following:

1. An Equity Assessment and Payment to compensate private hospitals for their Medicaid costs and a level comparable to public hospitals. This assessment and payment would be adjusted each year.
2. An Upper Payment Limit Assessment and Payment to compensate public and private hospitals for treatment of the uninsured. This assessment and payment would be adjusted each year.
3. DHHS to receive \$43 million from the Equity and Upper Payment Limit assessments. This amount would not be adjusted each year, but remain at \$43 million.

SOURCES OF DATA: Kaiser Family Foundation; National Conference of State Legislatures; North Carolina Hospital Association; Department of Health and Human Services, Division of Medical Assistance

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lee Dixon

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: February 18, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 32: Hospital Medicaid Assessment/Payment Program

2011-2012 General Assembly

Committee: House Finance	Date: March 2, 2011
Introduced by: Sens. Brunstetter, Clodfelter	Prepared by: Cindy Avrette
Analysis of: Second Edition	Committee Counsel

SUMMARY: *Senate Bill 32¹ would impose an annual assessment on hospitals, payable quarterly, and use the revenue derived from the assessment to obtain additional federal Medicaid funds. The assessment proceeds and corresponding Medicaid funds would be used to address hospitals' cost of treating Medicaid recipients and uninsured patients and to generate an additional \$43,000,000 for the General Fund to be used for the State's Medicaid program.*

CURRENT LAW: Forty-six states and the District of Columbia have some type of Medicaid-related provider tax, assessment, or fee this year. States have used Medicaid-related provider assessments since 1990 to help pay for the costs of states' Medicaid programs. North Carolina began utilizing provider assessments in 2003 to enhance payment rates for nursing facilities and intermediate care facilities for the mentally retarded and developmentally disabled.²

A Medicaid-related provider assessment collects revenue from specific categories of providers to generate new in-state funds and match them with federal funds so that the state gets additional federal Medicaid dollars. Because Medicaid is an entitlement program, the amount of total federal matching funds for Medicaid has no statutory limit. Federal spending is only limited by states' ability to provide matching funds.

In most states that impose a provider assessment, the cost of the assessment is promised back to providers through an increase in the Medicaid reimbursement rate. Under federal law, a state's ability to use provider-specific assessments to fund their state share of Medicaid expenditures has limits. Generally, those assessments cannot exceed 25% of the state's share of Medicaid expenditures and the state cannot provide a guarantee to the providers that the assessments will be returned to them. However, federal law provides a 'safe harbor' that says if the assessments returned to a provider are less than 6% of the provider's revenues, the prohibition on guaranteeing the return of assessment funds is not violated. Therefore, a state may impose a provider assessment of 5.5% of revenues, return those revenues directly or indirectly back to those providers in the form of a Medicaid payment and receive a federal match for those amounts. Unless altered by Congress, this maximum amount will increase to 6% of revenues in October 2011.

BILL ANALYSIS: Senate Bill 32 would impose two different Medicaid-related assessments on hospitals: an equity assessment and an upper pay limit (UPL) assessment. The assessments would be imposed as a percentage of total hospital costs on all licensed North Carolina hospitals. The Secretary of Health and Human Services would annually calculate the assessment amount for each hospital. The assessment would be payable quarterly. The Secretary would use the proceeds of the assessments to make quarterly distributions to the hospitals as well as a quarterly transfer to the General Fund of \$10,750,000. The payments to the hospitals would be due within seven days after the assessment is paid. If an assessment payment is not made to a hospital when due, the Secretary must refund to the

¹ SB 32, as introduced, was identical to HB 53, introduced by Reps. Barnhart, Avila, Crawford, and Glazier. HB 53 is currently in House Finance.

² Section 10.28 of S.L. 2003-284, the Appropriations Act of 2003.

Senate Bill 32

Page 2

hospital the corresponding assessment proceeds collected in proportion to the amount of assessment paid by the hospital.

The equity assessment would be levied on the inpatient and outpatient Medicaid costs of each private hospital. Public hospitals are exempt from this assessment. The percentage of the assessment is to be calculated by DHHS so that the amount generated from the assessment, when matched with federal Medicaid funds, is sufficient to reimburse the 67 private hospitals for their Medicaid costs consistent with the Medicaid reimbursements received by the 43 public hospitals and to fund a pro-rata share of the State annual Medicaid amount. To fulfill this purpose, the rate would need to be set at 1.45% for the first year.

The UPL assessment would be levied on the inpatient and outpatient Medicaid costs of public and private hospitals, with the exception of the following:

- State-operated hospitals
- Teaching hospitals of the University of North Carolina Medical School.
- Critical access hospitals.
- Long-term care hospitals.
- Free-standing psychiatric and rehabilitation hospitals.

The percentage of the UPL assessment is to be calculated by DHHS so that the amount generated from the assessment, when matched with federal Medicaid funds, is sufficient to reduce the losses that both public and private hospitals sustain when treating Medicaid and uninsured patients and to fund a pro-rata share of the State annual Medicaid amount. To fulfill this purpose, the rate would need to be set at 0.76% for the first year.

The State's assessment program would need to be approved by the Centers for Medicare & Medicaid Services. DHHS would need to evaluate the assessment percentages and assessment payments each year to ensure that the assessments do not exceed the federal provider assessment guidelines. The bill directs DHHS to file a State plan amendment with the Centers for Medicare & Medicaid Services to implement the hospital assessments and payments by March 31, 2011.

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

Lee Dixon, in the Fiscal Research Division, substantially contributed to this summary. I also used resources from NCSL.

S32-SMRB-10(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 92

Short Title: Repeal Land Transfer Tax.

(Public)

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

Referred to: Finance.

February 16, 2011

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A BILL TO BE ENTITLED
AN ACT TO REPEAL THE LAND TRANSFER TAX.
The General Assembly of North Carolina enacts:
SECTION 1. Article 60 of Chapter 105 of the General Statutes is repealed.
SECTION 2. This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: March 2, 2011
TO: House Finance Committee
FROM: Sandra Johnson
Fiscal Research Division
RE: Repeal Land Transfer Tax

FISCAL IMPACT					
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	*No Fiscal Impact*				
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	North Carolina Department of Revenue, County Register of Deeds				
EFFECTIVE DATE:	When the bill becomes law.				

BILL SUMMARY:
House Bill (HB) 92 repeals Article 60 of the General Statutes Chapter 105, the County Land Transfer Tax. The land transfer tax represents one of two local financing options enacted during

the 2007 legislative session (S.L. 2007-323 under Sec. 31.17). As an alternative to the land transfer tax, counties also received the option levy a one-quarter cent sales and use tax, Article 46.

Article 60 provides counties with the authority to levy a tax on conveyances if a majority of referendum voters support the tax. The land transfer tax operates alongside the excise stamp tax on conveyances of land and is administered in the same manner as the tax on conveyances. Land exempt from the tax on conveyances is also exempt from the land transfer tax. The maximum land transfer tax rate levied equals 0.4% of the greater: 1) the property value or 2) consideration paid for the property. Counties can enact or increase the land transfer tax in increments of 0.1%.

If HB 92 is enacted, the repeal of the County Land Transfer Tax will become effective when the bill becomes law.

ASSUMPTIONS AND METHODOLOGY: The repeal of Article 60, the Land Transfer Tax, has no fiscal impact because none of the counties implemented the levy. Since the enactment of Article 60 in 2007, 21 of the 100 counties have submitted the option to public vote, with two counties submitting the option twice. The decision to levy Article 60 failed public referendum in all instances.

Table 1 of the appendix covers the forgone revenue associated with the repeal of Article 60.

SOURCES OF DATA: North Carolina Association of County Commissioners, "Local Option Referendum Results," available at: <http://www.ncacc.org/revenueoptions.html>.

North Carolina Department of Revenue, Statistical Abstract, "Table 65. County Tax Levies and County Shares of State Taxes by Type, Fiscal Year 2009-10."

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

APPENDIX

Table 1. Revenue Associated with the Enactment of Article 60, by County, FY 2009-10					
Counties	Value of Property Sold Subject to Article 60 [\$] In Millions	Revenue Associated with a 0.1% Land Transfer Tax under Article 60 [\$] In Dollars	Counties	Value of Property Sold Subject to Article 60 [\$] In Millions	Revenue Associated with a 0.1% Land Transfer Tax under Article 60 [\$] In Dollars
Alamance	397.8	397,826	Jones	19.7	19,708
Alexander	52.5	52,499	Lee	114.6	114,554
Alleghany	50.5	50,522	Lenoir	74.8	74,841
Anson	29.3	29,350	Lincoln	261.4	261,355
Ashe	100.3	100,305	Macon	215.8	215,802
Avery	130.0	129,962	Madison	65.9	65,946
Beaufort	113.2	113,182	Martin	24.0	24,004
Bertie	23.6	23,607	McDowell	103.9	103,878
Bladen	49.8	49,825	Mecklenburg	4,794.0	4,794,029
Brunswick	1,003.6	1,003,566	Mitchell	29.5	29,468
Buncombe	1,131.7	1,131,709	Montgomery	54.2	54,239
Burke	128.8	128,802	Moore	391.8	391,787
Cabarrus	563.4	563,422	Nash	177.9	177,897
Caldwell	152.8	152,770	New Hanover	1,138.8	1,138,779
Camden	29.0	28,974	Northampton	35.4	35,412
Carteret	427.3	427,347	Onslow	874.1	874,142
Caswell	38.7	38,713	Orange	731.3	731,342
Catawba	388.6	388,590	Pamlico	54.3	54,297
Chatham	352.9	352,898	Pasquotank	90.5	90,527
Cherokee	118.0	118,045	Pender	244.7	244,715
Chowan	35.2	35,165	Perquimans	42.2	42,225
Clay	54.6	54,627	Person	74.3	74,277
Cleveland	153.8	153,781	Pitt	468.9	468,857
Columbus	53.1	53,118	Polk	64.9	64,947
Craven	284.3	284,349	Randolph	245.2	245,244
Cumberland	816.1	816,081	Richmond	63.6	63,613
Currituck	271.9	271,872	Robeson	104.5	104,521
Dare	821.2	821,249	Rockingham	136.6	136,596
Davidson	346.4	346,390	Rowan	245.4	245,395
Davie	111.7	111,735	Rutherford	169.7	169,692
Duplin	66.7	66,654	Sampson	76.9	76,865
Durham	1,276.5	1,276,509	Scotland	39.5	39,546
Edgecombe	46.0	45,971	Stanly	110.7	110,725
Forsyth	1,131.9	1,131,855	Stokes	73.4	73,417
Franklin	190.0	189,986	Surry	70.0	69,994
Gaston	480.7	480,680	Swain	31.4	31,372
Gates	16.7	16,687	Transylvania	173.5	173,518
Graham	14.5	14,471	Tyrrell	6.1	6,116
Granville	144.4	144,429	Union	1,011.5	1,011,459
Greene	22.5	22,493	Vance	49.7	49,661
Guilford	1,551.7	1,551,720	Wake	5,249.1	5,249,074
Halifax	73.6	73,556	Warren	49.4	49,387
Harnett	374.3	374,335	Washington	23.8	23,816
Haywood	207.5	207,472	Watauga	309.9	309,884
Henderson	395.4	395,411	Wayne	231.8	231,784
Hertford	27.3	27,260	Wilkes	132.9	132,942
Hoke	174.7	174,693	Wilson	177.6	177,559
Hyde	24.9	24,941	Yadkin	46.8	46,773
Iredell	705.9	705,906	Yancey	66.0	65,964
Jackson	346.4	346,381	Total	35,103	35,103,294
Johnston	559.7	559,659			



HOUSE BILL 92: Repeal Land Transfer Tax

2011-2012 General Assembly

Committee:	House Finance	Date:	March 3, 2011
Introduced by:	Reps. Howard, Starnes, Brawley, Jordan	Prepared by:	Martha Walston Committee Counsel
Analysis of:	First Edition		

SUMMARY: *HB 92 repeals the authority granted to counties in 2007 to levy, upon approval of voters in the county, a tax on the sale of real property at the rate of up to 0.4% of the value of the property.*

CURRENT LAW: In 2007, legislation was enacted authorizing a board of county commissioners, by resolution and after 10 days public notice, to levy a local land transfer tax on instruments conveying interests in real property located in the county, up to a rate of 0.4%, in increments of 0.1%. The imposition of the tax is subject to voter approval in a public referendum. The tax is payable by the transferor of the property. The legislation exempts the same transfers as the State excise tax on conveyances.

To date, no county has achieved voter approval to levy this local land transfer tax, although 21 counties have conducted public referendums. The 21 counties are Ashe, Avery, Brunswick, Chatham, Clay, Davie, Gates¹, Graham, Harnett, Henderson, Hoke, Johnston, Macon, Moore, Orange, Pender, Polk, Rutherford, Swain, Tyrrell², and Union.

BILL ANALYSIS: House Bill 92 would repeal the County Land Transfer Tax Act.

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

BACKGROUND: The following counties have been given the authority by the General Assembly to levy a land transfer tax on instruments conveying an interest in real property.

COUNTY	SESSION LAW	RATE	LEVY	REVENUE FY 08-09	APPEALS BOARD	USE OF FUNDS
Dare	1985-525	\$1/\$100	No Vote	\$4,037,302	Yes	Capital needs; shared with towns
Currituck	1985-670	\$1/\$100	No Vote	\$1,890,224	Yes	Capital needs
Chowan	1985-881	\$1/\$100	No Vote	\$277,266	No	Capital needs; shared with towns
Camden	1985-954	\$1/\$100	No Vote	\$261,656	No	Capital needs
Pasquotank	1989-393	\$1/\$100	Vote required	\$798,249	Yes	Capital needs
Perquimans	1989-393	\$1/\$100	Vote required	\$435,085	Yes	Capital needs
Washington ³	1989-393	\$1/\$100	Vote required	N/A	Yes	Capital needs

H92-SMSV-5(e1) v13

¹ Gates County conducted two public referendums, one on November 6, 2007 and one on May 4, 2008.

² Tyrrell County conducted two public referendums, one on May 4, 2008 and one on November 4, 2008.

³ Has been on ballot three times, but never passed.

House Bill 92

Page 2

The State excise tax on conveyances is imposed at the rate of \$1 for each \$500 of sales price. The proceeds from this tax are distributed as follows: ½ to the county for any public purpose, and the remaining ½ to the Department of Revenue (75% goes to Parks and Recreation Trust Fund and 25% goes to Natural Heritage Trust Fund). The following transfers are exempt from the State excise tax on conveyances:

- By operation of law
- By lease for a term of years
- By will
- By intestacy
- By gift
- No consideration paid
- By merger, conversion, or consolidation
- By instrument securing indebtedness

PROPERTY TAX RATES AND LATEST YEAR OF REVALUATION FOR NORTH CAROLINA COUNTIES AND MUNICIPALITIES FY 2010-11
 SOURCE: NORTH CAROLINA DEPARTMENT OF REVENUE POLICY ANALYSIS AND STATISTICS DIVISION

COUNTIES AND MUNICIPALITIES	YEAR OF LATEST REVALUATION	COUNTY-WIDE [S]	SPECIAL SCHOOL DISTRICTS [S]	OTHER DISTRICTS [S]	CITY OR TOWN [S]	TOTAL OF ALL JURISDICTIONS [S]	SPECIAL DISTRICTS LEVIED BY COUNTY OR MUNICIPALITY			
							[S]	[S]	[S]	
Alamance	2009	.5200	...	...	...	.5200	Twelve fire districts:			
Alamance		.5200	...	.0800	.2000	.8000	Altamahaw-Ossipee	.1025	54 East	.0900
Burlington:							East Alamance	.0900	Haw River	.1350
In Alamance		.5200	...	***	.5900	1.1100	Eli-Whitney	.0800	North Central Alamance	.1050
In Guilford		.7374	...	...	.5900	1.3274	Elon	.1050	Northeast Alamance	.0700
Elon		.5200	...	...	.3700	.8900	E M Holt	.0800	Snow Camp	.0850
Gibsonville:							Faucette	.0875	Swepsonville	.0900
In Alamance		.5200	...	...	.5150	1.0350				
In Guilford		.7374	...	...	.5150	1.2524				
Graham		.5200	...	...	.4450	.9650	***Burlington MSD	.1600	Other districts:	
Green Level		.5200	...	...	.3400	.8600				
Haw River		.5200	...	...	.4500	.9700				
Mebane:										
In Alamance		.5200	...	...	.4700	.9900				
In Orange		.8580	...	...	.4700	1.3280				
Ossipee		.5200	...	.1000	.0750	.6950				
Swepsonville		.5200	...	.0900	...	.6100				
Alexander	2007*	.6050	...	...	...	.6050	Eight fire districts:			
Taylorsville		.6050	...	...	.3500	.9550	Bethlehem	.0280	Hiddenite	.0380
							Central Alexander	.3350	Sugar Loaf	.0550
							East Alexander	.0500	Vashti	.0490
							Ellendale	.0390	Wittenburg	.0430
Alleghany	2007	.4300	...	...	...	.4300	No special districts			
Sparta		.4300	...	...	.2800	.7100				
Anson	2010	.7670	...	...	...	.7670	Seven fire districts:			
Ansonville		.7670	...	.0500	.2500	1.0670	Ansonville	.0500	Lilesville	.0500
Lilesville		.7670	...	...	.4800	1.2470	Burnsville	.0500	Morven	.0500
McFarlan		.7670	...	...	.2400	1.0070	Gulledge	.0500	Wadesboro	.0496
Morven		.7670	...	.0500	.4400	1.2570	Lanesboro	.0500		
Peachland		.76703000	1.0670				
Polkton		.76702500	1.0170				
Wadesboro		.76705500	1.3170				

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							[S]	[S]	[S]	
Ashe	2006*	.42504250	Twelve fire districts:			
Jefferson		.42503300	.7550	Creston	.0340	Laurel Springs	.0400
Lansing		.4250	...	...	.3500	.7750	Deep Gap	.0400	New River	.0400
West Jefferson		.4250	...	...	.4300	.8550	Fleetwood	.0400	Pond Mountain	.0500
							Glendale Springs	.0300	Todd	.0500
							Jefferson	.0290	Warrensville	.0480
							Lansing	.0260	West Jefferson	.0170
Avery	2010*	.3700	...	...	...	.3700	No special districts			
Banner Elk		.3700	...	...	.3800	.7500				
Beech Mountain:										
In Avery		.3700	...	...	.6400	1.0100				
In Watauga		.3130	...	...	.6400	.9530				
Crossnore		.3700	...	...	.2400	.6100				
Elk Park		.3700	...	...	.2800	.6500				
Grandfather Village		.3700	...	...	...	.3700				
Newland		.3700	...	...	.3600	.7300				
Seven Devils:										
In Avery		.3700	...	...	.5100	.8800				
In Watauga		.3130	...	...	.5100	.8230				
Sugar Mountain		.3700	...	...	.3300	.7000				
Beaufort	2010	.5000	...	...	...	.5000	Three fire districts:			
Aurora		.5000	...	...	.5500	1.0500	Chocowinity	.0260	Richland	.0280
Bath		.5000	...	...	.1800	.6800	Northside	.0290		
Belhaven		.5000	...	...	.4500	.9500				
Chocowinity		.5000	...	.0260	.4500	.9760				
Pantego		.5000	...	...	.1600	.6600	Rescue service	.0130	Rescue service 9	.0350
Washington		.5000	...	...	.5000	1.0000	Rescue service 2	.0400	Rescue service 12	.0500
Washington Park		.5000	...	...	.2600	.7600	Rescue service 5	.0350		
Bertie	2004	.7800	...	...	...	.7800	One special district:			
Askeville		.7800	...	...	.1500	.9300	Ahoskie Crk Watershed	.0400		
Aulander		.7800	...	...	.7600	1.5400				
Colerain		.7800	...	...	.4500	1.2300				
Kelford		.7800	...	...	.3600	1.1400				
Lewiston-Woodville		.7800	...	...	.6000	1.3800				
Powellsville		.78002400	1.0200				
Roxobel		.78002500	1.0300				
Windsor		.78001500	.9300				

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							[S]	[S]	[S]	
Bladen	2007	.74007400	Fifteen fire districts:			
Bladenboro		.74005700	1.3100	Ammon	.0700	Hickory Grove	.0700
Clarkton		.74005700	1.3100	Bay Tree Lakes	.0600	Kelly	.0700
Dublin		.74004900	1.2300	Bladenboro Rural	.0500	Lisbon	.0700
East Arcadia		.74003600	1.1000	Carvers Creek	.0500	Tar Heel	.0650
Elizabethtown		.74006150	1.3550	Clarkton	.0500	Tobymore	.0250
Tar Heel		.74003000	1.0400	Dublin	.0650	White Lake	.0600
White Lake		.74002300	.9700	East Arcadia	.0700	White Oak	.0600
							Elizabethtown Rural	.0500		
								Other special districts:		
							General service	.0250		
Brunswick	2007*	.3050	...	...	...	.3050	No fire districts		
Bald Head Island		.3050	...	.0225***	.3275	.6325			
Belville		.3050	...	...	.0683	.3733			
Boiling Spring Lakes		.3050	...	...	.1200	.4250			
Bolivia		.30500500	.3550	Smithville Twsp Hospital	.0225	Bald Head Island Zone B	.3625
Calabash		.30500700	.3750	Bald Head Island Zone A	.3825		
Carolina Shores		.3050	...	...	.0800	.3850			
Caswell Beach		.3050	...	.0225	.1300	.4575			
Holden Beach		.3050	...	...	.0690	.3740			
Leland		.3050	...	...	.1166	.4216			
Navassa		.3050	...	...	.2000	.5050			
Northwest		.3050	...	...	.1900	.4950			
Oak Island		.3050	...	.0225	.1550	.4825			
Ocean Isle Beach		.3050	...	...	.0900	.3950			
Sandy Creek		.3050	...	...	.3000	.6050			
Shallotte		.3050	...	...	.2700	.5750			
Southport		.3050	...	.0225	.1800	.5075			
St James		.30500225	.0500	.3775				
Sunset Beach		.30500900	.3950				
Varnamtown		.30500500	.3550				

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		[\$]	[\$]	[\$]	[\$]	[\$]		[\$]	[\$]	
Buncombe	2006	.52505250		Fifteen fire districts:		
Asheville		.5250	.15004200	1.0950	Barnardsville	.1500	North Buncombe	.1060
Biltmore Forest		.5250	...	...	.3200	.8450	Beaverdam	.1100	Reems Creek	.1200
Black Mountain		.5250	...	...	.3650	.8900	Fairview	.0750	Riceville	.1100
Montreat		.5250	...	.0900	.3700	.9850	Fletcher	.0780	Skyland	.0780
Weaverville		.5250	...	...	.3550	.8800	French Broad	.1200	Upper Hominy	.1100
Woodfin		.5250	...	.1000	.2650	.8900	Haw Creek	.0900	West Buncombe	.0900
							Jupiter	.0950	Woodfin	.1000
							Leicester	.1000		
								Eighteen fire protection service districts:		
							Asheville Suburban	.0850	N East (Barnardsville)	.1500
							Broad River	.1000	N East (N Bunc)	.1060
							East Buncombe	.0900	N East (Reems Crk)	.1200
							Enka	.0750	N West (Leicester)	.1000
							Garren Creek	.1400	N West (W Bunc)	.0900
							N Central (Beaverdam)	.1100	Reynolds	.1100
							N Central (N Bunc)	.1060	S Buncombe (Skyland)	.0780
							N Central (Reems Crk)	.1200	Swannanoa	.1200
							N Central (Woodfin)	.1000	Upper Hominy	.1100
								Other special districts:		
							Asheville School	.1500		
Burke	2007*	.5200	...	...	...	.5200		Eighteen fire districts:		
Connelly Springs		.5200	...	.0800	.0500	.6500	Brendletown	.0660	Lake James	.0600
Drexel		.5200	...	...	.3200	.8400	Carbon City	.0740	Longtown	.1500
Glen Alpine		.5200	...	...	.2700	.7900	Chesterfield	.0800	Lovelady	.0800
Hickory:							Drowning Creek	.1020	Oak Hill	.0800
In Burke		.5200	...	...	.5000	1.0200	Enola	.0920	Salem	.0580
In Caldwell		.6599	...	.0085	.5000	1.1684	George Hildebran	.0680	Smokey Creek	.0880
In Catawba		.5350	...	...	.5000	1.0350	Glen Alpine	.0600	South Mountain	.1130
Hildebran		.5200	...	.0720	.1500	.7420	Icard	.0720	Triple Community	.0710
Long View:							Jonas Ridge	.1200	West End	.0700
In Burke		.5200	...	...	.4000	.9200				
In Catawba		.5350	...	...	.4000	.9350				

(continued on next page)

PROPERTY TAX RATES AND LATEST YEAR OF REVALUATION FOR NORTH CAROLINA COUNTIES AND MUNICIPALITIES FY 2010-11
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							[S]	[S]	[S]
Burke (continued)									
Morganton		.5200	...	***	.4600	.9800		Other special districts:	
Rhodhiss:							***Morganton MSD	.1400	
In Burke		.5200	...	...	.5500	1.0700			
In Caldwell		.6599	...	.0085	.5500	1.2184			
Rutherford College		.5200	...	.0800	.1000	.7000			
Valdese		.5200	...	...	.4000	.9200			
Cabarrus	2008*	.6300	...	...	...	.6300		Seventeen fire districts:	
Concord		.6300	...	***	.4200	1.0500	Allen	.0400	Kannapolis Rural .0350
Harrisburg		.6300	...	.0750	.1250	.8300	Cold Water	.0500	Midland .0550
Kannapolis:							Concord Rural	.0350	Mt Mitchell .0500
In Cabarrus		.6300	...	...	.4900	1.1200	Flowers Store	.0400	Mt Pleasant .0550
In Rowan		.5950	...	...	.4900	1.0850	Georgeville	.0600	Northeast .0500
Locust:							Gold Hill	.0600	Odell .0300
In Cabarrus		.6300	...	.0550	.3600	1.0450	Harrisburg City	.0750	Richfield Misenhimer .0700
In Stanly		.6700	...	.0800	.3600	1.1100	Harrisburg Rural	.0750	Rimer .0600
Midland		.6300	...	.0550	.1400	.8250	Jackson Park	.0500	
Mount Pleasant		.6300	...	.0550	.4400	1.1250			
								Other special districts:	
							***Concord MSD	.1800	
Caldwell	2005	.6599	...	...	...	.6599		Fourteen fire districts:	
Blowing Rock:							Bethlehem	.0310	North Caldwell .0340
In Caldwell		.6599	...	.0085	.2800	.9484	Collettsville	.1300	North Catawba .0880
In Watauga		.3130	...	...	.2800	.5930	Gamewell	.0590	Patterson .0810
Cajah Mountain		.6599	...	.0675	...	.7274	Grace Chapel	.0600	Sawmills Rural .0700
Cedar Rock		.6599	...	.0785	.1500	.8884	Gunpowder	.1100	South Caldwell .0930
Gamewell		.6599	...	.0675	...	.7274	Kings Creek	.0700	Valmead/Lower Creek .1000
Granite Falls		.6599	...	.0085	.4200	1.0884	Little River	.0730	Yakdin Valley .0700
Hickory:								Other special districts:	
In Caldwell		.6599	...	.0085	.5000	1.1684			
In Burke		.5200	...	...	.5000	1.0200	Rescue Readiness	.0085	***Lenoir MSD .2500
In Catawba		.5350	...	...	.5000	1.0350			
Hudson		.6599	...	.1185	.3700	1.1484			
Lenoir		.6599	...	.0085***	.5400	1.1999			
Rhodhiss:									
In Caldwell		.6599	...	.0085	.5500	1.2184			
In Burke		.5200	...	...	.5500	1.0700			
Sawmills		.6599	...	.0785	.2000	.9384			

PROPERTY TAX RATES AND LATEST YEAR OF REVALUATION FOR NORTH CAROLINA COUNTIES AND MUNICIPALITIES FY 2010-11
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COUNTIES AND MUNICIPALITIES	YEAR OF LATEST REVALUATION	COUNTY-WIDE [S]	SPECIAL SCHOOL DISTRICTS [S]	OTHER DISTRICTS [S]	CITY OR TOWN [S]	TOTAL OF ALL JURISDICTIONS [S]	SPECIAL DISTRICTS LEVIED BY COUNTY OR MUNICIPALITY			
								[S]	[S]	
Catawba	2007*	.5350	...	...	...	.5350	Fourteen fire districts:			
Brookford		.5350	...	...	.5200	1.0550	Bandys	.0600	Maiden	.0600
Catawba		.5350	...	...	.4800	1.0150	Catawba	.0700	Mountain View	.0600
Claremont		.5350	...	...	.4600	.9950	Claremont	.0700	Newton	.0700
Conover		.5350	...	...	.4000	.9350	Conover Rural	.0700	Oxford	.0558
Hickory:							Cooksville	.5170	Propst	.0615
In Catawba		.5350	...	...	.5000	1.0350	Hickory Rural	.0700	Sherrills Ford	.0700
In Burke		.5200	...	...	.5000	1.0200	Longview Rural	.5460	St Stephens	.0700
In Caldwell		.6599	...	.0085	.5000	1.1684				
Long View:										
In Catawba		.5350	...	...	.4000	.9350				
In Burke		.5200	...	...	.4000	.9200				
Maiden		.5350	...	...	.4000	.9350				
Newton		.5350	...	...	.4800	1.0150				
Chatham	2009*	.6219	...	...	...	.6219	Twelve fire districts:			
Cary:							Bell's Annex	.0660	Hope	.0600
In Chatham		.6219	...	...	.3300	.9519	Bennett	.0700	Moncure	.0842
In Wake		.5430	...	...	.3300	.8730	Bonlee	.0650	North Chatham	.0660
Goldston		.6219	...	.2159	.1400	.9778	Central Chatham	.0800	Northview	.0835
Pittsboro		.6219	...	...	.3020	.9239	Circle City	.1000	Parkwood	.0960
Siler City		.6219	...	...	.4500	1.0719	Goldston	.0800	Staley	.1000
							Other special districts:			
							Gulf-Goldston Sanitary	.1500		
Cherokee	2008*	.3850	...	...	...	.3850	Thirteen fire districts:			
Andrews		.3850	...	...	.3800	.7650	Bellview	.0400	Martins Creek	.0280
Murphy		.3850	...	...	.3300	.7150	Brasstown	.0290	Murphy Rural	.0500
							Culberson	.0300	Peachtree	.0410
							Grape Creek	.0290	Ranger	.0250
							Hanging Dog	.0240	Unaka	.0270
							Hiawassee Dam	.0310	Valleytown	.0440
							Hothouse-Wolfcreek	.0270		
							Other special districts:			
							Bear Paw service	.2700		
Chowan	2006	.68506850	Three fire districts:			
Edenton		.68502900	.9750	Belvidere	.0500	County	.0500
							Center-Hill	.0500		

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		[\$]	[\$]	[\$]	[\$]	[\$]		[\$]	[\$]	
Clay	2010	.32503250		Four fire districts:		
Hayesville		.32502650	.5900	Brasstown Hayesville Central	.0300 .0210	Shooting Creek Warne	.0300 .0300
Cleveland	2008*	.7200	...	...	...	.7200		Four fire districts:		
Belwood		.7200	...	.0500	...	.7700	Cleveland County	.0300	Lattimore	.0300
Boiling Springs		.7200	...	...	.2900	1.0100	Fallston	.0500	Rippy	.0500
Casar		.7200	...	.0500	.0500	.8200		Other special districts:		
Earl		.7200	...	.0700	.1700	.9600				
Fallston		.7200	...	.0500	.0500	.8200	Cleveland County Water	.0200	***Shelby MSD	.2200
Grover		.7200	...	...	.3800	1.1000	***Kings Mtn MSD	.2362		
Kings Mountain:										
In Cleveland		.7200	...	***	.4000	1.1200				
In Gaston		.8350	...	...	.4000	1.2350				
Kingstown		.7200	...	.0500	.3500	1.1200				
Lattimore		.7200	...	.0500	.1800	.9500				
Lawndale		.7200	...	...	.2300	.9500				
Mooresboro		.7200	...	.0500	...	.7700				
Patterson Springs		.7200	...	.0700	...	.7900				
Polkville		.7200	...	.0500	.0500	.8200				
Shelby		.7200	...	***	.4350	1.1550				
Waco		.7200	...	.0500	.1500	.9200				
Columbus	2005	.8150	...	...	...	.8150		Fourteen fire districts:		
Boardman		.8150	...	.0200	.0500	.8850	Acme Delco	.1200	Nakina	.0800
Bolton		.8150	...	.1200	.6000	1.5350	Bolton	.1000	Old Dock	.0800
Brunswick		.8150	...	.0900	.4500	1.3550	Brunswick	.0700	Roseland	.0600
Cerro Gordo		.8150	...	.1200	.2000	1.1350	Buckhead	.0600	St. James	.0600
Chadbourn		.8150	...	.0200	.6200	1.4550	Cerro Gordo	.1000	Welches Creek	.0800
Fair Bluff		.8150	...	.0200	.6000	1.4350	Hallsboro	.0600	Williams Township	.0600
Lake Waccamaw		.8150	...	.0200	.2000	1.0350	Klondyke	.0700	Yam City	.1000
Sandyfield		.8150	...	.0200	.3500	1.1850		Other special districts:		
Tabor City		.8150	...	.0200	.6800	1.5150				
Whiteville		.8150	...	.0200***	.4400	1.2550	Cole's service	.1000	Water district II	.0700
							Riegelwood sanitary	.3000	Water district III	.1100
							Columbus rescue	.0200	***Whiteville MSD	.1200
							Whiteville rescue	.0200		

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							[S]	[S]	[S]	
Dare (continued)										
							Sanitation District	.0675	Other special districts:	
							Hatteras Island Rescue	.0060	Salvo Community	
							Hatteras Community	.0525	Stumpy Point Community	.0200
							Rodanthe Community	.0175	Wanchese Community	.0200
									Waves Community	.0175
Davidson	2007	.5400	...	...	...	.5400			Twenty six fire districts:	
Denton		.5400	...	...	.5500	1.0900	Arcadia-Reedy Creek	.0800	Midway	.1000
High Point:							Badin Lake	.0600	North Lexington	.1100
In Davidson		.5400	...	...	.6330	1.1730	Central	.0700	Pilot	.0850
In Forsyth		.6740	...	...	.6330	1.3070	Churchland	.0700	Reeds	.0400
In Guilford		.7374	...	...	.6330	1.3704	Clemmons	.0500	Silver Valley	.1100
In Randolph		.5860	...	...	.6330	1.2190	Fairgrove	.0600	South Davidson	.1000
Lexington		.5400	.1200	***	.5600	1.2200	Giffith	.0800	South Emmons	.0500
Midway		.5400	...	.1000	.0500	.6900	Gumtree	.0850	Southmont	.0850
Thomasville:							Hasty	.0700	South Lexington	.1100
In Davidson		.5400	.1800	...	.5600	1.2800	Healing Springs	.0900	Tyro	.0800
In Randolph		.5860	...	...	.5600	1.1460	Holly Grove	.0800	Wallburg	.0800
Wallburg		.5400	...	.0800	.0500	.6700	Horneytown	.1000	Welcome	.1000
							Linwood	.0750	West Lexington	.1000
									Other special districts:	
							Lexington School Unit	.1200	***Uptown Lexington Inc	.2000
							Thomasville School	.1800		
Davie	2009*	.6200	...	...	...	.6200			No special districts	
Bermuda Run		.62001500	.7700				
Cooleemee		.62003800	1.0000				
Mocksville		.62002900	.9100				

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							[S]	[S]	[S]	
Duplin	2009	.69006900	Eight fire districts:			
Beulaville		.69004400	1.1300	Albertson	.0750	Northeast	.0400
Calypso		.6900	...	...	.4700	1.1600	East Duplin	.0458	Oak Wolf	.0500
Faison:							Franklin	.0800	Sarecta	.0550
In Duplin		.6900	...	...	.5300	1.2200	Glisson	.0650	Stacy Britt	.0630
In Sampson		.8450	...	...	.5300	1.3750				
Greenevers		.6900	...	...	.3000	.9900				
Harrells:										
In Duplin		.6900	...	.0800	.1300	.9000				
In Sampson		.8450	...	.0800	.1300	1.0550				
Kenansville		.6900	...	...	.3900	1.0800				
Magnolia		.6900	...	...	.6500	1.3400				
Mount Olive:										
In Duplin		.6900	...	...	.5900	1.2800				
In Wayne		.7640	...	...	.5900	1.3540				
Rose Hill		.6900	...	...	.6400	1.3300				
Teachey		.6900	...	...	.4500	1.1400				
Wallace:										
In Duplin		.6900	...	...	.5600	1.2500				
In Pender		.6500	...	.0700	.5600	1.2800				
Warsaw		.6900	...	...	.5500	1.2400				
Durham	2008	.7459	...	...	...	.7459	Seven fire districts:			
Chapel Hill:							Bahama	.0600	New Hope	.0695
In Durham		.7459	...	...	.4940	1.2399	Bethesda	.0900	Parkwood	.1100
In Orange		.8580	.1884	***	.4940	1.5404	Eno	.0599	Redwood	.1075
Durham:							Lebanon	.1000		
In Durham		.7459	...	***	.5519	1.2978				
In Orange		.8580	...	...	.5519	1.4099				
In Wake		.5340	...	...	.5519	1.0859				
Morrisville:										
In Durham		.7459	...	...	.3665	1.1124	RTP Special	.0360	***Chapel Hill MSD	.0710
In Wake		.5340	...	...	.3665	.9005	Mangum Safety	.2500	***Raleigh Downtown	.0786
Raleigh:							***Durham Civic Center	.0015	*** Hillsborough St	.1000
In Durham		.74593735	1.1194				
In Wake		.5340	...	***	.3735	.9075				

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		[\$]	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]	
Edgecombe	2009	.86008600		Fourteen fire districts:		
Conetoe		.86000700	.1600	1.0900	Conetoe	.0700	Pintain	.0500
Leggett		.8600	...	...	.2500	1.1100	Davenport	.0750	Princeville	.1050
Macclesfield		.8600	...	...	.3700	1.2300	Harrison	.0900	Sharp Point	.0600
Pinetops		.8600	...	...	.3300	1.1900	Heartsease	.0600	South Edgecombe	.0300
Princeville		.8600	...	...	.6200	1.4800	Leggett	.0400	Speed	.0800
Rocky Mount:							Lewis	.0600	Tri-County	.0800
In Edgecombe		.8600	...	...	.5500	1.4100	Macclesfield	.0500	W Edgecombe	.0500
In Nash		.6700	...	***	.5500	1.2200				
Sharpsburg:								Other special districts:		
In Edgecombe		.8600	...	.0800	.5000	1.4400	***Rocky Mount MSD	.2000		
In Nash		.6700	...	...	.5000	1.1700				
In Wilson		.7300	...	.0800	.5000	1.3100				
Speed		.8600	...	...	.3000	1.1600				
Tarboro		.8600	...	...	.3600	1.2200				
Whitakers:										
In Edgecombe		.8600	...	...	.6900	1.5500				
In Nash		.6700	...	...	.6900	1.3600				
Forsyth	2009*	.6740	...	...	...	.6740		Twenty three fire districts:		
Bethania		.6740	...	.0800	.3500	1.1040	Beeson's Cross Roads	.0700	Old Richmond	.0800
Clemmons		.6740	...	.0600	.1150	.8490	Belews Creek	.0700	Piney Grove	.0900
High Point:							City View	.0800	Salem Chapel	.0900
In Forsyth		.6740	...	...	.6330	1.3070	Clemmons	.0500	South Fork	.0500
In Davidson		.5400	...	...	.6330	1.1730	Forest Hill	.0650	Suburban	.0650
In Guilford		.7374	...	...	.6330	1.3704	Griffith	.0550	Talley's Crossing	.0800
In Randolph		.5860	...	...	.6330	1.2190	Gumtree	.0850	Triangle	.0800
Kernersville:							Horneytown	.1000	Union Cross	.0800
In Forsyth		.6740	...	...	.4975	1.1715	King	.0550	Vienna	.0750
In Guilford		.7374	...	...	.4975	1.2349	Lewisville	.0600	Walkertown	.0800
King:							Mineral Springs	.0650	West Bend	.0500
In Forsyth		.6740	...	...	.3799	1.0539	Mount Tabor	.0750		
In Stokes		.6000	...	...	.3799	.9799				
Lewisville		.6740	...	.0600***	.1770	.8510			Other special districts:	
Rural Hall		.6740	...	...	.2400	.9140	Mineral Springs service	.0650	***Runnymead Service	.0500
Tobaccoville										
In Forsyth		.6740	...	.0800	.0500	.8040				
In Stokes		.60000650	.0500	.7150				
Walkertown		.67402000	.8740				
Winston-Salem		.67404750	1.1490				

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							[S]	[S]	[S]	
Franklin	2004*	.87258725	Thirteen fire districts:			
Bunn		.87250425	.6900	1.6050	Brassfield	.0225	Hopkins	.0240
Centerville		.8725	...	.0575	...	.9300	Bunn	.0475	Justice	.0600
Franklinton		.8725	...	.0600	.6800	1.6125	Centerville	.0600	Mitchiners	.0500
Louisburg		.8725	...	...	.5350	1.4075	Central Franklin	.0625	Pilot	.0700
Wake Forest							Epsom	.0600	White Level	.0650
In Franklin		.8725	...	...	.5100	1.3825	Franklinton	.0600	Youngsville	.0650
In Wake		.5340	...	***	.5100	1.0440	Gold Sand	.0700		
Youngsville		.8725	...	.0650	.5900	1.5275				
							Other special districts:			
							***Wake Forest MSD	.1400		
Gaston	2007*	.8350	...	...	...	.8350	Twenty fire districts:			
Belmont		.8350	...	...	.4750	1.3100	Ag Center	.0600	Lowell	.0500
Bessemer City		.8350	...	...	.4300	1.2650	Alexis	.0850	Lucia-Riverbend	.1050
Cherryville		.8350	...	...	.4600	1.2950	Chapel Grove	.0750	New Hope	.0700
Cramerton		.8350	...	...	.4750	1.3100	Chestnut Ridge	.0730	Ranlo	.0790
Dallas		.8350	...	...	.3800	1.2150	Community	.0930	South Gastonia	.0750
Gastonia		.8350	...	***	.5300	1.3650	Crouse	.0740	South Point	.0540
High Shoals		.8350	...	.0970	.4000	1.3320	East Gaston	.0740	Spencer Mountain Rd	.0700
Kings Mountain:							High Shoals	.0970	Tryonota	.0730
In Gaston		.8350	...	...	.4000	1.2350	Hughs Pond	.1010	Union Road	.0670
In Cleveland		.7200	...	***	.4000	1.1200	Long Shoals	.0970	Waco	.0730
Lowell		.8350	...	...	.4000	1.2350				
McAdenville		.8350	...	...	.3000	1.1350				
Mount Holly		.8350	...	...	.5300	1.3650	Other special districts:			
Ranlo		.8350	...	.0790	.3700	1.2840	***Gastonia MSD	.2000	***Kings Mountain MSD	.2362
Spencer Mountain		.8350	...	...	.1300	.9650				
Stanley		.8350	...	...	.5400	1.3750				
Gates	2009	.6400	...	...	...	.6400	No special districts			
Gatesville		.6400	...	...	.1300	.7700				
Graham	2010*	.40504050	No special districts			
Lake Santeetlah		.40500625	.4675				
Robbinsville		.40504775	.8825				

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		[\$]	[\$]	[\$]	[\$]	[\$]		[\$]	[\$]
Granville	2010	.79507950			
Butner		.79502500	1.0450	***Oxford MSD	Other special districts:	
Creedmoor		.7950	...	...	.7000	1.4950		.2000	
Oxford		.7950	...	***	.6000	1.3950			
Stem		.7950	...	...	.4500	1.2450			
Stovall		.7950	...	...	.4900	1.2850			
Greene	2005	.7560	...	...	...	.7560			
Hookerton		.7560	...	...	.5000	1.2560	Arba	Eleven fire districts:	
Snow Hill		.7560	...	...	.3500	1.1060	Bullhead	.0510 Little Creek	.0950
Walstonburg		.7560	...	...	.5000	1.2560	Castoria	.0850 Maury	.0770
							Contentnea	.0735 Rainbow	.0420
							Fort Run	.0520 Shine	.0780
							Jason	.1200 Speight's Bridge	.0620
								.0800	
Guilford	2004	.7374	...	...	...	.7374			
Archdale:								Twenty four fire districts:	
In Guilford		.7374	...	.1000	.2900	1.1274	Alamance	.1000 McLeansville	.0700
In Randolph		.5860	.0900	.1000	.2900	1.0660	Climax	.1000 Mount Hope	.0800
Burlington							Colfax	.1000 Northeast	.0900
In Guilford		.7374	...	...	.5900	1.3274	Deep River	.0770 Oak Ridge	.0825
In Alamance		.5200	...	***	.5900	1.1100	District # 14	.1000 Pinecroft-Sedgefield	.0860
Gibsonville:							District # 28	.0950 Pleasant Garden	.1000
In Guilford		.7374	...	...	.5150	1.2524	Gibsonville	.1000 PTIA Fire Service	.0000
In Alamance		.5200	...	...	.5150	1.0350	Guil-Rand	.1000 Rankin	.1000
Greensboro		.7374	...	***	.6325	1.3699	Guilford College	.0800 Southeast	.1000
High Point:							Guilford District # 1	.1000 Stokesdale	.0773
In Guilford		.7374	...	...	.6330	1.3704	Julian	.0910 Summerfield	.0875
In Davidson		.5400	...	...	.6330	1.1730	Kimesville	.1000 Whitsett	.0632
In Forsyth		.6740	...	...	.6330	1.3070		Other special districts:	
In Randolph		.5860	...	...	.6330	1.2190	Sedgefield sanitary	.0300 ***Greensboro MSD	.0900
Jamestown		.7374	...	...	.3900	1.1274	***Burlington MSD	.1600	
Kernersville:								Greensboro Historical districts:	
In Guilford		.7374	...	...	.4975	1.2349		***Charles B. Aycock	.0500 ***College Hill
In Forsyth		.6740	...	...	.4975	1.1715			.0500
Oak Ridge		.7374	...	.0825	.0863	.9062			
Pleasant Garden		.7374	...	.1000	.0250	.8624			
Sedalia		.7374	...	.0700	.2750	1.0824			
Stokesdale		.737407738147			
Summerfield		.73740875	.0350	.8599			
Whitsett		.73740632	.0500	.8506			

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								[S]	[S]	
Halifax	2007	.68006800	Eleven fire districts:			
Enfield		.68007500	1.4300	Arcola	.0700	Littleton	.0460
Halifax		.6800	.1700	...	.5500	1.4000	Darlington	.0900	Rheasville	.0700
Hobgood		.6800	...	.0719	.5700	1.3219	Davie	.0900	Scotland Neck	.0649
Littleton		.6800	...	...	.6500	1.3300	Enfield	.0700	Tillery	.0500
Roanoke Rapids		.6800	...	...	.6240	1.3040	Halifax	.0726	Weldon	.0845
Scotland Neck		.6800	...	.1200	.6400	1.4400	Hobgood	.0719		
Weldon		.6800	.1700	...	.6800	1.5300				
								Other special districts:		
							Our Community Hosp	.1200	Weldon Sch	.1700
Harnett	2009*	.7250	...	...	...	.7250	Sixteen fire districts:			
Angier:							Anderson Creek	.1100	Cypress Creek	.0850
In Harnett		.7250	...	.0700	.5300	1.3250	Averasboro	.0700	Erwin	.0700
In Wake		.5430	...	.0700	.5300	1.1430	Benhaven	.0700	Flatbranch	.1200
Benson							Black River	.0700	Flatwoods	.1500
In Harnett		.7250	...	...	.5300	1.2550	Boone Trail	.0700	Grove	.0800
In Johnston		.7800	...	...	.5300	1.3100	Buies Creek	.1000	Northwest Harnett	.0800
Broadway:							Bunnlevel	.1100	Sprout Springs	.1000
In Harnett		.7250	...	...	.4400	1.1650	Crains Creek	.1000	Summerville	.0700
In Lee		.7500	...	...	.4400	1.1900				
Coats		.7250	...	.0800	.5500	1.3550				
Dunn		.7250	.0200	.0700***	.4800	1.2250	Averasboro Sch	.0200	***Dunn MSD	.1200
Erwin		.7250	...	.0700	.4800	1.2750				
Lillington		.7250	...	...	.5200	1.2450				
Haywood	2006*	.5140	...	...	...	.5140	Thirteen fire districts:			
Canton		.5140	...	...	.5800	1.0940	Center Pigeon	.0750	Lake Logan/Cecil	.1000
Clyde		.5140	...	.0900	.4300	1.0340	Clyde	.0900	Maggie Valley	.0500
Maggie Valley		.5140	...	.0500	.4200	.9840	Crabtree-Ironduff	.0650	North Canton	.0600
Waynesville		.5140	...	***	.4000	.9140	Cruso	.0950	Saunook	.0400
							Fines Creek	.0900	Waynesville Rural	.0600
							Jonathan Creek	.0700	West Canton	.1000
							Junaluska	.0700		

(continued on next page)

PROPERTY TAX RATES AND LATEST YEAR OF REVALUATION FOR NORTH CAROLINA COUNTIES AND MUNICIPALITIES FY 2010-11
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COUNTIES AND MUNICIPALITIES	YEAR OF LATEST REVALUATION	COUNTY-WIDE [S]	SPECIAL SCHOOL DISTRICTS [S]	OTHER DISTRICTS [S]	CITY OR TOWN [S]	TOTAL OF ALL JURISDICTIONS [S]	SPECIAL DISTRICTS LEVIED BY COUNTY OR MUNICIPALITY			
								[S]	[S]	
Haywood (continued)							Other special districts:			
							Junaluska sanitary	.0600	***Waynesville MSD	.2300
							Nine road maintenance districts:			
							Forest Park	.0800	Tuscola	.1100
							Fox Run	.1500	Upper Chestnut Grove	.1600
							Maggie Valley	.1400	Wildcat Mountain	.1500
							Norman	.1500	Walker In The Hills	.0950
							Oak Park	.0800		
Henderson							Thirteen fire districts:			
	2007*	.4620	...	...	...	.4620	Bat Cave	.0900	Green River	.0600
		.4620	...	...	.0750	.5370	Blue Ridge	.0850	Mills River	.0650
		.4620	...	...	.3200	.7820	Dana	.1000	Mountain Home	.0950
		.4620	...	***	.3800	.8420	Edneyville	.0850	Raven Rock	.0750
		.4620	...	...	.3100	.7720	Etowah-Horse Shoe	.0850	Valley Hill	.0700
		.4620	...	...	.0750	.5370	Fletcher	.0950	Valley Hill # 2	.0700
		.4620	...	...	.5150	.9770	Gerton	.1150		
		.5200	.0300	...	.5050	1.0550	Other special districts:			
							***Hendersonville MSD	.2500	***Seventh Avenue MSD	.0800
Hertford							Three fire districts:			
	2003	.9100	...	...	...	.9100	Hoskie	.0400		
		.9100	...	...	.7900	1.7000	Union	.0400		
		.9100	...	...	.4500	1.3600	Woodland	.0500		
		.9100	...	...	.3000	1.2100				
		.9100	...	...	.3500	1.2600				
		.9100	...	...	.6800	1.5900				
		.9100	...	...	.6500	1.5600				
Hoke							Ten fire districts:			
	2006	.7000	...	...	...	.7000	Antioch	.1000	Pine Hill	.0900
		.7000	...	...	.4800	1.1800	Crestline	.1000	Puppy Creek	.0600
		.7000	...	...	.6200	1.3200	Hillcrest	.0900	Rockfish	.0900
		.7900	...	...	.6200	1.4100	North Raeford	.1000	Stonewall	.0800
							North Scotland	.0500	West Hoke	.0900
Hyde							Two special districts:			
	2009*	.52005200	Ocracoke Mosq. Control	.0150	Swan Qtr. Water Shed	.0600

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							[S]	[S]	[S]	
Iredell	2007*	.44504450	Five fire districts:			
Davidson:							B & F	.0500	Mt Mourne	.0325
In Iredell		.4450	...	...	.3650	.8100	All County	.0600	Shepherd	.0600
In Mecklenburg		.8387	...	...	.3650	1.2037	East Alexander	.0500		
Harmony		.4450	...	.0500	.1000	.5950				
Love Valley		.4450	...	.0500	.2500	.7450				
Mooreville		.4450	.1350	***	.5800	1.1600	Mooreville School	.1350	***Mooreville MSD	.1600
Statesville		.4450	...	***	.3800	.8250	***Davidson MSD	.0000	***Statesville MSD	.1000
Troutman		.4450	...	...	.4300	.8750				
Jackson	2008*	.2800	...	...	...	.2800	No special districts			
Dillsboro		.2800	...	.0300	.2100	.5200				
Forest Hills		.2800	...	...	.1000	.3800				
Highlands:										
In Jackson		.2800	...	...	.1350	.4150				
In Macon		.2790	...	.0090	.1350	.4230				
Sylva		.2800	...	...	.3000	.5800				
Webster		.2800	...	...	.0700	.3500				
Johnston	2003	.7800	...	...	...	.7800	Twenty seven fire districts:			
Archer Lodge		.7800	...	...	.1500	.9300	Archer Lodge	.0700	Newton Grove	.0650
Benson							Banner	.0900	Oakland	.0700
In Johnston		.7800	...	...	.5300	1.3100	Bentonville	.0800	O'Neals	.0800
In Harnett		.7250	...	...	.5300	1.2550	Beulah	.0800	Pine Level	.0700
Clayton							Blackmon's Crossroads	.0800	Selma	.0900
In Johnston		.7800	...	...	.5400	1.3200	Boon Hill	.0500	Shoeheel	.1000
In Wake		.5430	...	...	.5400	1.0830	Brogden	.0700	Smithfield	.1000
Four Oaks		.7800	...	...	.3300	1.1100	Claytex	.0975	Strickland Crossroads	.0500
Kenly:							Corinth Holder	.1000	Thanksgiving	.0800
In Johnston		.7800	...	...	.6100	1.3900	Elevation	.1000	West Johnston	.0700
In Wilson		.7300	...	...	.6100	1.3400	McLemore	.0650	Wilson's Mills	.0600
Micro		.7800	...	...	.5500	1.3300	Meadow	.0600	Wynn	.0700
Pine Level		.7800	...	...	.4400	1.2200	Micro	.1000	50/210	.0400
Princeton		.7800	...	...	.5600	1.3400	Nahunta	.0600		
Selma		.7800	...	...	.5300	1.3100				
Smithfield		.7800	...	***	.5700	1.3500				
Wilson's Mills		.7800	...	.0600	.3100	1.1500	Moccasin Crk Drainage	.0150	Research & Training	.0800
Zebulon							Whitley Heights sanitary	.1300	***Smithfield MSD	.1900
In Johnston		.78005000	1.2800				
In Wake		.53405000	1.0340				

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									[S]
Jones	2006	.70007000		One fire district:	
Maysville		.70005400	1.2400	Rock Creek	.0017	
Pollocksville		.7000	...	...	.3300	1.0300			
Trenton		.7000	...	...	.3700	1.0700			
Lee	2007*	.7500	...	...	...	.7500		Seven fire districts:	
Broadway:							Cape Fear	.0860	Northview .0810
In Lee		.7500	...	...	.4400	1.1900	Carolina Trace	.0670	Northwest Pocket .1180
In Harnett		.7250	...	...	.4400	1.1650	Deep River	.1040	Tramway .0800
Sanford		.7500	...	***	.5400	1.2900	Lemon Springs	.0840	
								Other special districts:	
							***Sanford MSD	.1300	
Lenoir	2009	.8000	...	...	...	.8000		Twelve fire districts:	
Grifton:							Cherry Tree	.0800	North Lenoir .0450
In Lenoir		.8000	...	...	.6000	1.4000	Deep Run	.0400	Sand Hill .0700
In Pitt		.6650	...	.0440	.6000	1.3090	Global Transpark	.0450	Sandy Bottom .0800
Kinston		.8000	...	***	.6600	1.4600	Grifton	.0300	Seven Springs .0400
La Grange		.8000	...	...	.4500	1.2500	Hugo	.0400	Southwood .0600
Pink Hill		.8000	...	...	.5500	1.3500	Moseley Hall	.0400	Wyse Fork .0650
								Other special districts:	
							***Kinston MSD	.2700	
Lincoln	2008*	.5700	...	...	...	.5700		Eleven fire districts:	
Lincolnton		.5700	...	...	.5600	1.1300	Alexis	.1100	North Brook .0600
							Boger City	.0750	North 321 .0350
							Crouse	.0600	Pumpkin Center .0951
							Denver	.09675	South Fork .0910
							East Lincoln	.0606	Union .0750
							Howards Creek	.1000	
								Other special districts:	
							E Lincoln Water & Sewer	.0175	

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								[S]	[S]	
Macon	2007*	.27902790	Eleven fire districts:			
Franklin		.27900300	.2500	.5590	Burningtown	.0590	Mountain Valley	.0760
Highlands:							Clarks Chapel	.0420	Nantahala	.0420
In Macon		.2790	...	.0090	.1350	.4230	Cullasaja	.0420	Otto	.0420
In Jackson		.2800	...	...	.1350	.4150	Cowee	.0820	Scaly Mountain	.0350
							Franklin	.0300	West Macon	.0560
							Highlands	.0090		
Madison	2004	.5600	...	...	...	.5600	Nine fire districts:			
Hot Springs		.5600	...	...	.5100	1.0700	Big Pine	.0600	Leicester	.1000
Mars Hill		.5600	...	...	.4700	1.0300	Country	.0700	Mars Hill	.0500
Marshall		.5600	...	...	.4900	1.0500	Ebb's Chapel	.0900	Smokey Mountain	.0800
							Jupiter	.1000	Spring Creek	.0200
							Laurel	.0200	Walnut	.1000
Martin	2009	.6700	...	...	...	.6700	Seven fire districts:			
Bear Grass		.6700	...	.0450	.2700	.9850	Bear Grass	.0450	Jamesville	.0500
Everetts		.6700	...	...	.4000	1.0700	Goose Nest	.0500	Roanoke	.0400
Hamilton		.6700	...	...	.5700	1.2400	Griffins	.0400	Williamston	.0500
Hassell		.6700	...	...	.2500	.9200	Hamilton	.0500		
Jamesville		.6700	...	...	.7000	1.3700				
Oak City		.6700	...	...	.4000	1.0700				
Parmele		.6700	...	...	.6800	1.3500				
Robersonville		.6700	...	...	.5800	1.2500				
Williamston		.6700	...	...	.7400	1.4100				
McDowell	2003	.5500	...	...	...	.5500	Fourteen fire districts:			
Marion		.5500	...	...	.5100	1.0600	Ashford/North Cove	.0400	Marion Area	.0600
Old Fort		.5500	...	...	.3700	.9200	County-wide	.0019	Nebo	.0600
							Crooked Creek	.0400	Old Fort	.0400
							Dysartville	.0400	Parkway/Woodland	.0800
							Glenwood	.0500	Pleasant Gardens	.0400
							Hankins/North Fork	.0400	Sugar Hill	.0500
							Long Town	.1500	Woodlawn/Sevier	.0400
							Other special districts:			
							Rescue squad	.0070		

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							[S]		[S]		
Mecklenburg	2003	.83878387	One county special district:				
Charlotte		.8387	...	***	.4586	1.2973	Police Service District	.2446			
Cornelius		.8387	...	...	.2750	1.1137				
Davidson:		Other special districts:									
In Mecklenburg		.8387	...	...	.3650	1.2037	***Charlotte MSD #1	.0174	***Charlotte MSD #4	.6680
In Iredell		.4450	...	...	.3650	.8100	***Charlotte MSD #2	.0413	***Charlotte MSD #5	.0300
Huntersville		.8387	...	...	.2900	1.1287	***Charlotte MSD #3	.0560	***Davidson MSD	.0000
Matthews		.8387	...	...	.3325	1.1712				
Mint Hill											
In Mecklenburg		.8387	...	...	.2750	1.1137				
In Union		.6650	...	...	.2750	.9400				
Pineville		.8387	...	...	.3200	1.1587				
Stallings											
In Mecklenburg		.8387	...	...	.2150	1.0537				
In Union		.6650	...	.0428	.2150	.9228				
Weddington											
In Mecklenburg		.8387	...	...	.0300	.8687				
In Union	.6650	...	.0428	.0300	.7378					
Mitchell	2009*	.4000	...	...	...	.4000	Seven fire districts:			
Bakersville		.4000	...	...	.3500	.7500	Bakersville	.0600	Ledger	.0600
Spruce Pine		.4000	...	...	.3700	.7700	Bradshaw	.0600	Parkway	.0600
							Buladean	.0600	Spruce Pine	.0600	
							Fork Mountain	.0600			
		Other special districts:									
							Bakersville service	.0300	Fork Mountain service	.0300	
							Bradshaw service	.0300	Ledger service	.0300	
							Buladean service	.0300	Spruce Pine service	.0300	
Montgomery		2004	.67006700	Two fire districts:			
Biscoe	.6700		...	...	.5800	1.2500	Badin Lake	.0600	Lake Tillery	.0500
Candor	.6700	6200	1.2900					
Mount Gilead	.6700	6300	1.3000					
Star	.6700	6400	1.3100					
Troy	.6700	4800	1.1500					

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								[S]	[S]	
Moore	2007*	.46504650	Sixteen fire districts:			
Aberdeen		.46500200	.4300	.9150	Aberdeen	.0900	Pinebluff	.0840
Cameron		.4650	...	.0200	.5750	1.0600	Carthage	.0620	Pinehurst	.0840
Carthage		.4650	...	.0200	.4000	.8850	Crains Creek	.1080	Robbins	.0630
Foxfire Village		.4650	...	.0200	.3200	.8050	Crestline	.0830	Seven Lakes	.0380
Pinebluff		.4650	...	.0200	.4540	.9390	Cypress Pointe	.0800	Southern Pines	.0890
Pinehurst		.4650	...	.0200***	.2800	.7450	Eagle Springs	.0710	West End	.0600
Robbins		.4650	...	.0200	.6600	1.1450	Eastwood	.0690	West Moore	.0570
Southern Pines		.4650	...	.0200	.3500	.8350	High Falls	.0490	Whispering Pines	.0550
Taylortown		.4650	...	.0200	.4000	.8850				
Vass		.4650	...	.0200	.4800	.9650				
Whispering Pines		.4650	...	.0200	.3700	.8550	Advanced Life Support	.0200	***Pinehurst MSD	.0500
Nash	2009	.6700	...	...	...	.6700	Eighteen fire districts:			
Bailey		.6700	...	.0500	.6100	1.3300	Castalia	.0735	Red Oak	.0700
Castalia		.6700	...	.0700	.2000	.9400	Coopers	.0850	Salem	.0800
Dortches		.6700	...	...	...	.6700	Davenport	.0750	Silver Lake	.0900
Middlesex		.6700	...	...	.5500	1.2200	Ferrells	.1200	Sims	.0464
Momeyer		.6700	...	.0600	.0900	.8200	Green Hornet	.0500	Stanhope	.0750
Nashville		.6700	...	...	.5600	1.2300	Harrison	.0900	Stony Creek	.0700
Red Oak		.6700	...	.0700	...	.7400	Middlesex	.0500	Tar River/Spring Hope	.0800
Rocky Mount:							Momeyer	.0600	Tri County	.0800
In Nash		.6700	...	***	.5500	1.2200	N S Gulley	.1075	West Mount	.0750
In Edgecombe		.8600	...	...	.5500	1.4100				
Sharpsburg:										
In Nash		.6700	...	...	.5000	1.1700	***Rocky Mount MSD	.2000		
In Edgecombe		.8600	...	.0800	.5000	1.4400				
In Wilson		.7300	...	.0800	.5000	1.3100				
Spring Hope		.6700	...	...	.5700	1.2400				
Whitakers:										
In Nash		.6700	...	...	.6900	1.3600				
In Edgecombe		.8600	...	...	.6900	1.5500				
New Hanover	2007*	.4655	...	...	...	.4655	One fire district:			
Carolina Beach		.4655	...	...	.1750	.6405	Fire Service District	.0600		
Kure Beach		.46551350	.6005				
Wilmington		.46553700	.8355				
Wrightsville Beach		.46550990	.5645				

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							[S]	[S]	[S]	
Northampton	2007*	.87008700	Nine fire districts:			
Conway		.87004400	1.3100	Garysburg	.0522	Roanoke Wildwood A	.0273
Garysburg		.8700	...	.0522	.6000	1.5222	Gaston	.0517	Rich Square	.0528
Gaston		.8700	...	...	.5000	1.3700	Jackson	.0435	Seaboard	.0530
Jackson		.8700	...	.0435	.5500	1.4635	Lasker	.0572	Woodland	.0539
Lasker		.8700	...	.0572	.2500	1.1772	Roanoke Wildwood	.0256		
Rich Square		.8700	...	.0528	.6500	1.5728				
Seaboard		.8700	...	.0530	.5000	1.4230				
Severn		.8700	...	...	.3900	1.2600				
Woodland		.8700	...	.0539	.6350	1.5589				
Onslow	2010*	.5850	...	...	...	.5850	No special districts			
Holly Ridge		.5850	...	...	.4150	1.0000				
Jacksonville		.5850	...	...	.5380	1.1230				
North Topsail Beach		.5850	...	...	.2355	.8205				
Richlands		.5850	...	...	.3700	.9550				
Surf City:										
In Onslow		.5850	...	...	.3100	.8950				
In Pender		.6500	...	.0700	.3100	1.0300				
Swansboro		.5850	...	...	.3930	.9780				
Orange	2009*	.8580	...	...	...	.8580	Twelve fire districts:			
Carrboro		.8580	.1884	...	.5894	1.6358	Cedar Grove	.0736	New Hope	.0695
Chapel Hill:							Chapel Hill	.0750	Orange Rural	.0636
In Orange		.8580	.1884	***	.4940	1.5404	Damascus	.0500	Orange Grove	.0358
In Durham		.7459	...	...	.4940	1.2399	Efland	.0466	South Orange	.0785
Durham:							Eno	.0599	South Triangle	.0500
In Orange		.8580	...	...	.5519	1.4099	Little River	.0406	White Cross	.0600
In Durham		.7459	...	***	.5519	1.2978				
In Wake		.5430	...	...	.5519	1.0949				
Hillsborough		.8580	...	...	.6200	1.4780	Chapel Hill School	.1884	***Durham Civic Center	.0015
Mebane:							***Chapel Hill MSD	.0710		
In Orange		.85804700	1.3280				
In Alamance		.52004700	.9900				

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							[S]	[S]	[S]	
Pamlico	2004	.65256525	Eight fire districts:			
Alliance		.65256525	Arapahoe	.0350	Reelsboro	.0500
Arapahoe		.6525	...	.0350	...	.6875	Florence/Whartonsville	.0700	Southeast	.0240
Bayboro		.6525	...	.0350	.2250	.9125	Grantsboro/Silverhill	.0500	Triangle	.0350
Grantsboro		.6525	...	.0500	.0500	.7525	Olympia	.0700	Vandemere	.0300
Mesic		.6525	...	...	.2300	.8825				
Minnesott Beach		.6525	...	.0350	.1800	.8675				
Oriental		.6525	...	...	.2000	.8525				
Stonewall		.6525	...	...	.1500	.8025				
Vandemere		.6525	...	...	.2000	.8525				
Pasquotank	2006	.6050	...	...	...	.6050	Other special districts:			
Elizabeth City:							***Elizabeth City MSD	.0600		
In Pasquotank		.6050	...	***	.4650	1.0700				
In Camden		.5900	...	...	.4650	1.0550				
Pender	2003	.6500	...	...	...	.6500	Twelve fire districts:			
Atkinson		.6500	...	.0700	.3700	1.0900	Atkinson	.0700	Pender Central	.0700
Burgaw		.6500	...	.0700	.5700	1.2900	Duplin-Pender	.0650	Penderlea	.0700
Saint Helena		.6500	...	.0700	.0500	.7700	Hampstead	.0500	Rocky Point	.0700
Surf City:							Long Creek-Grady	.0700	Scotts Hill	.0500
In Pender		.6500	...	.0700	.3100	1.0300	Maple Hill	.0700	Shiloh	.0800
In Onslow		.5850	...	...	.3100	.8950	Northeast Pender	.0700	Sloop Point	.0600
Topsail Beach		.6500	...	.0700	.2700	.9900				
Wallace:										
In Pender		.6500	...	.0700	.5600	1.2800	Pender EMS	.0700		
In Duplin		.6900	...	...	.5600	1.2500				
Watha		.6500	...	.1400	.0500	.8400				
Perquimans	2008	.4200	...	...	...	.4200	No special districts			
Hertford		.4200	...	...	.3500	.7700				
Winfall		.42004100	.8300				
Person	2005*	.70007000	No special districts			
Roxboro		.70006140	1.3140				

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							[S]	[S]	[S]	
Pitt	2008*	.66506650	Eighteen fire districts:			
Ayden		.66500440	.5000	1.2090	Ayden	.0300	Grifton	.0499
Bethel		.6650	...	.0440	.5900	1.2990	Bell Arthur	.0500	Grimesland	.0650
Falkland		.6650	...	.0440	.4500	1.1590	Black Jack	.0540	Pactolus	.0425
Farmville		.6650	...	.0440	.4900	1.1990	Clarks Neck	.0450	Red Oak	.0700
Fountain		.6650	...	.0440	.6000	1.3090	Eastern Pines	.0500	Sharp Point	.0600
Greenville		.6650	...	...	.5200	1.1850	Falkland	.0600	Simpson	.0500
Grifton:							Farmville	.0360	Staton House	.0200
In Pitt		.6650	...	.0440	.6000	1.3090	Fountain	.0500	Stokes	.0500
In Lenoir		.8000	...	...	.6000	1.4000	Gardnersville	.0750	Winterville	.0250
Grimesland		.6650	...	.0440	.4800	1.1890				
Simpson		.6650	...	.0440	.4500	1.1590				
Winterville		.6650	...	.0440	.4500	1.1590	County rescue	.0440		
Polk	2009	.5200	...	...	...	.5200	Six fire districts:			
Columbus		.5200	...	...	.3900	.9100	Columbus	.0400	Saluda	.0650
Saluda:							Cooper Gap	.0600	Tryon	.0480
In Polk		.5200	.0300	...	.5050	1.0550	Green Creek	.0410	White Oak	.0500
In Henderson		.4620	...	...	.5150	.9770				
Tryon		.5200	...	...	.5258	1.0458				
							Saluda School	.0300	Harmon Field	.0350
Randolph	2007*	.5860	...	...	...	.5860	Nineteen fire districts:			
Archdale:							Bennett	.0700	Northeast	.0900
In Randolph		.5860	.0900	.1000	.2900	1.0660	Climax	.1000	Randleman	.1000
In Guilford		.7374	...	.1000	.2900	1.1274	Coleridge	.0730	Seagrove	.1000
Asheboro		.5860	.1385	...	.5500	1.2745	Eastside	.0800	Sophia	.1000
Franklinville		.5860	...	...	.4200	1.0060	Fairgrove	.0650	Southwest	.1000
High Point:							Farmer	.0750	Staley	.1000
In Randolph		.5860	...	...	.6330	1.2190	Franklinville	.0850	Tabernacle	.1000
In Davidson		.5400	...	...	.6330	1.1730	Guil-Rand	.1000	Ulah	.0610
In Forsyth		.6740	...	...	.6330	1.3070	Julian	.1000	Westside	.0900
In Guilford		.7374	...	...	.6330	1.3704	Level Cross	.1000		
Liberty		.5860	...	...	.5125	1.0985				
Ramseur		.5860	...	...	.5800	1.1660				
Randleman		.5860	...	.1000	.5800	1.2660	Asheboro School	.1385	Trinity-Archdale School	.0900
Seagrove		.5860	...	...	.4000	.9860	Thomasville School	.1800		
Staley		.5860	...	...	.1250	.7110				

(continued on next page)

PROPERTY TAX RATES AND LATEST YEAR OF REVALUATION FOR NORTH CAROLINA COUNTIES AND MUNICIPALITIES FY 2010-11
 SOURCE: NORTH CAROLINA DEPARTMENT OF REVENUE POLICY ANALYSIS AND STATISTICS DIVISION

COUNTIES AND MUNICIPALITIES	YEAR OF LATEST REVALUATION	COUNTY-WIDE [S]	SPECIAL SCHOOL DISTRICTS [S]	OTHER DISTRICTS [S]	CITY OR TOWN [S]	TOTAL OF ALL JURISDICTIONS [S]	SPECIAL DISTRICTS LEVIED BY COUNTY OR MUNICIPALITY			
							[S]	[S]	[S]	
Randolph (continued)										
Thomasville:										
In Randolph		.5860	...	...	.5600	1.1460				
In Davidson		.5400	.1800	...	.5600	1.2800				
Trinity		.5860	...	...	.1000	.6860				
<hr/>										
Richmond	2008*	.8100	...	...	...	.8100		Four fire districts:		
Dobbins Heights		.8100	...	...	.5000	1.3100	Cardova	.1000	Northside	.0900
Ellerbe		.8100	...	...	.5000	1.3100	East Rockingham	.1000	Northside #2	.0900
Hamlet		.8100	...	...	.6600	1.4700				
Hoffman		.8100	...	...	.2000	1.0100				
Norman		.8100	...	...	...	.8100				
Rockingham		.8100	...	...	.4800	1.2900				
<hr/>										
Robeson	2010*	.7900	...	...	...	.7900		Twenty eight fire districts:		
Fairmont		.7900	...	...	.6900	1.4800	Ashpole	.1000	Que Hill	.1000
Lumber Bridge		.7900	...	...	.3000	1.0900	Big Marsh	.1000	Raft Swamp	.0700
Lumberton		.7900	...	...	.6300	1.4200	Britts	.1000	Raynham	.1500
Marietta		.7900	...	...	...	.7900	Deep Branch	.1500	Red Springs	.1500
Maxton:							East Howellsville	.1000	Rennert	.1500
In Robeson		.7900	...	***	.8000	1.5900	Evans Crossroads	.1000	Rowland	.1000
In Scotland		1.0200	...	...	.8000	1.8200	Jacobs Swamp	.1500	Saddletree	.1000
McDonald		.7900	...	...	.2000	.9900	Kingsdale	.1000	Scuffletown	.1000
Orrum		.7900	...	.1000	...	.8900	Lumber Bridge	.1000	Shannon	.1500
Parkton		.7900	...	...	.5000	1.2900	Northwoods	.1500	Smith	.1500
Pembroke		.7900	...	...	.6400	1.4300	Orrum	.1000	Southeast Maxton	.1500
Proctorville		.7900	...	.1000	.2000	1.0900	Phil/Burnt Swamp	.1000	Sterlings	.0700
Raynham		.7900	...	...	.2000	.9900	Piney Forest	.1000	Whitehouse	.1000
Red Springs							Prospect	.1000	Wishart	.0500
In Robeson		.7900	...	...	.6200	1.4100				
In Hoke		.7000	...	...	.6200	1.3200				
Rennert		.79001000	.8900	***Maxton MSD	.1000	***St Pauls MSD	.1000
Rowland		.79007600	1.5500				
St Pauls		.7900	...	***	.6000	1.3900				

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							[S]	[S]	[S]	
Rockingham	2003	.71507150	Twenty One fire districts:			
Eden		.7150	...	***	.6200	1.3350	Bethany	.1100	Shiloh	.1000
Madison		.7150	...	...	.7300	1.4450	Casville	.0350	Spray-Draper	.0500
Mayodan		.7150	...	...	.5800	1.2950	Draper	.0500	Spray-Draper Restricted	.0350
Reidsville		.7150	...	***	.7300	1.4450	Huntsville	.0550	Spray- (LKS)	.1000
Stoneville		.7150	...	...	.6700	1.3850	Jacobs Creek	.0875	Stokes/Rockingham	.0800
Wentworth		.7150	...	.0900	...	.8050	Leaksville	.1000	Stoneyview	.1050
							Madison/Mayodan	.1050	Summerfield	.0880
							Monroeton	.1000	Wentworth	.0900
							Northwest	.1150	Williamsburg	.1100
							Oregon Hill	.0500	Yanceyville	.0700
							Ruffin	.1000		
									Other special districts:	
							***Eden Draper Village	.1000	***Reidsville MSD	.2500
							***Eden Old Leaksville	.1000		
Rowan	2007*	.5950	...	...	...	.5950	Twenty three fire districts:			
China Grove		.5950	...	...	.4300	1.0250	Atwell	.0550	Mt Mitchell	.0526
Cleveland		.5950	...	.0600	.2100	.8650	Bostian Heights	.0600	Pooletown	.0500
East Spencer		.5950	...	...	.6300	1.2250	Cleveland	.0600	Richfield Misenheimer	.0700
Faith		.5950	...	...	.4100	1.0050	East Gold Hill	.0600	Rockwell	.0700
Granite Quarry		.5950	...	...	.3300	.9250	East Landis	.0420	Rowan Iredell	.0600
Kannapolis:							East Rowan	.0500	Scotch-Irish	.0400
In Rowan		.5950	...	...	.4900	1.0850	Ellis	.0500	South Rowan	.0480
In Cabarrus		.6300	...	...	.4900	1.1200	Enochville	.0600	South Salisbury	.0700
Landis		.5950	...	...	.4000	.9950	Franklin	.0500	Union	.0350
Rockwell		.5950	...	...	.2700	.8650	Liberty	.0500	West Rowan	.0550
Salisbury		.5950	...	***	.5900	1.1850	Locke	.0500	Woodleaf	.0400
Spencer		.59506000	1.1950	Miller Ferry	.0600		
									Other special districts:	
							Salisbury MSD	.1600		

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							[S]	[S]	[S]	
Rutherford	2007*	.53005300	Fifteen fire districts:			
Bostic		.53002500	.7800	Bills Creek	.0800	Green Hill	.0700
Chimney Rock		.5300	...	.0500***	.0750	.6050	Bostic	.0600	Hudlow	.0800
Ellenboro		.5300	...	.0600	.2200	.8100	Cherry Mountain	.0900	Rugherfordton	.0800
Forest City		.5300	...	...	.2900	.8200	Chimney Rock	.0500	Sandy Mush	.0500
Lake Lure		.5300	...	...	.2100	.7400	Cliffside	.0700	Shiloh/Danielstown/	
Ruth		.5300	...	...	.2600	.7900	County Contracted #15	.0300	Oakland	.0500
Rutherfordton		.5300	...	***	.5200	1.0500	County Contracted #16	.0200	Shingle Hollow	.1000
Spindale		.5300	...	...	.6000	1.1300	Ellenboro	.0600	Union Mills	.0500
								Other special districts:		
							Cliffside sanitary	.0800	***Rutherfordton MSD	.1300
							***Chimney Rock MSD	.0600		
Sampson	2003	.8450	...	...	...	.8450	Seventeen fire districts:			
Autryville		.8450	...	...	.5000	1.3450	Autryville	.0950	Honeycutt/Salemburg	.1000
Clinton		.8450	.1600	***	.4100	1.4150	Clement	.0900	Newton Grove	.0650
Faison:							Clinton	.0925	Piney Grove	.0750
In Sampson		.8450	...	...	.5300	1.3750	Coharie	.0850	Plain View	.0900
In Duplin		.6900	...	...	.5300	1.2200	Franklin	.0800	Spivey's Corner	.1000
Garland		.8450	...	...	.7200	1.5650	Garland	.1000	Taylor's Bridge	.0700
Harrells:							Godwin-Falcon	.1000	Turkey	.0600
In Sampson		.8450	...	.0800	.1300	1.0550	Halls	.0700	Vann's Crossroads	.0900
In Duplin		.6900	...	.0800	.1300	.9000	Herring	.0850		
Newton Grove		.8450	...	...	.3600	1.2050		Other special districts:		
Roseboro		.8450	...	...	.7100	1.5550	Clinton School	.1600	Taylor's Bridge service	.0350
Salemburg		.8450	...	...	.3200	1.1650	***Clinton MSD	.2000		
Turkey		.8450	...	.0600	.2500	1.1550				
Scotland	2003	1.0200	...	...	...	1.0200	One fire district:			
East Laurinburg		1.0200	...	.0200	.3000	1.3400	County fire	.0200		
Gibson		1.0200	...	...	.6800	1.7000		Other special districts:		
Laurinburg		1.0200	...	***	.4200	1.4400	***Laurinburg MSD	.2100	***Maxton MSD	.1000
Maxton:										
In Scotland		1.0200	...	...	.8000	1.8200				
In Robeson		.7900	...	***	.8000	1.5900				
Wagram		1.0200	...	...	.6500	1.6700				

PROPERTY TAX RATES AND LATEST YEAR OF REVALUATION FOR NORTH CAROLINA COUNTIES AND MUNICIPALITIES FY 2010-11
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							[S]	[S]	[S]	
Swain	2005	.33003300	No special districts			
Bryson City		.33003300	.6600				
Transylvania	2009*	.39493949	Eight fire districts:			
Brevard		.3949	...	***	.4325	.8274	Balsam Grove	.0968	Lake Toxaway	.0287
Rosman		.39490626	.4100	.8675	Brevard	.0269	Little River	.0577
							Cedar Mountain	.0756	North Transylvania	.0911
							Connestee Falls	.0494	Rosman	.0626
							Other special districts:			
							***Heart of Brevard MSD	.2250		
Tyrrell	2009*	.6700	...	...	...	.6700	No special districts		
Columbia		.6700	...	...	.4460	1.1160			
Union	2008*	.6650	...	...	...	.6650	Five fire districts:		
Fairview		.66500476	.0200	.7326	Hemby Bridge	.0476	Waxhaw	.0370
Hemby Bridge		.665004767126	Springs	.0300	Wesley Chapel	.0220
Indian Trail		.66500428	.1450	.8528	Stallings	.0428		
Lake Park		.6650	...	.0476	.2300	.9426			
Marshville		.6650	...	...	.4100	1.0750			
Marvin		.66500220	.0500	.7370	***Monroe MSD	.2000	Other special districts:	
Mineral Springs		.6650	...	...	.0250	.6900			
Mint Hill										
In Union		.6650	...	...	.2750	.9400			
In Mecklenburg		.8387	...	...	.2750	1.1137			
Monroe		.6650	...	***	.5550	1.2200				
Stallings										
In Union		.6650	...	.0428	.2150	.9228			
In Mecklenburg		.8387	...	...	.2150	1.0537			
Unionville		.6650	...	...	.0200	.6850			
Waxhaw		.6650	...	...	.3400	1.0050			
Weddington										
In Union		.6650	...	.0428	.0300	.7378			
In Mecklenburg		.83870300	.8687				
Wesley Chapel		.66500220	.0165	.7035				
Wingate		.66503900	1.0550				

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							[S]	[S]	[S]
Vance	2008	.78207820			
Henderson		.78205850	1.3670	Vance County	One fire district:	.0260
Kittrell		.7820	...	...	.1000	.8820			
Middleburg		.7820	...	...	.2500	1.0320			
Wake	2008	.5340	...	...	...	.5340		Two fire districts:	
Angier:							County-wide	.0800	Black River .0700
In Wake		.5340	...	.0700	.5300	1.1340			
In Harnett		.7250	...	.0700	.5300	1.3250		Other special districts:	
Apex		.5340	...	...	.3400	.8740	***Raleigh Downtown	.0786	Research Triangel Park .03714
Cary:							***Hillsborough St	.1000	***Durham Civic Center .0015
In Wake		.5340	...	...	.3300	.8640	***Wake Forest MSD	.1400	
In Chatham		.6219	...	...	.3300	.9519			
Clayton:									
In Wake		.5340	...	...	.5400	1.0740			
In Johnston		.7800	...	...	.5400	1.3200			
Durham:									
In Wake		.5340	...	...	.5519	1.0859			
In Durham		.7459	...	***	.5519	1.2978			
In Orange		.8580	...	...	.5519	1.4099			
Fuquay-Varina		.5340	...	...	.3850	.9190			
Garner		.5340	...	...	.4900	1.0240			
Holly Springs		.5340	...	...	.4150	.9490			
Knightdale		.5340	...	...	.4100	.9440			
Morrisville:									
In Wake		.5340	...	...	.3665	.9005			
In Durham		.7459	...	...	.3665	1.1124			
Raleigh:									
In Wake		.5340	...	***	.3735	.9075			
In Durham		.7459	...	...	.3735	1.1194			
Rolesville		.5340	...	...	.4200	.9540			
Wake Forest									
In Wake		.5340	...	***	.5100	1.0440			
In Franklin		.8725	...	...	.5100	1.3825			
Wendell		.53400800	.4900	1.1040			
Zebulon									
In Wake		.53405000	1.0340			
In Johnston		.78005000	1.2800			

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								[S]	[S]	
Warren	2009	.60006000	Fourteen fire districts:			
Macon		.60003000	.9000	Afton-Elberon	.0600	Littleton	.0380
Norlina		.6000	...	...	.6400	1.2400	Arcola	.0270	Longbridge	.0200
Warrenton		.6000	...	...	.6100	1.2100	Central Warren	.0650	Macon	.0500
							Churchill-Five Forks	.0300	Ridgeway	.0400
							Drewry	.0400	Roanoke Wildwood	.0200
							Hawtree	.0650	Smith Creek	.0575
							Inez	.0400	Soul City	.0600
Washington	2005	.7900	...	...	...	.7900	No special districts			
Creswell		.7900	...	...	.3900	1.1800				
Plymouth		.7900	...	...	.5900	1.3800				
Roper		.7900	...	...	.8200	1.6100				
Watauga	2006*	.3130	...	...	...	.3130	Twelve fire districts:			
Beech Mountain:							Beaver Dam	.0500	Meat Camp	.0300
In Watauga		.3130	...	...	.6400	.9530	Blowing Rock	.0500	Meat Camp/Creston	.0300
In Avery		.3700	...	...	.6400	1.0100	Boone Rural	.0400	Shawneehaw	.0500
Blowing Rock:							Cove Creek	.0500	Stewart Simmons	.0500
In Watauga		.3130	...	...	.2800	.5930	Deep Gap	.0500	Todd	.0500
In Caldwell		.6599	...	.0085	.2800	.9484	Foscoe	.0500	Zionville	.0500
Boone		.3130	...	***	.3700	.6830				
Seven Devils:							Four fire service districts:			
In Watauga		.3130	...	...	.5100	.8230	Beech Mountain	.0500	Foscoe	.0500
In Avery		.3700	...	...	.5100	.8800	Cove Creek	.0500	Shawneehaw	.0500
							Other special districts:			
							***Boone MSD	.2100		
Wayne	2003	.7640	...	...	...	.7640	Thirty fire districts:			
Eureka		.7640	...	.0800	.5800	1.4240	Antioch	.0800	Nahunta	.0700
Fremont		.7640	...	...	.6500	1.4140	Arrington	.0780	New Hope	.0600
Goldsboro		.7640	...	***	.6500	1.4140	Belfast	.0650	Northern Wayne	.0600
Mount Olive:							Boon Hill	.0500	Oakland	.0700
In Wayne		.7640	...	...	.5900	1.3540	Dudley	.0700	Patetown	.0500
In Duplin		.6900	...	...	.5900	1.2800	East Wayne	.0800	Pinewood	.0700
Pikeville		.7640	...	...	.6000	1.3640	Elroy	.0650	Pleasant Grove	.0700
Seven Springs		.76400400	.5000	1.3040	Eureka	.0800	Polly Watson	.0600
Walnut Creek		.76403800	1.1440	Faro	.0800	Pricetown	.0600

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							[S]	[S]	[S]	
Wayne (continued)							Fire districts (continued)			
							Grantham	.0800	Rosewood	.0500
							Indian Springs	.0600	Saulston	.0600
							Jordan's Chapel	.0700	Seven Springs	.0400
							Little River	.0800	Smith Chapel	.0700
							Mar Mac	.0600	Thoroughfare	.0800
							Moseley Hall	.0400	Waylin	.0450
							Other special districts:			
							***Goldsboro MSD	.2500		
Wilkes	2007*	.6500	...	...	...	.6500	Twenty-five fire districts:			
Elkin:							Arlington	.0800	Millers Creek	.0700
In Wilkes		.6500	...	...	.4750	1.1250	Austin	.0700	Moravian Falls	.0500
In Surry		.5820	.1220	***	.4750	1.1790	Boomer	.1000	Mountain View	.0500
North Wilkesboro		.6500	...	...	.5200	1.1700	Broadway	.0500	Mulberry-Fairplains	.0500
Ronda		.6500	...	...	.4000	1.0500	Brushy Mountain	.0800	Pleasant Hill	.1000
Wilkesboro		.6500	...	...	.4000	1.0500	Buck Shoals	.0500	Roaring River	.0600
							Champion	.0800	Ronda	.1000
							Cricket	.1000	Shepherds Crossroads	.0700
							Ferguson	.1100	State Road	.0750
							Goshen	.1000	Traphill	.0900
							Knottville	.1000	Wilbar	.1200
							Little Brushy Mountain	.1200	Wilkes-Iredell	.1200
							McGrady	.1000		
							Other special districts:			
							***Elkin MSD	.1000	Elkin School	.1220

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								[S]	[S]	
Wilson	2008	.73007300	Seventeen fire districts:			
Black Creek		.73000500	.5500	1.3300	Bakertown	.0525	Polly Watson	.0550
Elm City		.7300	...	...	.6300	1.3600	Beulah	.0800	Rock Ridge	.0675
Kenly:							Black Creek	.0500	Sanoca	.0925
In Wilson		.7300	...	...	.6100	1.3400	Contentnea	.0275	Silver Lake	.0900
In Johnston		.7800	...	...	.6100	1.3900	Crossroads	.0650	Sims	.0400
Lucama		.7300	...	...	.5000	1.2300	East Nash	.1025	Toisnot	.0150
Saratoga		.7300	...	...	.5800	1.3100	Green Hornet	.0500	Tri-County	.0800
Sharpsburg:							Lee Woodard	.0400	West Edgemcombe	.0500
In Wilson		.7300	...	.0800	.5000	1.3100	Moyton	.0975		
In Edgemcombe		.8600	...	.0800	.5000	1.4400				
In Nash		.6700	...	...	.5000	1.1700			Other special districts:	
Sims		.7300	...	.0400	.4600	1.2300	***Wilson MSD	.1700	Wilson Solid Waste	.0325
Stantonsburg		.7300	...	...	.4300	1.1600				
Wilson		.7300	...	***	.5150	1.2450				
Yadkin	2009*	.7400	...	...	...	.7400	Ten fire districts:			
Boonville		.7400	...	.0675	.4600	1.2675	Arlington	.0800	Fall Creek	.0600
East Bend		.7400	...	.0675	.4800	1.2875	Boonville	.0675	Forbush	.0650
Jonesville		.7400	...	...	.4800	1.2200	Buck Shoals	.0500	Lone Hickory	.0750
Yadkinville		.7400	...	.0650	.4100	1.2150	Courtney	.0800	West Yadkin	.0875
							East Bend	.0675	Yadkinville	.0650
Yancey	2008	.4500	...	...	...	.4500	Eight fire districts:			
Burnsville		.4500	...	...	.5000	.9500	Burnsville	.0600	Newdale	.0600
							Clearmont	.0500	Pensacola	.0600
							Double Island	.0600	South Toe	.0650
							Egypt Ramseytown	.0500	West Yancey	.0400

Notes:

All taxable property is assessed at 100% of appraised value and revaluation is effective January 1 of given year.

* All counties must revalue real property at least every 8 years, but may elect to revalue more frequently. These counties have adopted a more frequent revaluation schedule.

*** Tax rates for municipal service districts apply only to certain areas within the municipalities and not to all municipal property. Rates are shown in the NOTES column.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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1

SENATE BILL 97*

Short Title: Clarify Refunds of Tax Overpayments. (Public)

Sponsors: Senators Rucho, Hartsell, Daniel; Apodaca, Blake, Brock, Davis, Harrington, Hise, Mansfield, Meredith, Newton, Pate, Rouzer, and Tucker.

Referred to: Finance.

February 22, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN THE DEPARTMENT OF REVENUE IS REQUIRED TO INITIATE A REFUND OF AN OVERPAYMENT OF TAX AND TO AUTHORIZE THE ISSUANCE OF REFUNDS OF OVERPAYMENTS THAT HAVE BEEN IDENTIFIED BY THE DEPARTMENT CONSISTENT WITH THIS CLARIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-241.7(a) reads as rewritten:

"§ 105-241.7. Procedure for obtaining a refund.

(a) Initiated by Department. – The Department must refund an overpayment made by a taxpayer ~~when if the Department processes a return and finds all of the following:~~ discovers the overpayment before the expiration of the statute of limitations for obtaining a refund. Discovery occurs in any of the following circumstances:

- (1) ~~The statute of limitations for obtaining a refund has not expired.~~ The automated processing of a return indicates the return requires further review.
- (2) ~~The amount shown due on the return is not correct.~~ A review of a return by an employee of the Department indicates an overpayment.
- (3) ~~The correction of the amount due shows that the taxpayer has overpaid the tax.~~ An audit of a taxpayer by an employee of the Department indicates an overpayment."

SECTION 2.(a) The General Assembly makes the following findings concerning the application of the statute of limitations to a refund initiated by the Department of Revenue:

- (1) The statute of limitations is satisfied when the Department is on notice that a refund may be due.
- (2) The Department is on notice that a refund may be due when the Department's automated processing of a return indicates that the return requires further review, regardless of when an employee of the Department verifies whether a refund is in fact due.
- (3) Former G.S. 105-266 and G.S. 105-241.7 are consistent with the findings in this section and require the Department to refund an overpayment of tax if, before the statute of limitations expires, the Department discovers through its automated processing that a return requires further review.

SECTION 2.(b) The Department of Revenue is directed to issue refunds the Department discovered within the statute of limitations as applied in accordance with subsection (a) of this section.

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





SENATE BILL 97: Clarify Refunds of Tax Overpayments

2011-2012 General Assembly

Committee:	House Finance	Date:	March 3, 2011
Introduced by:	Sens. Rucho, Hartsell, Daniel	Prepared by:	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: *Senate Bill 97¹ clarifies when the Department of Revenue is required to initiate a refund of an overpayment of tax and directs the Department to issue refunds for overpayments that have been discovered within the statute of limitations consistent with this clarification.*

CURRENT LAW: Generally speaking, there are two methods for obtaining a refund of tax from the Department of Revenue. If a taxpayer is aware that he or she has made an overpayment, then the taxpayer may request a refund by filing an amended return or by filing a claim for refund. If the taxpayer is not aware of the overpayment, the Department is required to initiate the refund process if, within the statute of limitations period, it becomes aware of or "finds" the overpayment.

Specifically, the Department is required to initiate a refund of an overpayment of tax when the Department processes a return and finds all of the following:

1. The statute of limitations for obtaining a refund has not expired.
2. The amount shown due on the return is not correct.
3. The correction of the amount due shows that the taxpayer has overpaid the tax.

The general statute of limitations for obtaining a refund is the later of three years after the due date of the return or two years after the payment of tax.

The current statute does not specify what constitutes "finding" or discovering an overpayment for purposes of satisfying the statute of limitations. In other words, it does not identify what action must take place by the Department before the statute of limitations expires.

BILL ANALYSIS: Section 1 of the bill clarifies when the discovery of an overpayment occurs, which triggers the Department of Revenue's obligation to issue a refund. Discovery occurs in any of the following circumstances:

1. When the automated processing of a return indicates the return requires further review.
2. When a review of a return by an employee indicates an overpayment.
3. When an audit of a taxpayer by an employee indicates an overpayment.

If the Department's computer system flags a return for further review, the Department must still verify that an overpayment exists before issuing a refund because the automated flagging does not always indicate the precise nature of an error on a return. However, this bill clarifies that the verification need not occur within the statute of limitations period. The flagging of the return is sufficient to put the Department on notice that a refund may be due for purposes of satisfying the statute of limitations.

¹As introduced, this bill is identical to H182, as introduced by Reps. Starnes, Howard, Jordan, Setzer, which is currently in House Finance.

Senate Bill 97

Page 2

Section 2 of the bill directs the Department to issue refunds of overpayments that have been discovered within the statute of limitations in a manner consistent with the clarification in Section 1 of the bill. Over the last year, the Department has been working through a backlog of returns that were flagged for review, some dating as far back as 1996. By December 2010, the vast majority of returns had been reviewed and many refunds were issued. However, there remain approximately 7,000 returns in which an overpayment has been made but a refund has not been issued because the Department wants clarification from the General Assembly about the application of the current law. These overpayments total a little over \$2 million plus interest.

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

BACKGROUND: The Revenue Laws Study Committee looked at this issue during the recent interim. The Committee heard differing opinions about the interpretation of the law and its application to overpayments. One interpretation is that the Department is required to issue a refund of an overpayment only if the overpayment is verified by a Departmental employee within the statute of limitations period. Under this interpretation, a taxpayer's receipt of a refund is dependent on the Department's ability to timely review the return, which can vary depending on its workload and resources. The other interpretation is that the Department is required to issue a refund of an overpayment if the return is flagged by the Department's computer system within the statute of limitations. The Department may need to verify that an overpayment exists by manual review of a flagged return, but the manual review need not occur within the statute of limitations. Because returns are processed by the computer system almost immediately after they are filed, this interpretation assures that taxpayers will eventually get a refund.

The Committee concluded that when a return is flagged by the computer system, sufficient notice is provided to the Department that a refund may be due.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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2

SENATE BILL 76*
Finance Committee Substitute Adopted 2/23/11

Short Title: TC: Eligibility: Indus Facil/Fix Uwharrie Com.

(Public)

Sponsors:

Referred to:

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE INDUSTRIAL FACILITIES SALES TAX REFUND, A TECHNICAL CORRECTION TO THE MEMBERSHIP COUNT OF THE UWHARRIE COMMISSION, TO PROVIDE INTEREST ON OVERPAYMENT OF PROPERTY TAX, AND TO PROVIDE DELAY OF THE COLLECTION OF PROPERTY TAX PENDING APPEAL.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 105-164.14B(a) reads as rewritten:

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

...

(12) Owner. – The term includes a lessee under a capital lease.

(13) Paper-from-pulp manufacturing. – An industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.

...

~~(20) Strategic partner.~~ – A business that is engaged in activities at the facility that directly contribute to the manufacture and distribution of computers and computer peripherals and with whom the taxpayer has contracted to provide those activities at the facility in direct support of its manufacturing and distribution activities.

(21) Reserved.

(22) Turbine manufacturing. – An industry primarily engaged in manufacturing turbines or complete turbine generator set units, such as steam, hydraulic, gas, and wind. The term does not include the manufacturing of aircraft turbines."

SECTION 1.(b) G.S. 105-164.14B(b) reads as rewritten:

"(b) Refund. – An owner of an industrial facility that meets the business, minimum investment, and industry-specific requirements of this section is allowed an annual refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that are installed in the construction of the facility and that become a part of the real property of the facility. Liability incurred indirectly by the owner for sales and use taxes on those items is considered tax paid by the owner. The requirements are:

(1) Business requirement. – The facility is primarily engaged in one or more of the following:

a. Air courier services.

b. Aircraft manufacturing.



- 1 c. Bioprocessing.
- 2 d. Financial services, securities operations, and related systems
- 3 development.
- 4 e. Motor vehicle manufacturing.
- 5 f. Paper-from-pulp manufacturing.
- 6 g. Pharmaceutical and medicine manufacturing and distribution of
- 7 pharmaceuticals and medicines.
- 8 ~~g.h.~~ Semiconductor manufacturing.
- 9 ~~h.i.~~ Solar electricity generating materials manufacturing.
- 10 j. Turbine manufacturing.
- 11 (2) Minimum investment requirement. – The Secretary of Commerce has
- 12 certified that the owner of the facility will invest at least the required amount
- 13 of private funds to construct the facility in this State. For the purpose of this
- 14 subsection, costs of construction may include costs of acquiring and
- 15 improving land for the facility and costs of equipment for the facility. If the
- 16 facility is located in a development tier one area, the required amount is fifty
- 17 million dollars (\$50,000,000). For all other facilities, the required amount is
- 18 one hundred million dollars (\$100,000,000). ~~In the case of a computer~~
- 19 ~~manufacturing facility, the~~ The owner may invest these funds either directly
- 20 or indirectly through a related ~~entity or strategic partner entity.~~
- 21 (3) Industry-specific requirements:
- 22 a. If the facility is primarily engaged in financial services, securities
- 23 operations, and related systems development, it satisfies all of the
- 24 following conditions:
- 25 1. It is owned and operated by the business for which the
- 26 services are provided or by a related entity of that business as
- 27 defined in G.S. 105-130.7A.
- 28 2. No part of it is leased to a third-party tenant that is not a
- 29 related entity of the business.
- 30 b. If the facility is primarily engaged in solar electricity generating
- 31 materials manufacturing, the business satisfies a wage standard at the
- 32 facility. The wage standard is equal to one hundred five percent
- 33 (105%) of the lesser of the average weekly wage for all insured
- 34 private employers in the State and the average weekly wage for all
- 35 insured private employers in the county. A business satisfies the
- 36 wage standard if it pays an average weekly wage that is at least equal
- 37 to the amount required by this sub-subdivision. In making the wage
- 38 calculation, the business must include any jobs that were filled for at
- 39 least 1,600 hours during the calendar year."
- 40 **SECTION 2.** G.S. 153C-3(d) reads as rewritten:
- 41 "(d) Membership. – The Commission shall consist of ~~10~~12 members as follows:
- 42 (1) One representative from the public at large who is a resident of the Uwharrie
- 43 region of North Carolina appointed by the President Pro Tempore of the
- 44 Senate.
- 45 (2) One representative from the public at large who is a resident of the Uwharrie
- 46 region of North Carolina appointed by the Speaker of the House of
- 47 Representatives.
- 48 (3) Four representatives from the public at large who are residents of the
- 49 Uwharrie region of North Carolina to be appointed by the Governor,
- 50 including:

- 1 a. Two who shall at the time of appointment be actively connected with
2 or have experience in local government within the Uwharrie region
3 of North Carolina.
4 b. One who shall at the time of appointment have experience in tourism
5 or tourism development in the Uwharrie region of North Carolina.
6 c. One who shall have experience in economic development in the
7 Uwharrie region of North Carolina.

8 (4) Two members to represent each of the following regional councils of
9 government as appointed by those councils: the Centralina Council of
10 Governments and the Piedmont Triad Council of Governments.

11 (5) The Secretary of Commerce or the Secretary's designee.

12 (6) The Secretary of Environment and Natural Resources or the Secretary's
13 designee.

14 The members of the Commission shall elect a chair, vice-chair, and any other officers they
15 consider necessary and shall determine the length of the term of office, not to exceed two years,
16 of each officer. A majority of the Commission shall constitute a quorum. Each member
17 appointed to the Commission shall be appointed to serve a four-year term. Any vacancy on the
18 Commission shall be filled by the original appointing authority for the remainder of the
19 unexpired term. Initial terms commence September 1, 2010."

20 **SECTION 3.(a)** G.S. 105-360 is amended by adding a new subsection to read:

21 "(e) When an order of the county board of equalization and review reduces the valuation
22 of property or removes the property from the tax lists and, based on the order, the taxpayer has
23 paid more tax than is due on the property, the taxpayer is entitled to receive interest on the
24 overpayment in accordance with this subdivision. An overpayment of tax bears interest at the
25 rate set under subsection (a) of this section from the date the interest begins to accrue until a
26 refund is paid. Interest accrues from the later of the date the tax was paid and the date the tax
27 would have been considered delinquent under G.S. 105-360. A refund is considered paid on a
28 date determined by the governing body of the taxing unit that is no sooner than five days after a
29 refund check is mailed."

30 **SECTION 3.(b)** G.S. 105-378(d) reads as rewritten:

31 "(d) Enforcement and Collection Delayed Pending Appeal. – When the board of county
32 commissioners or municipal governing body delivers a tax receipt to a tax collector for any
33 assessment that has been or is subsequently appealed to the county board of equalization and
34 review or the Property Tax Commission, the tax collector may not seek collection of taxes or
35 enforcement of a tax lien resulting from the assessment until the appeal has been finally
36 adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer."

37 **SECTION 4.** Section 1 of this act becomes effective July 1, 2010, and applies to
38 sales made on or after that date. Section 3 of this act becomes effective for taxable years
39 beginning on or after January 1, 2011. The remainder of this act is effective when it becomes
40 law.



SENATE BILL 76: TC: Eligibility: Indus Facil/Fix Uwharrie Com

2011-2012 General Assembly

Committee: House Finance	Date: March 3, 2011
Introduced by: Sens. Hartsell, Rucho, Clary	Prepared by: Heather Fennell
Analysis of: Second Edition	Committee Counsel

SUMMARY: *Senate Bill 76 reenacts and amends the sales tax refunds for industrial facilities, corrects the stated number of members of the Uwharrie Commission, provides for interest on overpayments of property tax, and delays the collection of property tax pending appeal.*

CURRENT LAW:

Section 1: Section 4 of S.L. 2010-91 expanded the list of industries allowed an annual sales and use tax refund to include paper-from-pulp manufacturing and turbine manufacturing. The change was intended to become effective July 1, 2010, and applied to sales made on or after that date.

S.L. 2010-166 made technical changes to the sales and use tax refunds, but did not include the newly enacted refunds of S.L. 2010-91. Statutory construction provides that when the General Assembly enacts two bills that amend the same existing general statute, the bill enacted last will control. Therefore, the refunds enacted in S.L. 2010-91 were in effect removed by S.L. 2010-166.

Section 2: S.L. 2010-176 established the Uwharrie Regional Resources Commission to foster economic development, and to protect and enhance the natural resources of the Uwharrie Region, including Davidson, Davie, Montgomery, Rowan, Randolph, and Stanly counties. The total number of members authorized for appointment by statute is 12; however, the statute states the membership of the Commission is 10.

Section 3: Individuals may appeal property tax valuations to the county board of equalization and review. The State Property Tax Commission hears appeals from the local boards of equalization and review. If the Property Tax Commission reduces the value of the property, or removes the property from taxation, the taxpayer receives interest on any overpayment of taxes. The tax collector may not enforce collection of the tax while the appeal to the Property Tax Commission is pending, but interest will accrue if the taxes are not timely paid. There are not corresponding provisions for appeals pending at county boards of equalization and review.

BILL ANALYSIS:

Section 1: Reenacts the sales tax refunds for paper-from-pulp manufacturing and turbine manufacturing enacted in S.L. 2010-91. The following additional changes are made to the refunds for industrial facilities:

- Amends the definition of "owner" to include lessees under a capital lease.
- Deletes the defined term "strategic partner." This term was solely used in the refund for computer manufacturing facility which has been repealed.
- Remove additional reference to computer manufacturing facilities.
- Clarifies the minimum investment requirement for the refunds can be met by funds invested directly or indirectly through a related entity.

Section 2: Corrects the total number of members of the Uwharrie Commission.

Senate Bill 76

Page 2

Section 3: Provides interest on overpayments and suspension of the enforcement proceedings for property valuations that have been appealed to the county boards of equalization and review. If the county board of equalization and review reduces the value of the property, or removes the property from taxation, the taxpayer receives interest on any overpayment of taxes. The interest for overpayments is the same as the interest charged for delinquent taxes. The tax collector may not enforce collection of the taxes while the appeal to the board is pending, but interest will accrue if the tax is not timely paid.

EFFECTIVE DATE: Section 1 of this act is effective July 1, 2010 and applies to sales on or after that date. Section 3 becomes effective for taxable years beginning on or after January 1, 2011. The remainder of this act is effective when it becomes law.

S76-SMTD-7(e2) v3



North Carolina General Assembly
House Committee on Finance

Minutes

March 8, 2011

The House Committee on Finance met on Tuesday, March 8, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chair McComas; and Representatives Brawley, Carney, Collins, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Ross, Samuelson, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms Earl Coker, Fred Hines, Ken Kirby and Bill MacRae. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

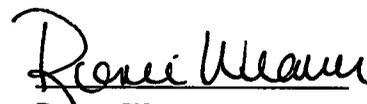
Chairperson Setzer called the meeting to order at 8:30 am and recognized the four (4) pages present: (1) McKenzie Blackwell of Wilson County sponsored by Representative Farmer-Butterfield; (2) Madison Blackwell of Wilson County sponsored by Representative Farmer-Butterfield; (3) Teannya Monroe of Cumberland County sponsored by Representative Lucas; and (4) Patrick Coats of Johnston County sponsored by Representative Daughtry.

Chairperson Setzer recognized David Clegg, Deputy Chairman & Chief Operating Officer with the Employment Security Commission, to proceed with his presentation on **The Recession and the UI Trust Fund** (see **attachment 3**). Following David's presentation, he answered questions from members.

Chairperson Setzer adjourned the meeting at 9:42 am.

Respectfully submitted,


Representative Mitchell Setzer
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

#1

AGENDA
House Finance Committee

Tuesday, March 8, 2011
Room 544 LOB
8:30 a.m.

Chaired by: Representative Mitchell Setzer

Call to Order

Introduction of Pages

Presentation

The Recession and the UI Trust Fund

*David Clegg, Deputy Chairman & Chief Operating Officer
Employment Security Commission*

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAR. 8, 2011 Room: 544

House Sgt-At Arms:

1. Name: FRED HINES

2. Name: ~~JOHN BRANDON~~

3. Name: EARL COKER

4. Name: KEN KIRBY

5. Name: Bill MacRae

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE FINANCE

DATE 03-08-11

1. Name: McKenzie Blackwell

County: Wilson

Sponsor: Farmer - Butterfield

2. Name: Madison Blackwell

County: Wilson

Sponsor: Farmer - Butterfield

3. Name: Teannya Monroe

County: Cumberland

Sponsor: Marvin Lucas

4. Name: Patrick Coats II

COATS

County: Johnston

Sponsor: Leo Dagthey

5. Name: _____

County: _____

Sponsor: _____

VISITOR REGISTRATION SHEET

House Finance Committee
Name of Committee

Tuesday, March 8, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
KEN DURHAM	DST 325 SALISBURY ST
Henry Hutaff	N.C.B.A.
Lachelle Pulliam	NC GA
Ed Lundy	Brooks Messer
Amy McCorkay	NC BEU
Michael Heley	Commira
JOHN GOODMAN	NC CHAMBER
Carol Howell	NC DST
Conne Wilson	ECNC
Pam Meyer	NCLM
Cameron Morley	Electric Cities of NC

VISITOR REGISTRATION SHEET

House Finance Committee

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME

FIRM OR AGENCY AND ADDRESS

Tom Coley

CWA

Andy Elle

NCMA

Doug Miskew

PSG

Herrin Burko

RUWC

SDCommy

-

Dr. Sally Gorman

Triangle Research Center

Ruth Zahoh

WILPF

VISITOR REGISTRATION SHEET

House Finance Committee
Name of Committee

3-8-11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Lockhart Taylor	ESC
Kevin Carlson	ESC
Jussi Ojamaa	NCHBT
Tom Kerst	NC Beer & Wine
Will Cuperpepper	MVA
Candy Pambou	Intern
Delma Dew	ESC
David Hemen	NC Center for Municipalities
Bill Rowle	NC Justice Center
Rob Schachtel	NCRW
Katie Stanley	Dept of Comm.



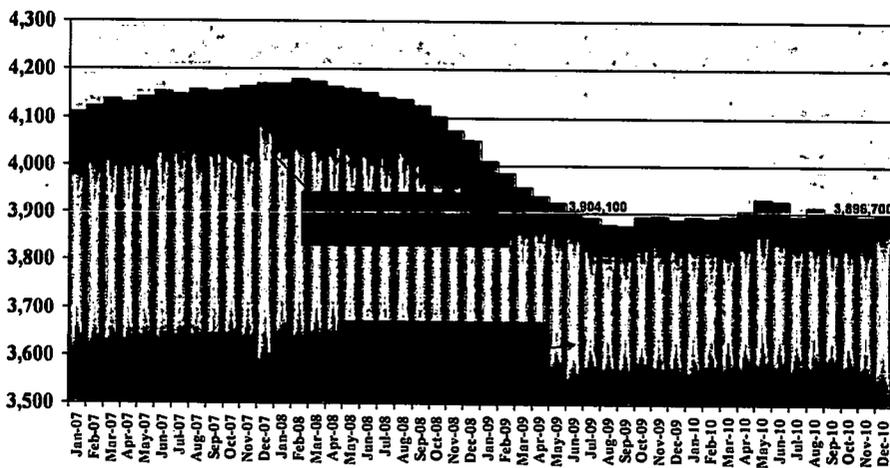
Trust Fund Review House Finance Committee

David L. Clegg
Deputy Chairman &
Chief Operating Officer

March 8, 2011

North Carolina Employment

Nonfarm Employment
January 2007-December 2010
(Seasonally Adjusted, in thousands)



December 2010 data are preliminary, other 2010 data are revised, while all other data are benchmarked.

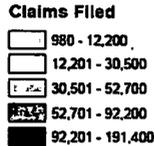
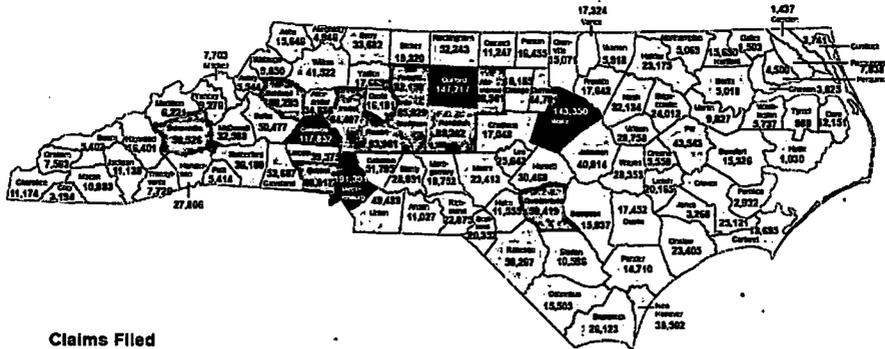
North Carolina Situation

- **As of December 2010**
 - **215,665 more individuals unemployed in North Carolina than in December 2007**
 - **Lost 272,800 jobs**
 - **Need to add 4,547 net jobs a month for the next 60 months to reach December 2007 employment levels**
 - **Total Private Jobs decreased 306,700 (8.8%)**

State and Federal Benefits

- **Benefit Weeks**
 - **Regular Unemployment Insurance**
 - **UI – 26 weeks**
 - **Extended Benefits –**
 - **EB – 20 weeks**
 - **Extended Unemployment Compensation Tier I**
 - **(EUC Tier I) – 20 weeks**
 - **Extended Unemployment Compensation Tier II**
 - **(EUC Tier II) – 14 weeks**
 - **Extended Unemployment Compensation Tier III**
 - **(EUC Tier III) – 13 weeks**
 - **Extended Unemployment Compensation Tier IV**
 - **(EUC Tier IV) – 6 weeks**
 - **Individuals may be eligible for up to 99 weeks of benefits**

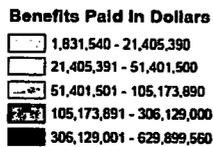
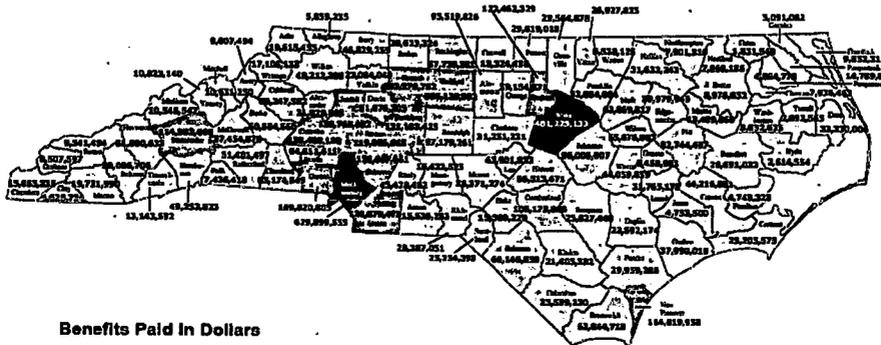
North Carolina Regular Initial Claims Filed by County January 2008-December 2010



Statewide 3,033,167

Note: Census data does not sum to statewide total.
Source: ETA Reporting
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2/2011

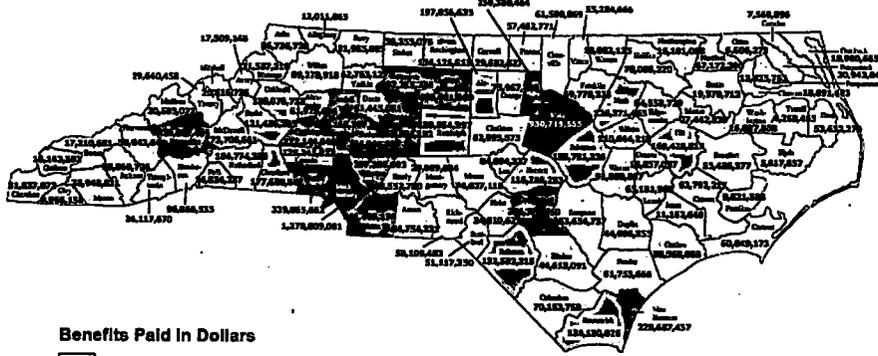
North Carolina UI Benefits Paid by County January 2008-December 2010



Statewide \$6,029,022,671

Source: Employment Security Commission of North Carolina (ESC), Information System (IS)
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2/2011

North Carolina UI Benefits Paid by County January 2008-December 2010 Total All Programs



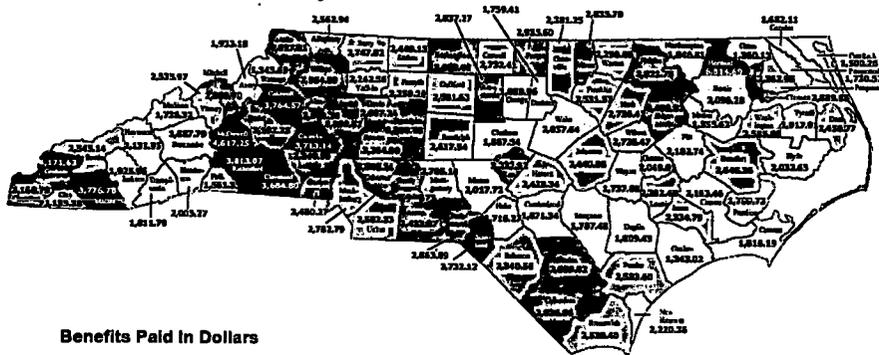
Benefits Paid in Dollars

	4,268,460 - 44,696,360
	44,696,361 - 104,774,390
	104,774,391 - 197,056,640
	197,056,641 - 629,021,090
	629,021,091 - 1,278,809,005

Statewide \$11,917,266,824

Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUC1), Emergency Unemployment Compensation Tier II (EUC2), Emergency Unemployment Compensation Tier III (EUC3), Emergency Unemployment Compensation Tier IV (EUC4), Extended Benefits (EB) and Federal Additional Compensation (FAC). County data does not sum to statewide total.
Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS)
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_2011

North Carolina Total All Benefits Paid Per Capita Civilian Labor Force January 2008-December 2010



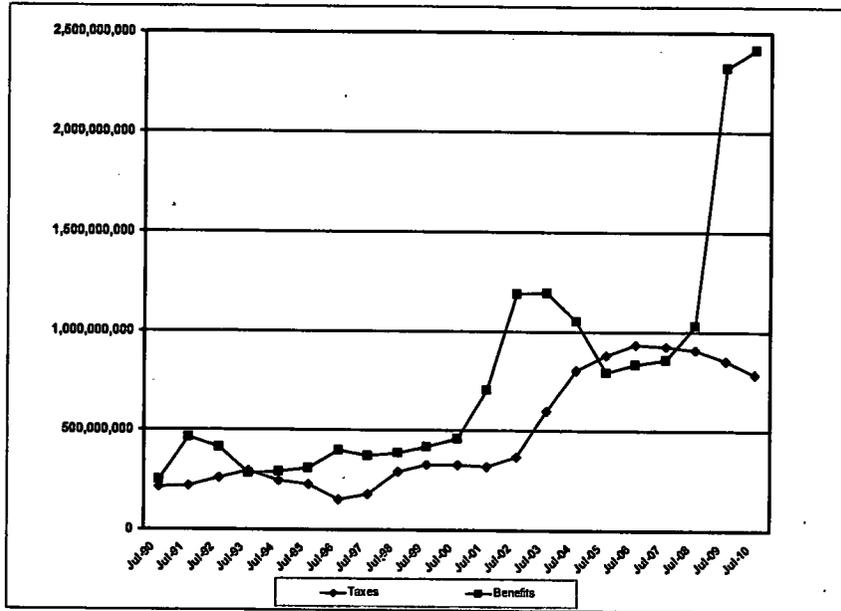
Benefits Paid in Dollars

	1,085.00 - 1,760.00
	1,760.01 - 2,250.00
	2,250.01 - 2,785.00
	2,785.01 - 3,565.00
	3,565.01 - 6,515.00

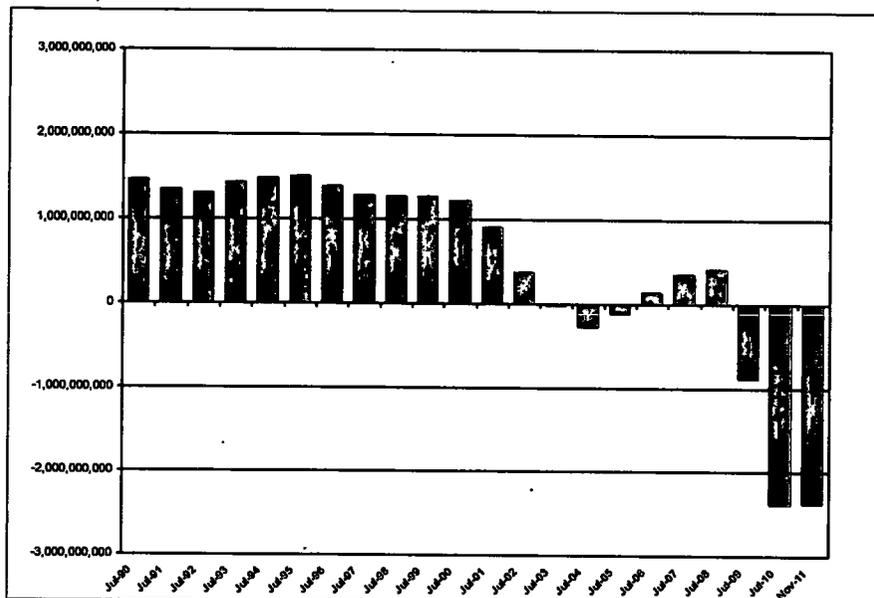
Statewide \$2,639.08

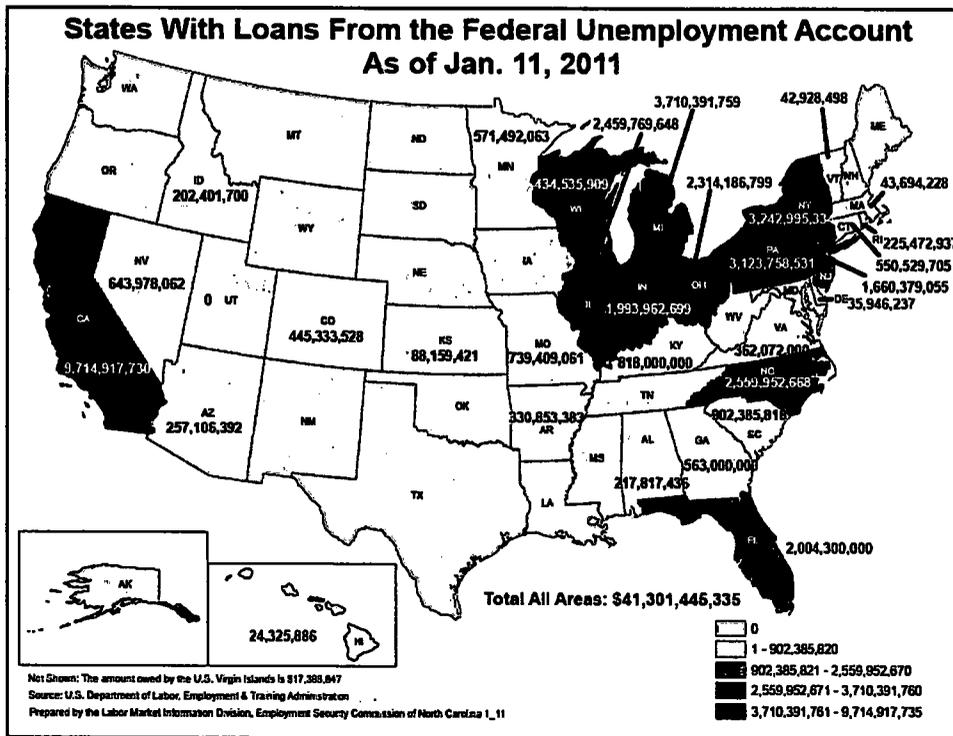
Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUC1), Emergency Unemployment Compensation Tier II (EUC2), Emergency Unemployment Compensation Tier III (EUC3), Emergency Unemployment Compensation Tier IV (EUC4), Extended Benefits (EB) and Federal Additional Compensation (FAC). County data does not sum to statewide total.
Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS)
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 2_2011

UI Trends - Taxes and Benefits



UI Trends - Trust Fund Balance





Purpose of UI Trust Fund

- Provide temporary assistance to those who have lost their jobs through no fault of their own
- Help stabilize the economy in times of economic downturn.

Title XII of Social Security Act

- "...provides for state advances (loans) when a state determines their Unemployment Fund will not have adequate funding to allow for the payment of Unemployment Benefits."

- Current loan balance: \$2,631,866,556

Tax Changes

- **March 1994: (Senate Bill 151 – Extra Session 1994)**
 - 50% tax rate reduction when fund balance equals or exceeds \$800m
 - Employers with a credit ratio of 6.4% or more received a tax rate of .01%
 - Also reduced new employer tax rate from 2.25% to 1.8%
- **February 1995: (Senate Bill 13 – 1995 Session)**
 - Employers with a credit ratio of 5% or more received a tax rate of 0%
- **July 1995: (Senate Bill 180 – 1995 Session)**
 - Imposed a 60% overall tax rate reduction on employers with a credit ratio when the fund ratio was equal to 5.0% or greater

Tax Law Changes

- **February 1996: (Senate Bill 2 – Extra Session 1996)**
 - Provided a tax moratorium for all credit ratio employers for 1996
 - Also lowered new employer tax rate from 1.8% to 1.2%
- **July 1999: (House Bill 275 – 1999 Session)**
 - Training and Reemployment Contribution provided a 20% reduction in employer tax rates while imposing a corresponding 20% contribution for Department of Community College training programs and ESC reemployment services
 - Expanded 0% tax rate to employers with credit ratios of 4% or greater
 - Lowered new employer tax rate from 1.2% to 1.0%
 - Repealed 1-1-2011

Tax Law Changes

- **July 2003: (HB 1241 – 2003 Session) Imposed a delay in collection of 20% unemployment surtax for one year.**
- **2003 – NC issued \$172 million in Tax Anticipation Notes (TAN) to pay Federal Loans.**
- **2004 – NC issued \$269 million in TANs to pay additional borrowing. These bonds were repaid in 2005.**
- **August 2005: (SB 757 – 2005 Session) Raised trigger for 50% tax reduction from \$800 million to 1.95% of gross taxable wages reported to ESC.**

Benefits vs. Tax Collections

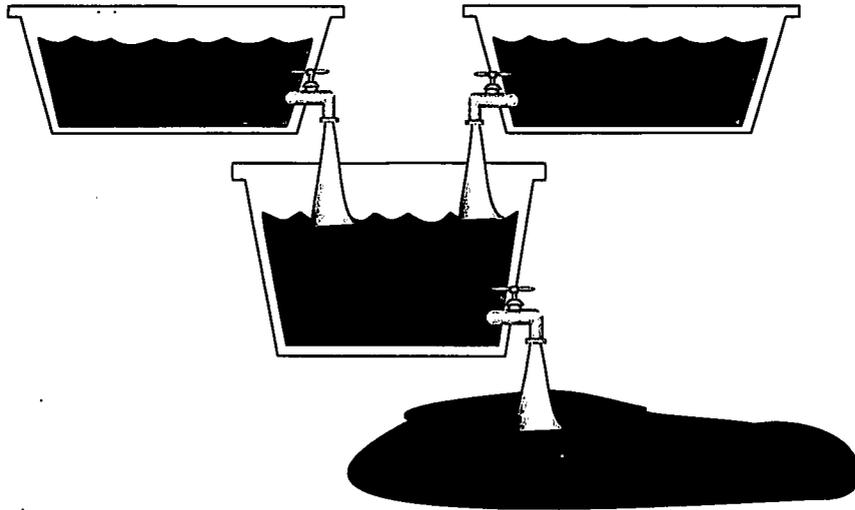
(in thousands)

Year	Tax Collections	Benefits	Trust Fund
1995	\$225,540	\$307,804	\$1,499,887
1996	\$150,656	\$398,847	\$1,383,604
1997	\$177,130	\$371,708	\$1,279,586
1998	\$291,593	\$385,790	\$1,272,798
1999	\$327,527	\$419,319	\$1,267,232
2000	\$326,670	\$459,685	\$1,219,353
2001	\$319,337	\$706,494	\$ 906,711
2002	\$367,970	\$1,192,915	\$ 368,517
2003	\$602,211	\$1,196,798	\$ <23,433>
2004	\$803,674	\$1,056,019	\$ <273,232>

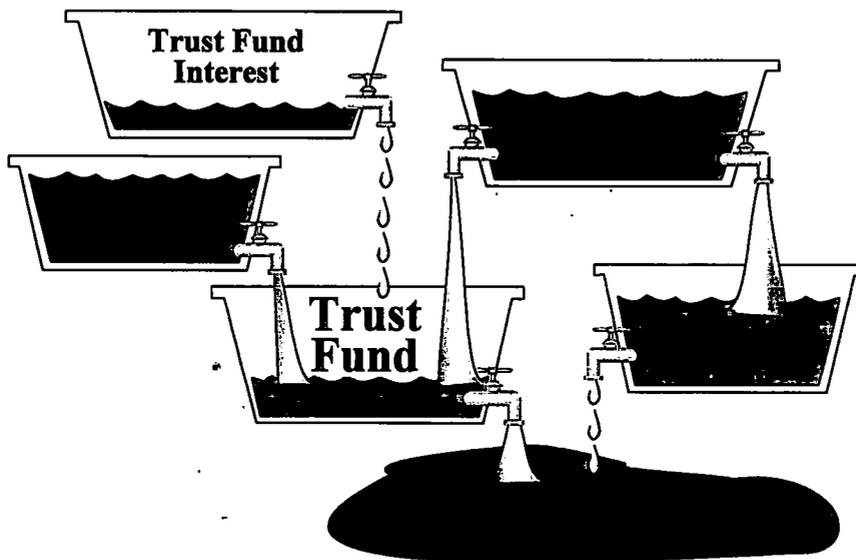
UI Trust Fund Report

Months	Taxes	Total Benefits	State Reserve	Interest	Balance
JULY 2008	907,454,994	1,032,703,139	171,052,000	20,464,298	414,673,061
JULY 2009	855,942,820	2,321,036,300	153,980,000	10,558,388	(885,882,030)
JULY 2010	786,066,147	2,413,298,782	125,458,000	49,877	(2,387,606,788)
DEC 2010	368,697,000	569,527,670	0	0	(2,588,437,458)

Trust Fund Monetary Flow - Regular



Trust Fund Monetary Flow - Recession



Compounding Factors

- Short recovery period between recessions
 - Recession 2002-04
 - Recession 2008-10
- Increase in the average duration of weeks
 - Avg. duration 1st Qtr. 2009 – 13.2 weeks
 - Avg. duration 4th Qtr. 2010 – 18.2 weeks
- Severity of the recession

Individuals Exhausting Benefits

Year	Number of Individuals
2000	42,564
2001	74,072
2002	135,370
2003	141,892
2004	115,456
2005	94,240
2006	96,747
2007	100,241
2008	132,019
2009	310,305
2010	283,304

Appeals G.S. 96-15

- Claim Adjudicated
- Appeals Referee - Aggrieved Party may appeal the adjudicator's decision within 15 days of the date of notification or mailing of conclusion.
Commission – Aggrieved Party may appeal the referee's decision within 10 days of the date of notification or mailing of the decision rendered in the appeals hearing.
- Court System – Aggrieved Party may appeal the Commission decision to Superior Court within 30 days of notification of Commission decision

Appeals Decisions Rendered

■ Appeals Referee		53,565
■ Claimant		37,407
■ Ruled in Favor	49.3%	
■ Employer		16,158
■ Ruled in Favor	54.6%	
■ Second Level Appeals		10,576
■ Claimant		7,926
■ Ruled in Favor of Employer	80.9%	
■ Employer		2,650

Experience Rated Accounts

- Annual Computation July 31
- Average Tax Rate 2011: 1.8%
- 2011 Tax Rates
 - 197,691 Experience Rated Employers
 - **59,972 Higher (30%)**
 - 13,000 came off New Employer Tax rate
 - **68,812 Lower (35%)**
 - **68,907 No Change (35%)**

Employer Accounts

- 197,691 Liable Employers
 - 8,774 Employers with the highest capped tax rate of 5.7%
 - 25,087 Employers with 0% tax rate
 - 0% Tax rate is available to employers who have a credit ratio of 4% or greater

Time Line

- February 2009 – First Advance by NC of Federal Loan
- January 2011 – Interest starts accruing on Federal Debt
- September 30, 2011 – Interest Payment Due
 - **Current Rate is 4.0869%**
 - **\$100 million in State Reserve to pay interest**
- November 10, 2011 – Principal Balance due to avoid FUTA credit reduction

Federal Loan Request and Repayment

- Governor or designee submits a request to the Secretary of Labor estimating amounts to be borrowed for each month of a consecutive three month period.
- Secretary of Labor certifies to Secretary of the Treasury the amounts that a State can borrow each month.
- State can access the amount of funds needed electronically.

Federal Loan Request and Repayment

- A State may elect to repay loans with any funds available at the end of each day over a specified period.
- North Carolina sweeps all revenue collected each day to pay benefits before borrowing.

Federal Loan Request and Repayment

- **Interest rate applicable to a calendar year is the rate of interest paid on balances in the Unemployment Trust Fund (UTF) for the fourth quarter of the prior calendar year.**
- **Interest rate on outstanding balances for 2011 is: 4.0869 percent.**
- **Interest cannot be paid directly or indirectly from funds in a State's account in the UTF.**
- **A State cannot use grant funds or Reed Act funds to pay interest.**

FUTA

- Federal payroll tax on employers at 6.2% on a taxable wage base of \$7,000
- Employers in States that are in compliance with Federal Regulations are given a 5.4% credit on their FUTA
- A tax credit reduction of .3% annually on States with Federal loan balance outstanding for 2 consecutive Januarys
 - If NC's debt is not paid by November 10, 2011, employers effective FUTA tax rate will increase from .08% to 1.1%. Currently, employers pay \$56 per employee. The increase would raise the FUTA tax to \$77 per employee.

FUTA Tax Issue

Estimated FUTA Credit Reduction*

State	Estimated FUTA Credit Reduction*		
	2009 (%)	2010 (%)	2011 (%)
Alabama			0.3
Arkansas			0.3
California			0.3
Connecticut			0.3
Florida			0.3
Georgia			0.3
Idaho			0.3
Illinois			0.3
Indiana		0.3	0.6
Kentucky			0.3
Michigan	0.3	0.6	0.9
Minnesota			0.3
Missouri			0.3
North Carolina			0.3
New Jersey			0.3
Nevada			0.3
New York			0.3
Ohio			0.3
Pennsylvania			0.3
Rhode Island			0.3
South Carolina		0.3	0.6
Virginia			0.3
Virgin Islands			0.3
Wisconsin			0.3

* Assumes balance on January 1 every year and on November 10 of the indicated year and no application of the possible third year 2.7% add-on amount.

Current Proposals

- President Obama proposed in his budget to give State's a two year moratorium on the interest.
- Provides a delay in the FUTA tax penalty
- Also provides for a increase in the taxable wage base while lowering the FUTA tax rate

Senate Bill 386

- Senator Durbin proposed a bill similar to Obama's proposal except:
 - Would provide a partial forgiveness on the debt principle if States meet certain criteria

Congressional Action

- Extension of the Emergency Unemployment Compensation through December 2011
- Extension of the interest free borrowing?
- Eliminate the FUTA credit reduction?
- Loan forgiveness?

Policy Options

- Do Nothing
- Adjust Existing Statutes
- Trust Fund Solvency

Do Nothing

- Make interest payments at Federal Rate and continue to borrow from Federal Trust Fund
- Allow FUTA tax increases to apply to outstanding balance.
 - **.3% increase in FUTA rate annually until loan is settled**
 - **Cost to employers: \$56 to \$77 per employee; \$83 million first year**
 - **By 2015, the rate would be 2.3%, or \$161 per employee**

ESC Internal Committee Recommendations

- Incrementally increase Taxable Wage Base
 - **60% - 2012; 70% - 2013; 80% - 2014**
 - **Cost to employers:**
 - **\$10 - \$20 million - Year 1**
 - **\$30 - \$40 million - Year 2**
 - **\$30 - \$40 million - Year 3**
- Require approximately an additional \$700 million in collections to replenish the trust fund

Recommendations

- Adjust Standard Beginning Rate
 - Change the Standard Beginning Rate from 1.2% to 2.7%
- Eliminate 0% Tax Rate
- Adjust the tax rates for Debit Ratio Employers
 - Current Rates are 2.9% - 5.7%
 - **Approximately 17,000 employers have a deficit balance in their ERA**

Recommendations

- Adjust the standard beginning rate
 - Currently new employers rate is 1.2% for 2 years
 - **Oklahoma and South Dakota have rates this low**
 - USDOL recommended new employer rate of 2.7%
 - **Generate \$38 million a year**

Recommendations

- **Modify Existing Tax Schedules**
 - Have been at the highest tax schedule allowed by statute since tax year 2003
 - Current Highest rates:
 - **Credit Ratio Experience Rate – 2.7%**
 - **Debit Ratio Experience Rate – 5.7%**

Bond Issuance

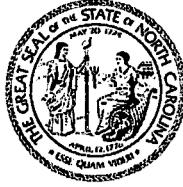
- Existing debt is not a general obligation of the State
- Bonds would be a general obligation
- Tax Anticipation Notes (TAN) are not a general obligation but are capped at 50% of the anticipated annual revenue



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P.O. Box 25903
Raleigh, NC 27611-5903



North Carolina General Assembly
House Committee on Finance

Minutes

March 9, 2011

The House Committee on Finance met on Wednesday, March 9, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Etefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairperson Setzer called the meeting to order at 8:30 am and recognized the four (4) pages present: (1) Paige Robinson of Wayne County sponsored by Representative Sager; (2) Emoni Tedder of Durham County sponsored by Representative Hall (3) Patrick Coats, II of Johnston County sponsored by Representative Daughtry; and (4) Teannya Monroe of Cumberland County sponsored by Representative Lucas.

The first bill considered by the Committee was **HB 68 Tax Certification – Add Brunswick County** (see **attachment 3**). The Chair recognized Representative Iler to explain the bill. Following the explanation, the Chair recognized Representative Hill who made a motion to adopt a proposed committee substitute. The motion carried. Representative Iler explained the proposed committee substitute. Representative Hill moved that HB 68 be given a favorable report to the proposed committee substitute which changed the title, unfavorable report to the original bill. The motion carried.

The next bill considered by the Committee was **HB 49 Laura's Law** (see **attachment 4**). Chairperson Setzer recognized Representative Moore to explain the bill. The Chair then recognized Representative McGee who moved that the proposed committee substitute be adopted. The motion carried. Representative Moore was recognized to explain the

proposed committee substitute. Following the explanation, The Chair recognized Representative Hackney who moved that HB 49 be given a favorable report to proposed committee substitute 2 and an unfavorable report to proposed committee substitute 1. The motion carried.

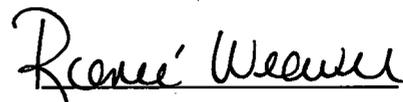
HB 93 Modify Refundability of EITC (see attachment 5) was heard next by the Committee. Chairperson Setzer recognized Representative Starnes to explain the bill. Due to the lengthy discussion that followed, no vote was taken on the bill. The Chair stated the bill would be re-calendared.

Chairperson Setzer adjourned the meeting at 9:50 am.

Respectfully submitted,



Representative Mitchell Setzer
Presiding Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 2 for

HB 49 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PUNISHMENT FOR DWI OFFENDERS WITH THREE OR MORE GROSSLY AGGRAVATING FACTORS, TO AUTHORIZE THE COURT TO REQUIRE CONTINUOUS ALCOHOL MONITORING FOR CERTAIN OFFENDERS, AND TO INCREASE THE COURT COSTS FOR DWI OFFENDERS.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 68 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE BRUNSWICK COUNTY TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

#1

AGENDA
House Finance Committee

Wednesday, March 9, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Julia C. Howard

Call to Order

Introduction of Pages

Bills:

HB 49 Laura's Law

Representatives Moore, Hastings, Torbett, Warren

HB 68 Tax Certification – Add Brunswick County

Representatives Iler, Hill

HB 93 Modify Refundability of EITC

Representatives Howard, Setzer, Brubaker, Starnes

SB 99 Reform UI Tax Structure/Expedite Analysis

Senators Clary, Rucho, Hartsell

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAR. 9, 2011 Room: 544

House Sgt-At Arms:

- 1. Name: FRED HINES
- 2. Name: JOHN BRANDON
- 3. Name: EARL COKER
- 4. Name: KEN KIRBY
- 5. Name: _____

Senate Sgt-At Arms:

- 1. Name: _____
- 2. Name: _____
- 3. Name: _____
- 4. Name: _____
- 5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE HOUSE FINANCE DATE 03/09/11

1. Name: Paige Robinson

County: Wayne

Sponsor: Efton Sager

2. Name: Emoni Tedder

County: Durham

Sponsor: Larry Hall

3. Name: Patrick Coats II

County: Johnston

Sponsor: Leo Dagtry

4. Name: Teannya Monroe

County: Cumberland

Sponsor: Marvin Lucas

5. Name: _____

County: _____

Sponsor: _____

weaver

MOG
JHC

VISITOR REGISTRATION SHEET

House Finance Committee
Name of Committee

3/9/11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME

FIRM OR AGENCY AND ADDRESS

Michael Oelos Santos

CRA-AC

James Andrews

NC State AFL-CIO

Edwin McLoughan

NC Justice Center

Sherry Bradsher

DHHS - DSS

Mark Bibbs

Bibbs Law Office

X Stanley

Commerce

JOHN PETERSON

NCEDA

Laura DeVita

WCSP

mood

VISITOR REGISTRATION SHEET

House Finance Committee

3/9/11

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Will Culpeper	MVA
Debra Durr	ESC
Alexandra Sivota	NC Budget & Tax Center
Jill Cox	United Way of NC
Mandy Ablesinger	Action for Children NC
David Baker	NC POR
Jessie Hayes	NC ABA
Carlton Murrey	CFG
Ken Feltz	CFG
Cockhart Taylor	ESC
Bill Rowe	NC Justice Center

VISITOR REGISTRATION SHEET

House Finance Committee

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Jammy Smith	DC AOC
Ed Thompson	Covenant w/ NC's Children
Amy Hobbs	Speakers Office
SUSAN LUTEN	CENTER FOR RESPONSIBLE LENDING
Henry Lutoff	N.C. B. A.
Lachelle Pulliam	Rep. Wainwright
Chuck Allen	US Airways
Rev. Mark Creech	CAE
John McAlister	NC Chamber
Cameron Henley	Electric Cities of NC
Dean Plunkett	PS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

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HOUSE BILL 68
PROPOSED COMMITTEE SUBSTITUTE H68-CSLA-1 [v.2]

3/8/2011 10:32:02 AM

Short Title: Tax Certification - Add Counties. (Local)

Sponsors:

Referred to:

February 10, 2011

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A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE ALAMANCE, BRUNSWICK, BUNCOMBE, AND YANCEY
COUNTIES TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES
BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"§ 161-31. Tax certification.

(a) Tax Certification. – The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. – If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

(b) Applicability. – This section applies only to Alamance, Alexander, Anson, Beaufort, Bertie, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, ~~and~~ Yadkin ~~Yadkin~~, and Yancey Counties."

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



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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1

HOUSE BILL 68

Short Title: Tax Certification - Add Brunswick County. (Local)

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

Referred to: Government.

February 10, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE BRUNSWICK COUNTY TO REQUIRE THE PAYMENT OF
3 DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING
4 PROPERTY.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. G.S. 161-31(b) reads as rewritten:
7 "§ 161-31. Tax certification.
8 (a) Tax Certification. – The board of commissioners of a county may, by resolution,
9 require the register of deeds not to accept any deed transferring real property for registration
10 unless the county tax collector has certified that no delinquent ad valorem county taxes, ad
11 valorem municipal taxes, or other taxes with which the collector is charged are a lien on the
12 property described in the deed. The county commissioners may describe the form the
13 certification must take in its resolution.
14 (a1) Exception to Tax Certification. – If a board of county commissioners adopts a
15 resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register
16 of deeds shall accept without certification a deed submitted for registration under the
17 supervision of a closing attorney and containing this statement on the deed: "This instrument
18 prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be
19 paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."
20 (b) Applicability. – This section applies only to Alexander, Anson, Beaufort, Bertie,
21 Brunswick, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay,
22 Cleveland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston,
23 Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde,
24 Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell,
25 Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt,
26 Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell,
27 Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties."
28 SECTION 2. This act is effective when it becomes law.





HOUSE BILL 68: Tax Certification - Add Counties

2011-2012 General Assembly

Committee: House Finance	Date: March 8, 2011
Introduced by: Reps. Iler, Hill	Prepared by: Martha Walston
Analysis of: PCS to First Edition, H68-CSLA-1	Committee Counsel

SUMMARY: *HB 68, as introduced, authorizes Brunswick County to require payment of delinquent property taxes prior to recording deeds conveying property. HB 68 was given a favorable report in House Government. The PCS adds Alamance, Buncombe, and Yancey Counties.*

CURRENT LAW: *G.S. 161-31(a)* permits tax certification by allowing a county board of commissioners, by resolution, to require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

G.S. 161-31(a1) provides an exception to the tax certification by requiring the register of deeds to accept, without certification, a deed containing the following statement: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

G.S. 161-31(b) lists the 69 counties to which this provision currently applies.¹

The following four counties have a similar requirement but under different authorizing legislation:

Avery County	Chapter 305 of the 1963 Session Laws, as amended by S.L. 1997-410 and S.L. 1998-73 ²
Ashe County	S.L. 1993-657, as amended by S.L. 1997-410 and S.L. 2005-433 ³
Alleghany County	S.L. 1997-410
Mitchell County	S.L. 1987-537, as amended by S.L. 1997-410 and S.L. 1999-326 ⁴

These local acts provide that the Register of Deeds shall not record any deed unless it is accompanied by a certification that all delinquent taxes have been paid. These local acts are in contrast to *G.S. 161-31*, which gives certain counties the discretion to pass a resolution to that effect.

BILL ANALYSIS: The PCS to House Bill 68 amends *G.S. 161-31(b)* to add Alamance, Brunswick, Buncombe, and Yancey Counties to the list of counties in which the board of commissioners is permitted to pass a resolution requiring the register of deeds not to accept any deed transferring real property unless the county tax collector certifies that the taxes listed in the statute are not delinquent and are not a lien on the property. (The taxes listed in *G.S. 161-31(a)* are ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged.)

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

Trina Griffin, counsel to House Finance, substantially contributed to this summary.

H68-SMLA-5(e1) v1

¹ The Register of Deeds in Duplin County must also receive a certification that no municipal taxes or any other taxes the collector is charged with collecting are a lien on the property before a deed transferring the property may be recorded.

² The Town of Newland was added in 1997; the Town of Banner Elk was added in 1998.

³ S.L. 2005-433 provides that in addition to receiving a certification from the county tax collector, the Register of Deeds must also receive a certification from any municipal tax collector, where applicable, verifying that all delinquent taxes on the property have been paid.

⁴ This local act also provides that if the property is located in the Town of Spruce Pine or the Town of Bakersville, the deed must also be accompanied by a certification from the town tax collector that all municipal taxes have been paid with respect to the property.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 49
Committee Substitute Favorable 2/24/11
PROPOSED COMMITTEE SUBSTITUTE H49-CSSVx-1 [v.1]

3/8/2011 7:16:28 PM

Short Title: Laura's Law.

(Public)

Sponsors:

Referred to:

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR DWI OFFENDERS WITH THREE OR MORE GROSSLY AGGRAVATING FACTORS, TO AUTHORIZE THE COURT TO REQUIRE CONTINUOUS ALCOHOL MONITORING FOR CERTAIN OFFENDERS, AND TO INCREASE THE COURT COSTS FOR DWI OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179 reads as rewritten:

"§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(a) Sentencing Hearing Required. – After a conviction under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Aggravated Level One punishment under subsection (f3) of this section if it is determined that three or more grossly aggravating factors apply. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:



- 1 a. The conviction occurred within seven years before the date of the
2 offense for which the defendant is being sentenced; or
3 b. The conviction occurs after the date of the offense for which the
4 defendant is presently being sentenced, but prior to or
5 contemporaneously with the present sentencing; or
6 c. The conviction occurred in district court; the case was appealed to
7 superior court; the appeal has been withdrawn, or the case has been
8 remanded back to district court; and a new sentencing hearing has
9 not been held pursuant to G.S. 20-38.7.

10 Each prior conviction is a separate grossly aggravating factor.

- 11 (2) Driving by the defendant at the time of the offense while his driver's license
12 was revoked under G.S. 20-28, and the revocation was an impaired driving
13 revocation under G.S. 20-28.2(a).
14 (3) Serious injury to another person caused by the defendant's impaired driving
15 at the time of the offense.
16 (4) Driving by the defendant while a child under the age of 16 years was in the
17 vehicle at the time of the offense.

18 In imposing an Aggravated Level One, a Level One, or a Level Two punishment, the
19 judge may consider the aggravating and mitigating factors in subsections (d) and (e) in
20 determining the appropriate sentence. If there are no grossly aggravating factors in the case, the
21 judge must weigh all aggravating and mitigating factors and impose punishment as required by
22 subsection (f).

23 ...

24 (f3) Aggravated Level One Punishment. – A defendant subject to Aggravated Level One
25 punishment may be fined up to ten thousand dollars (\$10,000) and shall be sentenced to a term
26 of imprisonment that includes a minimum term of not less than 12 months and a maximum
27 term of not more than 36 months. Notwithstanding G.S. 15A-1371, a defendant sentenced to a
28 term of imprisonment pursuant to this subsection shall not be eligible for parole. However, the
29 defendant shall be released from the Department of Correction on the date equivalent to the
30 defendant's maximum imposed term of imprisonment less four months, and shall be supervised
31 by the Division of Community Corrections under and subject to the provisions of Article 84A
32 of Chapter 15A of the General Statutes and shall also be required to abstain from alcohol
33 consumption for the four-month period of supervision as verified by a continuous alcohol
34 monitoring system. For purposes of revocation, violation of the requirement to abstain from
35 alcohol or comply with the use of a continuous alcohol monitoring system shall be deemed a
36 controlling condition under G.S. 15A-1368.4.

37 The term of imprisonment may be suspended only if a condition of special probation is
38 imposed to require the defendant to serve a term of imprisonment of at least 120 days.
39 Subsection (k1) of this section shall not apply to a defendant sentenced pursuant to this
40 subsection. If the defendant is placed on probation, the judge shall impose as requirements that
41 the defendant (i) abstain from alcohol consumption for a minimum of 120 days, to a maximum
42 of the term of probation, as verified by a continuous alcohol monitoring system pursuant to
43 subsections (h1) and (h3) of this section, and (ii) obtain a substance abuse assessment and the
44 education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a
45 condition of probation. The judge may impose any other lawful condition of probation.

46 (g) Level One Punishment. – A defendant subject to Level One punishment may be
47 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment
48 that includes a minimum term of not less than 30 days and a maximum term of not more than
49 24 months. The term of imprisonment may be suspended only if a condition of special
50 probation is imposed to require the defendant to serve a term of imprisonment of at least 30
51 days. If the defendant is placed on probation, the judge shall impose a requirement that the

1 defendant obtain a substance abuse assessment and the education or treatment required by
2 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge
3 may impose any other lawful condition of probation.
4

5 (h1) The judge may impose, as a condition of probation for defendants subject to Level
6 One or Level Two punishments, that the defendant abstain from alcohol consumption for a
7 minimum of 30 days, to a maximum of ~~60 days, the term of probation,~~ as verified by a
8 continuous alcohol monitoring system. ~~The total cost to the defendant for the continuous~~
9 ~~alcohol monitoring system may not exceed one thousand dollars (\$1,000).~~ The defendant's
10 abstinence from alcohol shall be verified by a continuous alcohol monitoring system of a type
11 approved by the Department of Correction.

12 (h2) ~~Notwithstanding the provisions of subsection (h1), if the court finds, upon good~~
13 ~~cause shown, that the defendant should not be required to pay the costs of the continuous~~
14 ~~alcohol monitoring system, the court shall not impose the use of a continuous alcohol~~
15 ~~monitoring system unless the local governmental entity responsible for the incarceration of the~~
16 ~~defendant in the local confinement facility agrees to pay the costs of the system.~~

17 (h3) Any fees or costs paid pursuant to ~~subsections (h1) or (h2)~~ subsection (h1) of this
18 section shall be paid to the clerk of court for the county in which the judgment was entered or
19 the deferred prosecution agreement was filed. Fees or costs collected under this subsection shall
20 be transmitted to the entity providing the continuous alcohol monitoring system.
21

22 (k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order
23 that a term of imprisonment imposed as a condition of special probation under ~~any level of~~
24 ~~punishment~~ subsection (g), (h), (i), (j), or (k) of this section be served as an inpatient in a
25 facility operated or licensed by the State for the treatment of alcoholism or substance abuse
26 where the defendant has been accepted for admission or commitment as an inpatient. The
27 defendant shall bear the expense of any treatment unless the trial judge orders that the costs be
28 absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the
29 premises of the treatment facility and require that the defendant follow the rules of the
30 treatment facility. The judge may credit against the active sentence imposed on a defendant the
31 time the defendant was an inpatient at the treatment facility, provided such treatment occurred
32 after the commission of the offense for which the defendant is being sentenced. This section
33 shall not be construed to limit the authority of the judge in sentencing under any other
34 provisions of law.
35

36"

37 SECTION 2. G.S. 20-19(e) reads as rewritten:

38 "(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has
39 two or more previous offenses involving impaired driving for which the person has been
40 convicted, and the most recent offense occurred within the five years immediately preceding
41 the date of the offense for which the person's license is being ~~revoked, or (ii) revoked, (ii)~~
42 G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(f3) for the offense
43 resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the
44 revocation is permanent."

45 SECTION 3. G.S. 20-17.8 reads as rewritten:

46 "§ 20-17.8. Restoration of a license after certain driving while impaired convictions;
47 ignition interlock.

48 (a) Scope. – This section applies to a person whose license was revoked as a result of a
49 conviction of driving while impaired, G.S. 20-138.1, and:

50 (1) The person had an alcohol concentration of 0.15 or ~~more; or more;~~

51 (2) The person has been convicted of another offense involving impaired
driving, which offense occurred within seven years immediately preceding

1 the date of the offense for which the person's license has been
2 ~~revoked~~revoked; or

3 (3) The person was sentenced pursuant to G.S. 20-179(f3).

4 For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as
5 shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the
6 Division to determine that person's alcohol concentration.

7 ...

8 (b) **(Effective until December 1, 2014)** Ignition Interlock Required. – Except as
9 provided in subsection (l) of this section, when the Division restores the license of a person
10 who is subject to this section, in addition to any other restriction or condition, it shall require
11 the person to agree to and shall indicate on the person's drivers license the following
12 restrictions for the period designated in subsection (c):

13 (1) A restriction that the person may operate only a vehicle that is equipped with
14 a functioning ignition interlock system of a type approved by the
15 Commissioner. The Commissioner shall not unreasonably withhold approval
16 of an ignition interlock system and shall consult with the Division of
17 Purchase and Contract in the Department of Administration to ensure that
18 potential vendors are not discriminated against.

19 (2) A requirement that the person personally activate the ignition interlock
20 system before driving the motor vehicle.

21 (3) An alcohol concentration restriction as follows:

22 a. If the ignition interlock system is required pursuant only to
23 subdivision (a)(1) of this section, a requirement that the person not
24 drive with an alcohol concentration of 0.04 or greater;

25 b. If the ignition interlock system is required pursuant to subdivision
26 (a)(2) or (a)(3) of this section, or subsection (a1) of this section, a
27 requirement that the person not drive with an alcohol concentration
28 of greater than 0.00; or

29 c. If the ignition interlock system is required pursuant to subdivision
30 (a)(1) of this section, and the person has also been convicted, based
31 on the same set of circumstances, of: (i) driving while impaired in a
32 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21
33 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a
34 violation of G.S. 20-141.4, or (iv) manslaughter or negligent
35 homicide resulting from the operation of a motor vehicle when the
36 offense involved impaired driving, a requirement that the person not
37 drive with an alcohol concentration of greater than 0.00.

38 (b) **(Effective December 1, 2014)** Ignition Interlock Required. – Except as provided in
39 subsection (l) of this section, when the Division restores the license of a person who is subject
40 to this section, in addition to any other restriction or condition, it shall require the person to
41 agree to and shall indicate on the person's drivers license the following restrictions for the
42 period designated in subsection (c):

43 (1) A restriction that the person may operate only a vehicle that is equipped with
44 a functioning ignition interlock system of a type approved by the
45 Commissioner. The Commissioner shall not unreasonably withhold approval
46 of an ignition interlock system and shall consult with the Division of
47 Purchase and Contract in the Department of Administration to ensure that
48 potential vendors are not discriminated against.

49 (2) A requirement that the person personally activate the ignition interlock
50 system before driving the motor vehicle.

51 (3) An alcohol concentration restriction as follows:

- 1 a. If the ignition interlock system is required pursuant only to
- 2 subdivision (a)(1) of this section, a requirement that the person not
- 3 drive with an alcohol concentration of 0.04 or greater;
- 4 b. If the ignition interlock system is required pursuant to subdivision
- 5 (a)(2) or (a)(3) of this section, a requirement that the person not drive
- 6 with an alcohol concentration of greater than 0.00; or
- 7 c. If the ignition interlock system is required pursuant to subdivision
- 8 (a)(1) of this section, and the person has also been convicted, based
- 9 on the same set of circumstances, of: (i) driving while impaired in a
- 10 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21
- 11 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a
- 12 violation of G.S. 20-141.4, or (iv) manslaughter or negligent
- 13 homicide resulting from the operation of a motor vehicle when the
- 14 offense involved impaired driving, a requirement that the person not
- 15 drive with an alcohol concentration of greater than 0.00.

16"

17 **SECTION 4.** G.S. 7A-304(a) reads as rewritten:

18 "(a) In every criminal case in the superior or district court, wherein the defendant is
 19 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the
 20 prosecuting witness, the following costs shall be assessed and collected, except that when the
 21 judgment imposes an active prison sentence, costs shall be assessed and collected only when
 22 the judgment specifically so provides, and that no costs may be assessed when a case is
 23 dismissed.

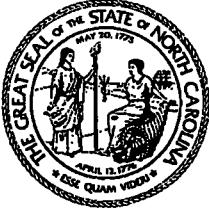
24 ...

25 (10) For support of the General Court of Justice, the sum of one hundred dollars
 26 (\$100.00) is payable by a defendant convicted under G.S. 20-138.1 or
 27 G.S. 20-138.2, for a second or subsequent conviction under G.S. 20-138.2A,
 28 or for a second or subsequent conviction under G.S. 20-138.2B, to be
 29 remitted to the State Treasurer. This fee shall be in addition to the fee
 30 required by subsection (4a) of this section."

31 **SECTION 5.** G.S. 15A-534 is amended by adding a new subsection to read:

32 "(i) In addition to any other condition of pretrial release, the judicial official authorizing
 33 pretrial release may order any defendant (i) charged with an offense involving impaired
 34 driving, as defined by G.S. 20-4.01(24a), and (ii) having a prior conviction for an offense
 35 involving impaired driving that occurred within seven years before the date of the offense for
 36 which the defendant is being placed on pretrial release, to abstain from alcohol consumption as
 37 verified by an approved continuous alcohol monitoring system for the period of pretrial release
 38 or until this condition is removed by entry of order of a court of competent jurisdiction."

39 **SECTION 6.** This act becomes effective December 1, 2011, and applies to
 40 offenses committed on or after that date.



HOUSE PCS 49: Laura's Law

2011-2012 General Assembly

Committee:	House Finance	Date:	March 9, 2011
Introduced by:	Reps. T. Moore, Hastings, Torbett, H. Warren	Prepared by:	Susan Sitze
Analysis of:	PCS to Second Edition H49-CSSVx-1		Staff Attorney

SUMMARY: *House Bill 49¹ would increase the punishment for DWI offenders with three or more grossly aggravating factors, would authorize the court to require continuous alcohol monitoring for certain offenders, and would impose an additional \$100 in court costs for DWI offenders.*

BILL ANALYSIS:

Section 1 would amend subsections (c), (g), and (k1) of G.S. 20-179 to create a new, higher, Aggravated Level One punishment for DWI offenders with 3 or more grossly aggravating factors. The punishment would allow a fine up to \$10,000 and a term of imprisonment of 12 months to 36 months. A defendant would not be eligible for parole on any term of imprisonment under this level of sentencing. However, the defendant would be released 4 months prior to the maximum prison term for a period of supervision including continuous alcohol monitoring.

The term of imprisonment could be suspended if a special condition of probation is imposed to require the defendant to serve a term of imprisonment of at least 120 days. The defendant would not be able to receive credit for inpatient treatment towards the term of imprisonment. The defendant would be required to comply with continuous alcohol monitoring for a minimum of 120 days to a maximum of the term of probation.

This section would also amend subsections (h1), (h2), and (h3) of G.S. 20-179 to make the following changes to the current provisions relating to the use of continuous alcohol monitoring:

- Would remove the current limitation of 60 days on the use of continuous alcohol monitoring, and allow the court to require the use for the full term of probation
- Would remove the current restriction that the total cost to the defendant for continuous alcohol monitoring not be more than \$1,000
- Would remove the provision in current law that allows the court to find that the defendant should not be required to pay the costs of continuous alcohol monitoring, and in that case to not impose the requirement unless the local government entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the cost of the system

Section 2 would provide for a permanent revocation for persons sentenced as an Aggravated Level One offender. This particular "permanent" revocation authorizes a person to apply for conditional license restoration after 3 years.

¹As introduced, this bill was identical to S86, as introduced by Sens. Harrington, Clary, Forrester, which is currently in Senate Judiciary I.

House PCS 49

Page 2

Section 3 would require a person sentenced as an Aggravated Level One offender to have an ignition interlock system installed on their vehicle for a period of 7 years after license restoration, and that they not drive with an alcohol concentration (BAC) of greater than 0.00.

Section 4 would impose an additional court cost of \$100 on all persons convicted of a driving while impaired offense. This fee would be in addition to the current fees, which total approximately \$141, plus any fines, restitution, attorneys' fees, or other fees, such as probation supervision or lab fees, that may be imposed.

Section 5 would authorize that a person charged with an offense involving impaired driving be required to comply with continuous alcohol monitoring as a condition of pre-trial release if they have a prior conviction of an offense involving impaired driving that occurred within 7 years.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

BACKGROUND:

There are currently 5 levels of DWI sentencing described briefly as follows:

Level One – 2 or more grossly aggravating factors, fine up to \$4,000, imprisonment of 30 days to 24 months, with mandatory 30 days active

Level Two – 1 grossly aggravating factor, fine up to \$2,000, imprisonment of 7 days to 12 months, with mandatory 7 days active

Level Three – no grossly aggravating factors, but the aggravating factors outweigh the mitigating factors, fine up to \$1,000, imprisonment of 72 hours to 6 months, with mandatory 72 hours active or 72 hours community service or both

Level Four – no aggravating and mitigating factors, or aggravating factors are substantially counterbalanced by mitigating factors, fine up to \$500, imprisonment of 48 hours to 120 days, with mandatory 48 hours active or 48 hours community service or both

Level Five – mitigating factors substantially outweigh any aggravating factors, fine up to \$200, imprisonment of 24 hours to 60 days, with mandatory 24 hours active or 24 hours community service or both

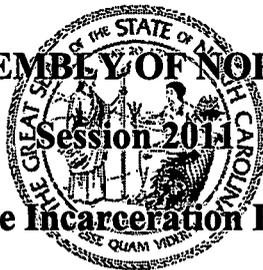
Grossly aggravating factors are:

- Prior DWI conviction within 7 years
- Driving while license revoked for an impaired driving conviction
- Serious injury to another person caused by the impaired driving
- Driving while impaired with a child under 16 in the vehicle

Aggravating factors include factors such as: a BAC level of 0.15 or more, reckless driving, driving while license revoked, an accident resulting from the impaired driving, and some previous motor vehicle convictions.

Mitigating factors include factors such as: a BAC level of less than 0.09, safe driving except for the impairment, a safe driving record, impairment caused by lawfully prescribed drug for an existing medical condition, and voluntary submission to substance abuse assessment.

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 49 (First Edition)
SHORT TITLE: Laura's Law.
SPONSOR(S): Representatives T. Moore, Torbett, Hastings, and H. Warren

FISCAL IMPACT table with columns for Yes (X), No (), and No Estimate Available () across fiscal years FY 2011-12 to FY 2015-16. Rows include REVENUE, EXPENDITURES (Correction, Probation, Judicial), and PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED.

BILL SUMMARY:

The proposed legislation provides that a defendant subject to Aggravated Level One punishment may be fined up to \$10,000 and will be sentenced to imprisonment, including a term of not less than 120 days and not more than 36 months. The act also makes a defendant sentenced under Aggravated Level One punishment ineligible for parole. The act allows suspension of the imprisonment term only if a special probation condition is imposed, requiring the defendant to serve a term of imprisonment of at least 120 days. The act prohibits crediting the time a defendant spent at an inpatient treatment facility toward the defendant's Aggravated Level One sentence.

Additionally, the act amends G.S. 20-179 (pertaining to sentencing hearings for impaired driving convictions; determination of grossly aggravating, aggravating, and mitigating factors; and punishments) to require a judge, in a sentencing hearing, to impose the Aggravated Level One punishment under proposed G.S. 20-179(g), if the judge determines that three or more grossly aggravating factors apply. The act also amends G.S. 20-179(h1) to allow a judge to impose, as a condition of probation for defendants subject to Aggravated Level One, Level One, or Level Two punishments, that the defendant abstain from alcohol consumption for at least 30 days through the term of probation (was, to a maximum of 60 days). The proposed legislation removes the provision limiting the total cost to the defendant for the continuous alcohol monitoring system to \$1,000. The act also removes the provision allowing the court to waive application of the continuous alcohol monitoring system when the court determines that the defendant should not pay for the system, and the responsible local government does not pay.

The proposed legislation amends G.S. 20-19(e) (concerning circumstances of license revocation) to add the following circumstance to those resulting in permanent license revocation: when a person's license is revoked under G.S. 20-17(a)(2) (concerning impaired driving offenses) and the person was sentenced under the Aggravated Level One punishment (proposed G.S. 20-179(g)) for the offense resulting in the license revocation.

The act also amends G.S. 20-17.8 to restrict a person sentenced under the Aggravated Level One punishment to operating vehicles equipped with functioning ignition interlock systems, and to require that the person not drive with an alcohol concentration greater than 0.0.

Furthermore, the act amends G.S. 7A-304(a) (regarding costs in criminal actions) to impose a cost of \$100 on a defendant convicted under G.S. 20-138.1 or G.S. 20-138.2 (for impaired driving), or a second or subsequent conviction under G.S. 20-138.2A or G.S. 20-138.2B (operating a commercial vehicle, school bus, or child care vehicle after consuming alcohol), in every criminal case in the superior or district court, as indicated.

The proposed legislation becomes effective December 1, 2011, and applies to offenses committed on or after that date.

Source: Bill Digest H.B. 49 (02/08/2011).

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

However, the Sentencing and Policy Advisory Commission was unable to prepare prison population projections for the proposed legislation. DWI's are not punished under Structured Sentencing, so the Sentencing Commission does not have any DWI offender data. As a result, the

Department of Correction Office of Research and Planning was asked to estimate the fiscal impact of the proposed legislation.

Department of Correction

Methodology:

To estimate eligibility for Aggravated Level One punishment, the Department of Correction Office of Research and Planning (DOC) examined 519 entries to prison with DWI Level One as their most serious offense in FY 2009-10. DOC reviewed the offender's commitments and arrest record to determine the following:

1. Whether the offender had any prior DWI offenses and instances of concurrent driving while license revoked charges;
2. Whether, at the time of the offense, the defendant's impaired driving caused serious injury to another person; and
3. Whether, at the time of the offense, the defendant was driving while a child under the age of 16 years was in the vehicle.

Inmates were assigned one factor for each prior offense, and one factor for each aggravating condition, then the factors were summed for each inmate. Inmates with a total of three or more factors were placed in Aggravated Level One for the purposes of this analysis. Inmates with only two factors remained in Level One in order to compare the impact of the act. In total, DOC estimated that 275 would be re-assigned to Aggravated Level One punishment.

For inmates who remained in Level One, the estimated new sentence remained the same as the current sentence. The bill increases the maximum sentence for DWI Level One crimes from 730 days to 1,095 days. Under the old law, Level One inmates served approximately 33% of the 730 day maximum sentence; non-paroled Level One inmates served approximately 41% of the 730 day maximum sentence. To estimate the amount of time that may be served by Aggravated Level One inmates, the new sentence was multiplied by the expected percent of sentence served by non-paroled Level One inmates (41%) and by the expected percent of sentences served by all Level One inmates (33%) for inmates who remained in the Level One category. For inmates who would be re-assigned to Aggravated Level One punishment, DOC estimated that offenders would serve an additional 171 days. The cost of the additional days for offenders in the Aggravated Level One punishment was estimated by multiplying the number of potential days served by \$14 per day per inmate.

Findings:

Using the methodology above, 275 of the 519 offenders (53%) would be re-assigned to Aggravated Level One punishment. The estimated total cost of 171 additional days is \$658,350 per year (171 days x \$14 per day x 275 offenders).

Other Issues/Concerns:

Inmates convicted of DWI Level One may enter prison with some other crime as the most serious offense. During FY 2009-2010, there were 118 inmates who entered prison with a Level One conviction to be served concurrently or consecutively to a more serious crime. Of these inmates,

DOC estimates that 61 (51.7%) would be eligible for Aggravated Level One. The changes in sentence range for inmates convicted of Aggravated Level One may extend these inmates stay in prison, depending upon the sentence received for other crimes. DOC was unable to estimate the impact for these inmates at this time.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Aggravated Level One Case Estimates:

Under current law, a judge must impose the Level One punishment under subsection (g) of this section, if it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies.

For Calendar Year 2010, AOC data shows the following:

DWI Level	Grossly Aggravating Factors*	Defendants Convicted**	Percent of Total
Level 1	2 or more	3,939	9.5%
Level 2	1	6,215	14.9%
Levels 3 - 5	none	31,528	75.6%
Total		41,682	100.0%
Level 1 as % of Levels 1 & 2			38.8%

*AOC data does not contain details on the number of grossly aggravating factors found or alleged. However, G.S. 20-179 requires a Level One conviction if two or more grossly aggravating factors are found and a Level Two conviction if one grossly aggravating factor is found.

**Note: Typically, Judicial cost estimates are based on charges, rather than convictions. However, since a Level One or Level Two DWI conviction is determined at sentencing based on findings of grossly aggravating factors, in this instance convictions are a more appropriate measure of workload.

Overall, in 2010 DWI convictions with any grossly aggravating factors accounted for 28% of all DWI convictions; and DWI convictions with more than one grossly aggravating factor accounted for 39% of all DWI convictions with grossly aggravating factors (or 10% of all DWI convictions). AOC cannot determine the number of Level One convictions that had at least three grossly aggravating factors.

Elevation from Level One to Aggravated Level One carries the potential for a substantial increase in punishment. In general, AOC expects that an increase in punishment will lead to a more vigorous defense, thus requiring more time on the part of court personnel. However, the district attorney is already obligated to introduce all aggravating and grossly aggravating factors of which he is aware, and anecdotal evidence suggests that DWI charges are already defended vigorously.

Therefore, AOC does not anticipate that this portion of the bill will significantly impact court workload at the time of conviction.

However, because this legislation increases the maximum fine amount and increases court costs, it is likely that the violation rate for some DWI probationers would increase, resulting in more court hearings on those violations. The number or impact of such hearings cannot be projected. There will be some one-time programming and form changes to include the new offense in the necessary reports to DMV. These costs are not anticipated to be substantial.

Elimination of Duration and Cost Caps for Continuous Alcohol Monitoring (CAM):

G.S. 20-179(h1) – (h3) currently provide that, when imposing a Level One or Level Two punishment for conviction of DWI, the court may impose a condition of probation that the defendant abstain from the consumption of alcohol for up to 60 days. The defendant's compliance with this condition is to be monitored by the use of a continuous alcohol monitoring system (CAM) approved by the Department of Correction. The costs (up to \$1,000) are borne by the defendant or, if the court finds for good cause that the defendant should not bear the costs of CAM, by the local government entity responsible for his incarceration. If neither the defendant nor the local government can bear the costs, the judge may not require CAM. The costs of CAM are paid to the Clerk of Court for distribution to the vendor providing the monitoring system.

Section 1 would amend the current CAM provisions in G.S. 20-179 to eliminate:

- The cap of 60 days (proposed: CAM could be imposed for the duration of probation);
- The \$1,000 cap on CAM costs (proposed: no limitation); and,
- The provision that CAM may not be imposed if there is no party available to pay for it (proposed: unknown; there is no clear authority to assess costs or their allocation).

By repealing G.S. 20-179(h2) and the assessment of costs in subsection (h1), it is unclear how costs for CAM would be assessed or allocated to a responsible party. Subsection (h3) would continue to provide that "any fees or costs paid under subsection[s] (h1)" would be collected by the clerk and paid to the CAM vendor. If the intention of the bill is that the costs of CAM would be assessed against the defendant, it is possible that judges would be less likely to impose as a condition of probation that offenders abstain from alcohol consumption under 20-179(h1). AOC cannot project the impact of this potential change in terms of other conditions that might be imposed instead, or on any resulting impact on probationer compliance and behavior. Any increase in probation revocation hearings would impact court workload.

New Court Fee for Impaired Driving Convictions:

DWI offenders are subject to multiple court costs in addition to any amounts imposed for fines, restitution, or attorneys' fees. With a new fee, revenue projections must take into account those offenders who currently pay in full, but would not ultimately pay the full additional \$100. In addition, it is important to note that costs due the State are toward the end of the priority order, and DWI probation terms are more than one year. Therefore, AOC would expect to see a gradual increase in revenue over the first three fiscal years. For this estimate, AOC has focused on defendants convicted in FY2008-09 and their payments through FY2009-10.

Due to data limitations, AOC is unable to determine the exact number of DWI offenders convicted in FY2008-09 who paid in full by FY2009-10. This is due to the court's focus on offender compliance with all terms of probation, rather than solely on money collected. Offenders may have received some reduction or waiver of fees and complied in full with the judgments rendered, and some defendants may still be on probation and making payments.

At this time, AOC estimates that 23,200 defendants convicted in FY2008-09 of the applicable offenses paid the full General Court of Justice fees owed. If all 23,200 paid the additional \$100 fee, total revenue from defendants sentenced in the first 12 months of implementation would be \$2.32 million, collected over 24 months. (Note: effective date is December 1, 2011, so collections would be spread over three fiscal years.)

However, it is likely that some of the offenders would pay only part of the new fee, or that collections would be diminished in other accounts with lower priorities. If the equivalent of 50% paid the full fee, collections from that group would be \$1.16 million, collected over 24 months. If the equivalent of 10% paid the full fee, collections from that group would be \$232,000, collected over 24 months.

Additionally, there will be a one-time impact on workload for information technology and legal staff, and ongoing impact on clerk workload, for any new fee that is imposed only on conviction of specific cases.

SOURCES OF DATA: Department of Correction Office of Research and Planning; Judicial Branch

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone; Kristine Leggett

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: February 14, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 49
Committee Substitute Favorable 2/24/11

Short Title: Laura's Law.

(Public)

Sponsors:

Referred to:

February 9, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PUNISHMENT FOR DWI OFFENDERS WITH THREE OR
3 MORE GROSSLY AGGRAVATING FACTORS, TO AUTHORIZE THE COURT TO
4 REQUIRE CONTINUOUS ALCOHOL MONITORING FOR CERTAIN OFFENDERS,
5 AND TO INCREASE THE COURT COSTS FOR DWI OFFENDERS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 20-179 reads as rewritten:

8 "§ 20-179. Sentencing hearing after conviction for impaired driving; determination of
9 grossly aggravating and aggravating and mitigating factors; punishments.

10 (a) Sentencing Hearing Required. – After a conviction under G.S. 20-138.1,
11 G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or
12 subsequent conviction under G.S. 20-138.2B, or when any of those offenses are remanded back
13 to district court after an appeal to superior court, the judge shall hold a sentencing hearing to
14 determine whether there are aggravating or mitigating factors that affect the sentence to be
15 imposed.

16 ...

17 (c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing,
18 based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior
19 court, must first determine whether there are any grossly aggravating factors in the case.
20 Whether a prior conviction exists under subdivision (1) of this subsection, or whether a
21 conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by
22 the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case
23 remanded back to district court from superior court, the judge shall determine whether the
24 defendant has been convicted of any offense that was not considered at the initial sentencing
25 hearing and impose the appropriate sentence under this section. The judge must impose the
26 Aggravated Level One punishment under subsection (g) of this section if it is determined that
27 three or more grossly aggravating factors apply. The judge must impose the Level One
28 punishment under subsection ~~(g)~~(g1) of this section if it is determined that two or more grossly
29 aggravating factors apply. The judge must impose the Level Two punishment under subsection
30 (h) of this section if it is determined that only one of the grossly aggravating factors applies.
31 The grossly aggravating factors are:

32 (1) A prior conviction for an offense involving impaired driving if:

- 33 a. The conviction occurred within seven years before the date of the
34 offense for which the defendant is being sentenced; or
35 b. The conviction occurs after the date of the offense for which the
36 defendant is presently being sentenced, but prior to or
37 contemporaneously with the present sentencing; or



1 c. The conviction occurred in district court; the case was appealed to
2 superior court; the appeal has been withdrawn, or the case has been
3 remanded back to district court; and a new sentencing hearing has
4 not been held pursuant to G.S. 20-38.7.

5 Each prior conviction is a separate grossly aggravating factor.

6 (2) Driving by the defendant at the time of the offense while his driver's license
7 was revoked under G.S. 20-28, and the revocation was an impaired driving
8 revocation under G.S. 20-28.2(a).

9 (3) Serious injury to another person caused by the defendant's impaired driving
10 at the time of the offense.

11 (4) Driving by the defendant while a child under the age of 16 years was in the
12 vehicle at the time of the offense.

13 In imposing an Aggravated Level One, a Level One, or a Level Two punishment, the
14 judge may consider the aggravating and mitigating factors in subsections (d) and (e) in
15 determining the appropriate sentence. If there are no grossly aggravating factors in the case, the
16 judge must weigh all aggravating and mitigating factors and impose punishment as required by
17 subsection (f).

18 ...

19 (g) Aggravated Level One Punishment. – A defendant subject to Aggravated Level One
20 punishment may be fined up to ten thousand dollars (\$10,000) and shall be sentenced to a term
21 of imprisonment that includes a minimum term of not less than 12 months and a maximum
22 term of not more than 36 months. Notwithstanding G.S. 15A-1371, a defendant sentenced to a
23 term of imprisonment pursuant to this subsection shall not be eligible for parole. However, the
24 defendant shall be released from the Department of Correction on the date equivalent to the
25 defendant's maximum imposed term of imprisonment less four months, and shall be supervised
26 by the Division of Community Corrections under and subject to the provisions of Article 84A
27 of Chapter 15A of the General Statutes and shall also be required to abstain from alcohol
28 consumption for the four-month period of supervision as verified by a continuous alcohol
29 monitoring system. For purposes of revocation, violation of the requirement to abstain from
30 alcohol or comply with the use of a continuous alcohol monitoring system shall be deemed a
31 controlling condition under G.S. 15A-1368.4.

32 The term of imprisonment may be suspended only if a condition of special probation is
33 imposed to require the defendant to serve a term of imprisonment of at least 120 days.
34 Subsection (k1) of this section shall not apply to a defendant sentenced pursuant to this
35 subsection. If the defendant is placed on probation, the judge shall impose as requirements that
36 the defendant (i) abstain from alcohol consumption for a minimum of 120 days, to a maximum
37 of the term of probation, as verified by a continuous alcohol monitoring system pursuant to
38 subsections (h1) and (h3) of this section, and (ii) obtain a substance abuse assessment and the
39 education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a
40 condition of probation. The judge may impose any other lawful condition of probation.

41 (g1) Level One Punishment. – A defendant subject to Level One punishment may be
42 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment
43 that includes a minimum term of not less than 30 days and a maximum term of not more than
44 24 months. The term of imprisonment may be suspended only if a condition of special
45 probation is imposed to require the defendant to serve a term of imprisonment of at least 30
46 days. If the defendant is placed on probation, the judge shall impose a requirement that the
47 defendant obtain a substance abuse assessment and the education or treatment required by
48 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge
49 may impose any other lawful condition of probation.

50 ...

1 (h1) The judge may impose, as a condition of probation for defendants subject to Level
2 One or Level Two punishments, that the defendant abstain from alcohol consumption for a
3 minimum of 30 days, to a maximum of ~~60 days, the term of probation,~~ as verified by a
4 continuous alcohol monitoring system. ~~The total cost to the defendant for the continuous~~
5 ~~alcohol monitoring system may not exceed one thousand dollars (\$1,000).~~ The defendant's
6 abstinence from alcohol shall be verified by a continuous alcohol monitoring system of a type
7 approved by the Department of Correction.

8 (h2) ~~Notwithstanding the provisions of subsection (h1), if the court finds, upon good~~
9 ~~cause shown, that the defendant should not be required to pay the costs of the continuous~~
10 ~~alcohol monitoring system, the court shall not impose the use of a continuous alcohol~~
11 ~~monitoring system unless the local governmental entity responsible for the incarceration of the~~
12 ~~defendant in the local confinement facility agrees to pay the costs of the system.~~

13 (h3) Any fees or costs paid pursuant to ~~subsections (h1) or (h2)~~ subsection (h1) of this
14 section shall be paid to the clerk of court for the county in which the judgment was entered or
15 the deferred prosecution agreement was filed. Fees or costs collected under this subsection shall
16 be transmitted to the entity providing the continuous alcohol monitoring system.

17 ...

18 (k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order
19 that a term of imprisonment imposed as a condition of special probation under ~~any level of~~
20 ~~punishment subsection (g1), (h), (i), (j), or (k) of this section~~ be served as an inpatient in a
21 facility operated or licensed by the State for the treatment of alcoholism or substance abuse
22 where the defendant has been accepted for admission or commitment as an inpatient. The
23 defendant shall bear the expense of any treatment unless the trial judge orders that the costs be
24 absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the
25 premises of the treatment facility and require that the defendant follow the rules of the
26 treatment facility. The judge may credit against the active sentence imposed on a defendant the
27 time the defendant was an inpatient at the treatment facility, provided such treatment occurred
28 after the commission of the offense for which the defendant is being sentenced. This section
29 shall not be construed to limit the authority of the judge in sentencing under any other
30 provisions of law.

31"

32 SECTION 2. G.S. 20-19(e) reads as rewritten:

33 "(e) When a person's license is revoked under (i) G.S. 20-17(a)(2) and the person has
34 two or more previous offenses involving impaired driving for which the person has been
35 convicted, and the most recent offense occurred within the five years immediately preceding
36 the date of the offense for which the person's license is being ~~revoked, or (ii) revoked, (ii)~~
37 G.S. 20-17(a)(2) and the person was sentenced pursuant to G.S. 20-179(g) for the offense
38 resulting in the revocation, or (iii) G.S. 20-17(a)(9) due to a violation of G.S. 20-141.4(a4), the
39 revocation is permanent."

40 SECTION 3. G.S. 20-17.8 reads as rewritten:

41 "§ 20-17.8. Restoration of a license after certain driving while impaired convictions;
42 ignition interlock.

43 (a) Scope. – This section applies to a person whose license was revoked as a result of a
44 conviction of driving while impaired, G.S. 20-138.1, and:

45 (1) The person had an alcohol concentration of 0.15 or ~~more; or more;~~

46 (2) The person has been convicted of another offense involving impaired
47 driving, which offense occurred within seven years immediately preceding
48 the date of the offense for which the person's license has been
49 ~~revoked; or~~

50 (3) The person was sentenced pursuant to G.S. 20-179(g).

1 For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as
2 shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the
3 Division to determine that person's alcohol concentration.

4 ...

5 **(b) (Effective until December 1, 2014) Ignition Interlock Required.** – Except as
6 provided in subsection (l) of this section, when the Division restores the license of a person
7 who is subject to this section, in addition to any other restriction or condition, it shall require
8 the person to agree to and shall indicate on the person's drivers license the following
9 restrictions for the period designated in subsection (c):

10 (1) A restriction that the person may operate only a vehicle that is equipped with
11 a functioning ignition interlock system of a type approved by the
12 Commissioner. The Commissioner shall not unreasonably withhold approval
13 of an ignition interlock system and shall consult with the Division of
14 Purchase and Contract in the Department of Administration to ensure that
15 potential vendors are not discriminated against.

16 (2) A requirement that the person personally activate the ignition interlock
17 system before driving the motor vehicle.

18 (3) An alcohol concentration restriction as follows:

19 a. If the ignition interlock system is required pursuant only to
20 subdivision (a)(1) of this section, a requirement that the person not
21 drive with an alcohol concentration of 0.04 or greater;

22 b. If the ignition interlock system is required pursuant to subdivision
23 (a)(2) or (a)(3) of this section, or subsection (a1) of this section, a
24 requirement that the person not drive with an alcohol concentration
25 of greater than 0.00; or

26 c. If the ignition interlock system is required pursuant to subdivision
27 (a)(1) of this section, and the person has also been convicted, based
28 on the same set of circumstances, of: (i) driving while impaired in a
29 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21
30 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a
31 violation of G.S. 20-141.4, or (iv) manslaughter or negligent
32 homicide resulting from the operation of a motor vehicle when the
33 offense involved impaired driving, a requirement that the person not
34 drive with an alcohol concentration of greater than 0.00.

35 **(b) (Effective December 1, 2014) Ignition Interlock Required.** – Except as provided in
36 subsection (l) of this section, when the Division restores the license of a person who is subject
37 to this section, in addition to any other restriction or condition, it shall require the person to
38 agree to and shall indicate on the person's drivers license the following restrictions for the
39 period designated in subsection (c):

40 (1) A restriction that the person may operate only a vehicle that is equipped with
41 a functioning ignition interlock system of a type approved by the
42 Commissioner. The Commissioner shall not unreasonably withhold approval
43 of an ignition interlock system and shall consult with the Division of
44 Purchase and Contract in the Department of Administration to ensure that
45 potential vendors are not discriminated against.

46 (2) A requirement that the person personally activate the ignition interlock
47 system before driving the motor vehicle.

48 (3) An alcohol concentration restriction as follows:

49 a. If the ignition interlock system is required pursuant only to
50 subdivision (a)(1) of this section, a requirement that the person not
51 drive with an alcohol concentration of 0.04 or greater;

- 1 b. If the ignition interlock system is required pursuant to subdivision
2 (a)(2) or (a)(3) of this section, a requirement that the person not drive
3 with an alcohol concentration of greater than 0.00; or
4 c. If the ignition interlock system is required pursuant to subdivision
5 (a)(1) of this section, and the person has also been convicted, based
6 on the same set of circumstances, of: (i) driving while impaired in a
7 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21
8 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a
9 violation of G.S. 20-141.4, or (iv) manslaughter or negligent
10 homicide resulting from the operation of a motor vehicle when the
11 offense involved impaired driving, a requirement that the person not
12 drive with an alcohol concentration of greater than 0.00.

13 "

14 **SECTION 4.** G.S. 7A-304(a) reads as rewritten:

15 "(a) In every criminal case in the superior or district court, wherein the defendant is
16 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the
17 prosecuting witness, the following costs shall be assessed and collected, except that when the
18 judgment imposes an active prison sentence, costs shall be assessed and collected only when
19 the judgment specifically so provides, and that no costs may be assessed when a case is
20 dismissed.

21
22 (10) For support of the General Court of Justice, the sum of one hundred dollars
23 (\$100.00) is payable by a defendant convicted under G.S. 20-138.1 or
24 G.S. 20-138.2, for a second or subsequent conviction under G.S. 20-138.2A,
25 or for a second or subsequent conviction under G.S. 20-138.2B, to be
26 remitted to the State Treasurer. This fee shall be in addition to the fee
27 required by subsection (4a) of this section."

28 **SECTION 5.** G.S. 15A-534 is amended by adding a new subsection to read:

29 "(i) In addition to any other condition of pretrial release, the judicial official authorizing
30 pretrial release may order any defendant (i) charged with an offense involving impaired
31 driving, as defined by G.S. 20-4.01(24a), and (ii) having a prior conviction for an offense
32 involving impaired driving that occurred within seven years before the date of the offense for
33 which the defendant is being placed on pretrial release, to abstain from alcohol consumption as
34 verified by an approved continuous alcohol monitoring system for the period of pretrial release
35 or until this condition is removed by entry of order of a court of competent jurisdiction."

36 **SECTION 6.** This act becomes effective December 1, 2011, and applies to
37 offenses committed on or after that date.



North Carolina General Assembly
House Committee on Finance

Minutes

March 10, 2011

The House Committee on Finance met on Thursday, March 10, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Folwell; Vice-Chair Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Faison, Hackney, Hall, Luebke, McCormick, McGee, McGuirt, Moffitt, Samuelson, Stam, Warren, and Weiss. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:30 am and recognized the four (4) pages present: (1) Kayla Dunston of Warren County sponsored by Representative Bryant; (2) Brandon Paul of Davidson County sponsored by Representative R. Brown (3) Patrick Coats, II of Johnston County sponsored by Representative Daughtry; and (4) Zac Wilson of Wake County sponsored by Representative Martin.

Chairwoman Howard announced that **HB 93 Modify Refundability of EITC** would not be heard today. Information requested by committee members during the March 9th meeting is still being researched and gathered. Once all the information is available, the bill will be re-calendared.

The first bill considered by the Committee was **HB 45 Accelerate Cleanup of Industrial Properties** (see **attachment 3**). The Chair recognized Representative Gillespie to explain the bill. Following the explanation, the Chair recognized Representative Carney who made a motion to hear the proposed committee substitute. The motion carried. Representative Gillespie explained the proposed committee substitute. Chairwoman Howard recognized Dexter Matthews, Director of Waste Management at the North Carolina Department of Environment and Natural Resources. Mr. Matthews stated that the department was in support of the bill. Representative Starnes moved that HB 45 be given a favorable report to

proposed committee substitute 2, unfavorable report to proposed committee substitute 1.
The motion carried.

Chairwoman Howard stated the remaining two bills on the agenda would be re-calendared at a later date.

The Chair recognized and welcomed Representative Frank McGuirt. Representative McGuirt was appointed to the seat vacated by Representative Gibson.

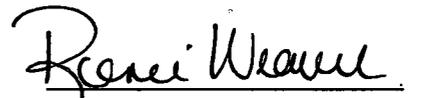
Chairwoman Howard re-referred **HB 134 Modify Carteret County Occupancy Tax** to the subcommittee on Occupancy Tax.

Chairwoman Howard adjourned the meeting at 8:38 am.

Respectfully submitted,



Representative Julia Howard
Presiding Senior Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 45 A BILL TO BE ENTITLED AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

1

AGENDA
House Finance Committee

Thursday, March 10, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 45 Accelerate Cleanup of Industrial Properties
Representatives Gillespie, Cook, Gibson

HB 93 Modify Refundability of EITC
Representatives Howard, Setzer, Brubaker, Starnes

SB 99 Reform UI Tax Structure/Expedite Analysis
Senators Clary, Rucho, Hartsell

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: MAR. 10, 2011 Room: 544

House Sgt-At Arms:

1. Name: FRED HINES
2. Name: JOHN BRANDON
3. Name: EARL COKER
4. Name: KEN KIRBY
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE FINANCE DATE 03/10/11

1. Name: Kayla Dunston

County: Warren

Sponsor: Rep. Angela Bryant

2. Name: Patrick Coats

County: Johnston

Sponsor: Leo Daghty

3. Name: Brandon Paul

County: Davidson

Sponsor: R. Brown

4. Name: Zac Wilson

County: Wake

Sponsor: Rep. Martin

5. Name: _____

County: _____

Sponsor: _____

VISITOR REGISTRATION SHEET

House Finance Committee

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Paul Sherman	NCFB
Henry Jones	Attorney - Raleigh
John Roberts	NCMAA
Drew Peate	RALEIGH CHAMBER
Amy Hobbs	Speaker
Melly D. ...	Sera Club
Jim Kent	NC Beer & Wine

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 45*
Committee Substitute Favorable 3/3/11
PROPOSED COMMITTEE SUBSTITUTE H45-PCS30138-LDF-1

Short Title: Accelerate Cleanup of Industrial Properties. (Public)

Sponsors:

Referred to:

February 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a remediation process that requires that contaminated industrial sites be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that there are contaminated industrial sites in North Carolina, including land and other property, surface water, and groundwater, that are adversely affected by environmental contamination due to the presence of drilling waste; hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes, contaminants, and regulated substances; and

Whereas, the General Assembly finds that the presence of environmental contamination on industrial sites creates both potential and actual harm to public health, safety, and welfare and to the environment; and

Whereas, the General Assembly finds that this potential and actual harm results in substantial economic losses, including reduced property values and tax revenues, decreased ability to develop and expand the beneficial use of these sites, and other opportunity costs because of the uncertainties and concerns that result from the environmental contamination of these sites; and

Whereas, the General Assembly finds that it is in the public interest that contaminated industrial sites are cleaned up or managed in a manner that protects public health, safety, and welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987; the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of



1 1976; the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988; the Brownfields
2 Property Reuse Act of 1997; the Dry-Cleaning Solvent Cleanup Act of 1997; the federal
3 Superfund program administered in part by the State pursuant to the Comprehensive
4 Environmental Response, Compensation, and Liability Act of 1980 and the Superfund
5 Amendments and Reauthorization Act of 1986; and the groundwater protection rules adopted
6 by the Environmental Management Commission; and

7 Whereas, the General Assembly finds that the expenditure of public and private
8 resources on unnecessary remediation could better be channeled to other purposes, including
9 new development, renovation and repair, research and development, training and education,
10 and other activities that maintain and enhance North Carolina's competitive position in the
11 world and the excellent quality of life enjoyed by the citizens of North Carolina; and

12 Whereas, the General Assembly finds that North Carolina's groundwater is a
13 valuable public and private resource, serving as the drinking water source for one-half of the
14 State's population and also as a water supply for industrial and commercial uses; and

15 Whereas, the General Assembly finds that maintenance of North Carolina's surface
16 water and groundwater resources will become increasingly important to the continued
17 economic vitality of the State in the future; and

18 Whereas, the General Assembly finds that use of site-specific remediation standards
19 based on an objective, scientific, and uniform approach to the evaluation of the risk posed by
20 each contaminated site can be protective of public health, safety, and welfare and the
21 environment; and

22 Whereas, the General Assembly finds that use of site-specific remediation standards
23 in appropriate circumstances may encourage accelerated cleanup of contaminated industrial
24 sites; and

25 Whereas, the General Assembly intends that the levels of remediation that are
26 established for each contaminated site are to be applicable or relevant under federal remediation
27 programs; and

28 Whereas, the General Assembly intends that the protections afforded to public
29 health, safety, and welfare and to the environment by existing environmental, health, and safety
30 standards that apply to ongoing activities not be diminished in any way, in order that those
31 standards will continue to protect against the discharge or release of contaminants to the
32 environment that would result in additional contaminated sites; Now, therefore,
33 The General Assembly of North Carolina enacts:

34 **SECTION 1.** G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future
35 codification purposes.

36 **SECTION 2.** Article 9 of Chapter 130A of the General Statutes is amended by
37 adding a new Part to read:

38 "Part 8. Risk-Based Environmental Remediation of Industrial Sites.

39 "§ 130A-310.65. Definitions.

40 As used in this Part:

- 41 (1) "Background standard" means the naturally occurring concentration of a
42 substance in the absence of the release of a contaminant.
43 (2) "Commission" means the Environmental Management Commission created
44 pursuant to G.S. 143B-282.
45 (3) "Contaminant" means any substance regulated under any program listed in
46 G.S. 130A-310.67(a).
47 (4) "Contaminated industrial site" or "site" means any real property that meets
48 all of the following criteria:
49 a. The property is contaminated and may be subject to remediation
50 under any of the programs or requirements set out in
51 G.S. 130A-310.67(a).

1 **b.** The property is or has been used primarily for manufacturing or other
2 industrial activities for the production of a commercial product. This
3 includes a property used primarily for the generation of electricity.
4 This does not include a property used primarily for service industry
5 activities.

6 **c.** No contaminant associated with activities at the property has
7 migrated or will migrate to any adjacent properties above
8 unrestricted use standards for the contaminant.

9 (5) "Contamination" means a contaminant released into an environmental
10 medium that has resulted in or has the potential to result in an increase in the
11 concentration of the contaminant in the environmental medium in excess of
12 unrestricted use standards.

13 (6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established
14 pursuant to G.S. 130A-310.11.

15 (7) "Institutional controls" means nonengineered measures used to prevent
16 unsafe exposure to contamination, such as land-use restrictions.

17 (8) "Registered environmental consultant" means an environmental consulting
18 or engineering firm approved to implement and oversee voluntary remedial
19 actions pursuant to Part 3 of Article 9 of Chapter 130A of the General
20 Statutes and rules adopted to implement the Part.

21 (9) "Remedial action plan" means a plan for eliminating or reducing
22 contamination or exposure to contamination.

23 (10) "Remediation" means all actions that are necessary or appropriate to clean
24 up, mitigate, correct, abate, minimize, eliminate, control, or prevent the
25 spreading, migration, leaking, leaching, volatilization, spilling, transport, or
26 further release of a contaminant into the environment in order to protect
27 public health, safety, or welfare or the environment.

28 (11) "Systemic toxicant" means any substance that may enter the body and have a
29 harmful effect other than causing cancer.

30 (12) "Unrestricted use standards" means contaminant concentrations for each
31 environmental medium that are acceptable for all uses; that are protective of
32 public health, safety, and welfare and the environment; and that comply with
33 generally applicable standards, guidance, or methods established by statute
34 or adopted, published, or implemented by the Commission, the Commission
35 for Public Health, or the Department.

36 "§ 130A-310.66. Purpose.

37 It is the purpose of this Part to authorize the Department to approve the remediation of
38 contaminated industrial sites based on site-specific remediation standards in circumstances
39 where site-specific remediation standards are adequate to protect public health, safety, and
40 welfare and the environment and are consistent with protection of current and anticipated future
41 use of groundwater and surface water affected or potentially affected by the contamination.

42 "§ 130A-310.67. Applicability.

43 (a) This Part applies to contaminated industrial sites subject to remediation pursuant to
44 any of the following programs or requirements:

45 (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9
46 of Chapter 130A of the General Statutes, including voluntary actions under
47 G.S. 130A-310.9 of that act, and rules promulgated pursuant to those
48 statutes.

49 (2) The hazardous waste management program administered by the State
50 pursuant to the federal Resource Conservation and Recovery Act of 1976,

1 Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,
2 and Article 9 of Chapter 130A of the General Statutes.

3 (3) The solid waste management program administered pursuant to Article 9 of
4 Chapter 130A of the General Statutes.

5 (4) The federal Superfund program administered in part by the State pursuant to
6 the Comprehensive Environmental Response, Compensation, and Liability
7 Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as
8 amended, the Superfund Amendments and Reauthorization Act of 1986,
9 Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article
10 9 of Chapter 130A of the General Statutes.

11 (5) The groundwater protection corrective action requirements adopted by the
12 Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

13 (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2
14 of Article 21A of Chapter 143 of the General Statutes.

15 (b) This Part shall not apply to contaminated industrial sites subject to remediation
16 pursuant to any of the following programs or requirements:

17 (1) The Leaking Petroleum Underground Storage Tank Cleanup program under
18 Part 2A of Article 21A of Chapter 143 of the General Statutes and rules
19 promulgated pursuant to that statute.

20 (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of
21 Chapter 143 of the General Statutes and rules promulgated pursuant to that
22 statute.

23 (3) The pre-1983 landfill assessment and remediation program established under
24 G.S. 130A-310.6(c) through (g).

25 (c) This Part shall apply only to sites where a discharge, spill, or release of
26 contamination has been reported to the Department prior to March 1, 2011.

27 **§ 130A-310.68. Remediation standards.**

28 (a) When conducting remediation activities pursuant to this Part, a person who proposes
29 to or is required to respond to the release of a contaminant at a contaminated industrial site
30 shall comply with one of the following standards:

31 (1) The unrestricted use standards applicable to each affected medium.

32 (2) The background standard, if the background standard exceeds the
33 unrestricted use standards.

34 (3) A site-specific remediation standard developed in accordance with
35 subsection (b) of this section that is approved by the Department.

36 (4) Any combination of remediation standards described in this subsection that
37 is approved by the Department.

38 (b) Site-specific remediation standards shall be developed for each medium as provided
39 in this subsection to achieve remediation that eliminates or reduces to protective levels any
40 substantial present or probable future risk to human health, including sensitive subgroups, and
41 the environment based upon the present or currently planned future use of the property
42 comprising the site. Site-specific remediation standards shall be developed in accordance with
43 all of the following:

44 (1) Remediation methods and technologies that result in emissions of air
45 pollutants shall comply with applicable air quality standards adopted by the
46 Commission.

47 (2) The site-specific remediation standard for surface waters shall be the water
48 quality standards adopted by the Commission.

49 (3) The current and probable future use of groundwater shall be identified and
50 protected. Site-specific sources of contaminants and potential receptors shall
51 be identified. Potential receptors must be protected, controlled, or eliminated

1 whether the receptors are located on or off the site where the source of
2 contamination is located. Natural environmental conditions affecting the fate
3 and transport of contaminants, such as natural attenuation, shall be
4 determined by appropriate scientific methods.

5 (4) Permits for facilities located at sites covered by any of the programs or
6 requirements set out in G.S. 130A-310.67(a) shall contain conditions to
7 avoid exceedances of applicable groundwater standards adopted by the
8 Commission pursuant to Article 21 of Chapter 143 of the General Statutes
9 due to operation of the facility.

10 (5) Soil shall be remediated to levels that no longer constitute a continuing
11 source of groundwater contamination in excess of the site-specific
12 groundwater remediation standards approved under this Part.

13 (6) Soil shall be remediated to unrestricted use standards on residential property
14 with the following exceptions:

15 a. For mixed-use developments where the ground level uses are
16 nonresidential and where all potential exposure to contaminated soil
17 has been eliminated, the Department may allow soil to remain on the
18 site in excess of unrestricted use standards.

19 b. If soil remediation is impracticable because of the presence of
20 preexisting structures or impracticability of removal, all areas of the
21 real property at which a person may come into contact with soil shall
22 be remediated to unrestricted use standards, and, on all other areas of
23 the real property, engineering and institutional controls that are
24 sufficient to protect public health, safety, and welfare and the
25 environment shall be implemented and maintained.

26 (7) The potential for human inhalation of contaminants from the outdoor air and
27 other site-specific indoor air exposure pathways shall be considered, if
28 applicable.

29 (8) The site-specific remediation standard shall protect against human exposure
30 to contamination through the consumption of contaminated fish or wildlife
31 and through the ingestion of contaminants in surface water or groundwater
32 supplies.

33 (9) For known or suspected carcinogens, site-specific remediation standards
34 shall be established at exposures that represent an excess lifetime cancer risk
35 of one in 1,000,000. The site-specific remediation standard may depart from
36 the one-in-1,000,000 risk level based on the criteria set out in 40 Code of
37 Federal Regulations § 300.430(e)(9) (July 1, 2003 Edition). The cumulative
38 excess lifetime cancer risk to an exposed individual shall not be greater than
39 one in 10,000 based on the sum of carcinogenic risk posed by each
40 contaminant present.

41 (10) For systemic toxicants, site-specific remediation standards shall represent
42 levels to which the human population, including sensitive subgroups, may be
43 exposed without any adverse health effect during a lifetime or part of a
44 lifetime. Site-specific remediation standards for systemic toxicants shall
45 incorporate an adequate margin of safety and shall take into account cases
46 where two or more systemic toxicants affect the same organ or organ
47 system.

48 (11) The site-specific remediation standards for each medium shall be adequate to
49 avoid foreseeable adverse effects to other media or the environment that are
50 inconsistent with the risk-based approach under this Part.

51 **§ 130A-310.69. Remedial investigation report; remedial action plans.**

1 (a) A person who proposes to conduct remediation pursuant to this Part shall submit a
2 remedial investigation report to the Department prior to submitting a remedial action plan. The
3 remedial investigation report shall include, but is not limited to, a legal description of the
4 location of the site; a map showing the location of the site; a description of the contaminants
5 involved and their concentration in the media of the site; a narrative description of the
6 methodology used in the investigation; a description of all on-site releases of contamination; a
7 site map, drawn to scale, showing benchmarks, directional arrow, location of property
8 boundaries, buildings, structures, all perennial and nonperennial surface water features,
9 drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities,
10 storage vessels, and existing on-site wells; identification of adjacent property owners and
11 adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the
12 site and adjacent properties for the existence of environmentally sensitive areas; a description
13 of groundwater monitoring well design and installation procedures; a map, drawn to scale, that
14 shows all groundwater sample locations; a description of field and laboratory quality control
15 and quality assurance procedures followed during the remedial investigation; a description of
16 methods used to manage investigation-derived wastes; tabulation of analytical results for all
17 sampling; copies of all laboratory reports; a description of procedures and the results of any
18 special assessments; and any other information required by the Department or considered
19 relevant by the investigator. The remedial investigation shall assess all contaminated areas of
20 the site, including types and levels of contamination, and the risk that the contamination poses
21 to public health, safety, and welfare and to the environment.

22 (b) A person who proposes to conduct remediation pursuant to this Part shall develop
23 and submit a proposed remedial action plan to the Department. A remedial action plan shall
24 provide for the protection of public health, safety, and welfare and the environment. A remedial
25 action plan shall do all of the following:

- 26 (1) Identify actions required to remove, treat, or otherwise appropriately
27 mitigate or isolate the source of contamination to ensure that the source will
28 not cause unrestricted use standards to be exceeded in any medium.
- 29 (2) Address contamination that moves from one medium to another in order to
30 prevent a violation of the remediation standards established under
31 G.S. 130A-310.68. A more stringent remediation standard may be required
32 for a particular medium to control impact on other media.
- 33 (3) Identify the current and anticipated future uses of property comprising the
34 contaminated site and address any concerns raised in public comment on the
35 proposed remedial action plan as to the proposed future uses of the property.
- 36 (4) Identify the current and anticipated future uses of groundwater in the
37 contaminated site and address any concerns raised in public comment on the
38 proposed remedial action plan as to the future uses of groundwater.
- 39 (5) Determine the appropriate method of remediation to achieve the site-specific
40 remediation standards.
- 41 (6) Specify any measures that may be necessary to prevent adverse effects to the
42 environment that may occur at levels of contamination that are lower than
43 the standard necessary to protect human health.
- 44 (7) Specify any measures that may be necessary to prevent any discharge into
45 surface waters during implementation of the remedial action plan that
46 violates applicable surface water quality standards adopted by the
47 Commission.
- 48 (8) Specify any measures that may be necessary to prevent any air emission
49 during implementation of the remedial action plan that violates applicable air
50 quality standards adopted by the Commission.

- 1 (9) Provide for attainment and maintenance of the remediation standards
2 established under G.S. 130A-310.68.
- 3 (10) Provide for methods and procedures to verify that the quantity,
4 concentration, range, or other measure of each contaminant remaining at the
5 contaminated site at the conclusion of the contaminant-reduction phase of
6 remediation meets the remediation standards established for the site, that an
7 acceptable level of risk has been achieved, and that no further remediation is
8 required.
- 9 (11) Provide for the imposition and recordation of land-use restrictions as
10 provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8,
11 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan
12 allows contamination in excess of the greater of unrestricted use standards or
13 background standards to remain on any real property or in groundwater that
14 underlies any real property.
- 15 (12) Provide for submission of an annual certification to the Department by the
16 property owner that land use at the site is in compliance with land-use
17 restrictions recorded pursuant to this Part and that the land-use restrictions
18 are still properly recorded in the chain of title for the property.
- 19 (13) Provide a detailed description of the proposed remedial action to be taken;
20 the results of any treatability studies and additional site characterization
21 needed to support the proposed remedial action; plans for postremedial and
22 confirmatory sampling; a project schedule; a schedule for progress reports to
23 the Department; and any other information required by the Department or
24 considered relevant by the person who submits the proposed remedial action
25 plan.
- 26 (14) Provide a description of measures that will be employed to ensure that the
27 safety and health of persons on properties in the vicinity of the site and
28 persons visiting or doing business on the site will not be adversely affected
29 by any remediation activity.
- 30 (15) Provide a reasonable estimate of the probable cost of the remedial action
31 sufficient for the Department to determine an acceptable level of financial
32 assurance.
- 33 (16) Provide proof of financial assurance as required by G.S. 130A-310.72.
- 34 (c) A remedial action plan shall also include an analysis of each of the following
35 factors:
- 36 (1) Long-term risks and effectiveness of the proposed remediation, including an
37 evaluation of all of the following:
- 38 a. The magnitude of risks remaining after completion of the
39 remediation.
- 40 b. The type, degree, frequency, and duration of any postremediation
41 activity that may be required, including, but not limited to, operation
42 and maintenance, monitoring, inspection, reports, and other activities
43 necessary to protect public health, safety, and welfare and the
44 environment.
- 45 c. Potential for exposure of human and environmental receptors to
46 contaminants remaining at the site.
- 47 d. Long-term reliability of any engineering and voluntary institutional
48 controls, including repair, maintenance, or replacement of
49 components.
- 50 e. Time required to achieve remediation standards.

1 (2) Toxicity, mobility, and volume of contaminants, including the amount of
2 contaminants that will be removed, contained, treated, or destroyed; the
3 degree of expected reduction in toxicity, mobility, and volume; and the type,
4 quantity, toxicity, and mobility of contaminants that will remain after
5 implementation of the remedial action plan.

6 (3) Short-term risks and effectiveness of the remediation, including the
7 short-term risks that may be posed to the community, workers, or the
8 environment during implementation of the remedial action plan, and the
9 effectiveness and reliability of protective measures to address short-term
10 risks.

11 (4) The ease or difficulty of implementing the remedial action plan, including
12 commercially available remedial measures; expected operational reliability;
13 available capacity and location of needed treatment, storage, and disposal
14 services for wastes; time to initiate remediation; and approvals necessary to
15 implement the remediation.

16 (d) The development of a remedial action plan may require supplemental submissions
17 and revisions based on Department review, remedial action pilot studies, and public comment
18 from local government and citizens.

19 **"§ 130A-310.70. Notice of intent to remediate.**

20 In addition to the public participation requirements of the individual programs listed in
21 G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a
22 notice of intent to remediate to all local governments having taxing or land-use jurisdiction
23 over the site, and to all adjoining landowners. The notice shall include all of the information
24 required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to
25 site-specific remediation standards. The person shall submit to the Department a copy of the
26 notice of intent provided to local governments and adjoining landowners, a certification that the
27 notice of intent to remediate was so provided to those parties, and all information and
28 comments that the person received in response to the notice. In addition, the person shall, when
29 appropriate, describe how the remediation plan was modified to address comments received in
30 response to the notice.

31 **"§ 130A-310.71. Review and approval of proposed remedial action plans.**

32 (a) The Department shall review and approve a proposed remedial action plan
33 consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set
34 out in this section. In its review of a proposed remedial action plan, the Department shall do all
35 of the following:

36 (1) Determine whether site-specific remediation standards are appropriate for a
37 particular contaminated site. In making this determination, the Department
38 shall consider proximity of the contamination to water supply wells or other
39 receptors; current and probable future reliance on the groundwater as a water
40 supply; current and anticipated future land use; environmental impacts; and
41 the feasibility of remediation to unrestricted use standards.

42 (2) Determine whether the party conducting the remediation has adequately
43 demonstrated through modeling or other scientific means acceptable to the
44 Department that no contamination will migrate to adjacent property at levels
45 above unrestricted use standards.

46 (3) Determine whether the proposed remedial action plan meets the
47 requirements of G.S. 130A-310.69.

48 (4) Determine whether the proposed remedial action plan meets the
49 requirements of any other applicable remediation program except those
50 pertaining to remediation standards.

- 1 (5) Establish the acceptable level or range of levels of risk to public health,
2 safety, and welfare and to the environment.
- 3 (6) Establish, for each contaminant, the maximum allowable quantity,
4 concentration, range, or other measures of contamination that will remain at
5 the contaminated site at the conclusion of the contaminant-reduction phase
6 of the remediation.
- 7 (7) Consider the technical performance, effectiveness, and reliability of the
8 proposed remedial action plan in attaining and maintaining compliance with
9 applicable remediation standards.
- 10 (8) Consider the ability of the person who proposes to remediate the site to
11 implement the proposed remedial action plan within a reasonable time and
12 without jeopardizing public health, safety, or welfare or the environment.
- 13 (9) Determine whether the proposed remedial action plan adequately provides
14 for the imposition and maintenance of engineering and institutional controls
15 and for sampling, monitoring, and reporting requirements necessary to
16 protect public health, safety, and welfare and the environment.
- 17 (10) Approve the circumstances under which no further remediation is required.

18 (b) The person who proposes a remedial action plan has the burden of demonstrating
19 that contamination from the site will not likely migrate in the reasonably foreseeable future to
20 adjacent property and that the remedial action plan is protective of public health, safety, and
21 welfare and the environment by virtue of its compliance with this Part.

22 (c) The Department may require a person who proposes a remedial action plan to
23 supply any additional information necessary for the Department to approve or disapprove the
24 plan.

25 (d) In making a determination on a proposed remedial action plan, the Department shall
26 consider the information provided by the person who proposes the remedial action plan as well
27 as information provided by local governments and adjoining landowners pursuant to
28 G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the
29 Department finds that the plan is protective of public health, safety, and welfare and the
30 environment and complies with the requirements of this Part. If the Department disapproves a
31 proposed remedial action plan, the person who submitted the plan may seek review as provided
32 in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or
33 disapprove a proposed remedial action plan within 120 days after a complete plan has been
34 submitted, the person who submitted the plan may treat the plan as having been disapproved at
35 the end of that time period.

36 **"§ 130A-310.72. Financial assurance requirement.**

37 The person conducting remediation of a contaminated industrial site pursuant to the
38 provisions of this Part shall establish financial assurance that will ensure that sufficient funds
39 are available to implement and maintain the actions or controls specified in the remedial action
40 plan for the site. The person conducting remediation of a site may establish financial assurance
41 through one of the following mechanisms, or any combination of the following mechanisms, in
42 a form specified or approved by the Department: insurance products issued from entities having
43 no corporate or ownership association with the person conducting the remediation; funded
44 trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local
45 government financial tests; corporate guarantees; local government guarantees; capital reserve
46 funds; or any other financial mechanism authorized for the demonstration of financial
47 assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition)
48 and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
49 Administrative Code.

50 **"§ 130A-310.73. Attainment of the remediation standard.**

1 (a) Compliance with the approved remediation standards is attained for a site or portion
2 of a site when a remedial action plan approved by the Department has been implemented and
3 applicable soil, groundwater, surface water, and air emission standards have been attained. The
4 remediation standards may be attained through a combination of remediation activities that can
5 include treatment, removal, engineering, or institutional controls, except that the person
6 conducting the remediation may not demonstrate attainment of an unrestricted use standard or a
7 background standard through the use of institutional controls alone. When the remedial action
8 plan has been fully implemented, the person conducting the remediation shall submit a final
9 report to the Department, with notice to all local governments with taxing and land-use
10 jurisdiction over the site, that demonstrates that the remedial action plan has been fully
11 implemented, that any land-use restrictions have been certified on an annual basis, and that the
12 remediation standards have been attained. The final report shall be accompanied by a request
13 that the Department issue a determination that no further remediation beyond that specified in
14 the approved remedial action plan is required.

15 (b) The person conducting the remediation has the burden of demonstrating that the
16 remedial action plan has been fully implemented and that the remediation standards have been
17 attained in compliance with the requirements of this Part. The Department may require a person
18 who implements the remedial action plan to supply any additional information necessary for
19 the Department to determine whether the remediation standards have been attained.

20 (c) The Department shall review the final report, and, upon determining that the person
21 conducting the remediation has completed remediation to the approved remediation standard
22 and met all the requirements of the approved remedial action plan, the Department shall issue a
23 determination that no further remediation beyond that specified in the approved remedial action
24 plan is required at the site. Once the Department has issued a no further action determination,
25 the Department may require additional remedial action by the responsible party only upon
26 finding any of the following:

- 27 (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the
28 no further action determination indicates that the remediation standards and
29 objectives were not achieved or are not being maintained.
- 30 (2) One or more of the conditions, restrictions, or limitations imposed on the site
31 as part of the remediation have been violated.
- 32 (3) Site monitoring or operation and maintenance activities that are required as
33 part of the remedial action plan or no further action determination for the site
34 are not adequately funded or are not adequately implemented.
- 35 (4) A contaminant or hazardous substance release is discovered at the site that
36 was not the subject of the remedial investigation report or the remedial
37 action plan.
- 38 (5) A material change in the facts known to the Department at the time the
39 written no further action determination was issued, or new facts, cause the
40 Department to find that further assessment or remediation is necessary to
41 prevent a significant risk to human health and safety or to the environment.
- 42 (6) The no further action determination was based on fraud, misrepresentation,
43 or intentional nondisclosure of information by the person conducting the
44 remediation.
- 45 (7) Installation or use of wells would induce the flow of contaminated
46 groundwater off the site.

47 (d) The Department shall issue a final decision on a request for a determination that
48 remediation has been completed to approved standards and that no further remediation beyond
49 that specified in the approved remedial action plan is required within 180 days after receipt of a
50 complete final report. Failure of the Department to issue a final decision on a no further
51 remediation determination within 180 days after receipt of a complete final report and request

1 for a determination of no further remediation may be treated as a denial of the request for a no
2 further remediation determination. The responsible person may seek review of a denial of a
3 request for a release from further remediation as provided in Article 3 of Chapter 150B of the
4 General Statutes.

5 (e) Once the Department issues a determination that no further remediation is required
6 beyond that specified in the approved remedial action plan for the site, any person who changes
7 the use of the property causing the level of risk to increase beyond the acceptable risk range
8 shall be required by the Department to undertake additional remediation measures.

9 **"§ 130A-310.74. Compliance with other laws.**

10 Where a site is covered by an agreement under the Brownfields Property Reuse Act of
11 1997, as codified as Part 5 of Article 9 Chapter 130A of the General Statutes, any work
12 performed by the prospective developer pursuant to that agreement is not required to comply
13 with this Part, but any work not covered by such agreement and performed at the site by
14 another person not a party to that agreement may be performed pursuant to this Part.

15 **"§ 130A-310.75. Use of registered environmental consultants.**

16 The Department may approve the use of a registered environmental consultant to provide
17 oversight for the assessment and remediation of a site under this Part. If remediation under this
18 Part is not undertaken voluntarily, the Department may not require the use of a registered
19 environmental consultant to provide oversight for the assessment and remediation of a site
20 under this Part.

21 **"§ 130A-310.76. Fees; permissible uses of fees.**

22 (a) A person who undertakes remediation of environmental contamination under
23 site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund
24 in an amount equal to four thousand five hundred dollars (\$4,500) for each acre or portion of an
25 acre of contamination, including any area that will become contaminated as a result of the
26 release; however, no person shall be required to pay more than one hundred twenty-five
27 thousand dollars (\$125,000) to the Fund for any individual site, regardless of its size. This
28 one-time fee shall be payable at the time the person undertaking remediation submits the
29 remedial action plan to the Department.

30 (b) Funds collected pursuant to subsection (a) of this section may be used only for the
31 following purposes:

32 (1) To pay for administrative and operating expenses necessary to implement
33 this Part.

34 (2) To establish, administer, and maintain a system for the tracking of land-use
35 restrictions recorded at sites that are remediated pursuant to this Part.

36 **"§ 130A-310.77. Construction of Part.**

37 This Part shall not be construed or implemented in any of the following ways:

38 (1) In any manner that would jeopardize federal authorization under any of the
39 federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or
40 would otherwise conflict with federal authority under those statutes,
41 programs, and requirements. This Part is supplemental to the programs and
42 requirements set out in G.S. 130A-310.67(a) that would otherwise govern
43 the remediation of a contaminated industrial site. Where the definitions,
44 provisions, or requirements of this Part conflict with the definitions,
45 provisions, or requirements of an otherwise applicable remediation program,
46 this Part shall control, unless expressly stated to the contrary.

47 (2) To limit the authority of the Department to require investigation, initial
48 response, or remediation of environmental contamination under any other
49 provision of State or federal law necessary to address an imminent threat to
50 public health, safety, or welfare or the environment.

- 1 (3) To alter the requirements of programs to prevent or mitigate the release or
 2 discharge of contaminants to the environment, including permitting
 3 requirements that regulate the handling of hazardous substances or wastes.
 4 (4) To supersede or otherwise affect or prevent the enforcement of any land-use
 5 or development regulation or ordinance adopted by a municipality pursuant
 6 to Article 19 of Chapter 160A of the General Statutes or adopted by a county
 7 pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a
 8 site and any land-use restrictions imposed as part of a remedial action plan
 9 shall comply with land-use and development controls adopted by a
 10 municipality pursuant to Article 19 of Chapter 160A of the General Statutes
 11 or adopted by a county pursuant to Article 18 of Chapter 153A of the
 12 General Statutes."

13 **SECTION 3.** G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future
 14 codification purposes.

15 **SECTION 4.** G.S. 130A-310.10(a) reads as rewritten:

16 "(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative
 17 Commission on Governmental Operations, the Environmental Review Commission, and the
 18 Fiscal Research Division on or before 1 October of each year. The report shall include at
 19 ~~least~~least the following:

- 20 (1) The Inactive Hazardous Waste Sites Priority ~~List~~List.
 21 (2) A list of remedial action plans requiring State funding through the Inactive
 22 Hazardous Sites Cleanup ~~Fund~~Fund.
 23 (3) A comprehensive budget to implement these remedial action plans and the
 24 adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of
 25 said ~~plans~~plans.
 26 (4) A prioritized list of sites that are eligible for remedial action under
 27 CERCLA/SARA together with recommended remedial action plans and a
 28 comprehensive budget to implement such plans. The budget for
 29 implementing a remedial action plan under CERCLA/SARA shall include a
 30 statement as to any appropriation that may be necessary to pay the State's
 31 share of such ~~plan~~plan.
 32 (5) A list of sites and remedial action plans undergoing voluntary cleanup with
 33 Departmental ~~approval~~approval.
 34 (6) A list of sites and remedial action plans that may require State funding, a
 35 comprehensive budget if implementation of these possible remedial action
 36 plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup
 37 Fund to fund the possible costs of said ~~plans~~plans.
 38 (7) A list of sites that pose an imminent ~~hazard~~hazard.
 39 (8) A comprehensive budget to develop and implement remedial action plans for
 40 sites that pose imminent hazards and that may require State funding, and the
 41 adequacy of the Inactive Hazardous Sites Cleanup ~~Fund~~and Fund.
 42 (8a) The amounts and sources of funds collected by year received under
 43 G.S. 130A-310.76, the amounts and sources of those funds paid into the
 44 Inactive Hazardous Sites Cleanup Fund established pursuant to
 45 G.S. 130A-310.11, the number of acres of contamination for which funds
 46 have been received pursuant to G.S. 130A-310.76, and a detailed annual
 47 accounting of how the funds collected pursuant to G.S. 130A-310.76 have
 48 been utilized by the Department to advance the purposes of Part 8 of Article
 49 9 of Chapter 130A of the General Statutes.
 50 (9) Any other information requested by the General Assembly or the
 51 Environmental Review Commission."

1 **SECTION 5.** The Secretary of Environment and Natural Resources shall make all
2 reasonable efforts to obtain a written agreement from the United States Environmental
3 Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted
4 by Section 2 of this act, is consistent with the Comprehensive Environmental Response,
5 Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601,
6 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public
7 Law 99-499, 100 Stat. 1613, as amended.

8 **SECTION 6.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 45*
Committee Substitute Favorable 3/3/11

Short Title: Accelerate Cleanup of Industrial Properties.

(Public)

Sponsors:

Referred to:

February 8, 2011

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE
2 THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF
3 LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO
4 PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO
5 ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND
6 PRIVATE RESOURCES.
7

8 Whereas, the General Assembly finds that public health, safety, and welfare and the
9 environment can be protected by implementing a remediation process that requires that
10 contaminated industrial sites be cleaned up to a level that is sufficient to ensure protection of
11 public health, safety, and welfare and the environment without excessive expenditure of public
12 or private resources; and

13 Whereas, the General Assembly finds that there are contaminated industrial sites in
14 North Carolina, including land and other property, surface water, and groundwater, that are
15 adversely affected by environmental contamination due to the presence of drilling waste;
16 hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes,
17 contaminants, and regulated substances; and

18 Whereas, the General Assembly finds that the presence of environmental
19 contamination on industrial sites creates both potential and actual harm to public health, safety,
20 and welfare and to the environment; and

21 Whereas, the General Assembly finds that this potential and actual harm results in
22 substantial economic losses, including reduced property values and tax revenues, decreased
23 ability to develop and expand the beneficial use of these sites, and other opportunity costs
24 because of the uncertainties and concerns that result from the environmental contamination of
25 these sites; and

26 Whereas, the General Assembly finds that it is in the public interest that
27 contaminated industrial sites are cleaned up or managed in a manner that protects public health,
28 safety, and welfare and the environment and protects groundwater that is a current or probable
29 future water supply; and

30 Whereas, the General Assembly finds that North Carolina has numerous and varied
31 State-managed remediation programs to address environmental contamination, including the
32 Inactive Hazardous Sites Response Act of 1987; the hazardous waste management program
33 administered by the State pursuant to the federal Resource Conservation and Recovery Act of
34 1976; the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988; the Brownfields
35 Property Reuse Act of 1997; the Dry-Cleaning Solvent Cleanup Act of 1997; the federal
36 Superfund program administered in part by the State pursuant to the Comprehensive
37 Environmental Response, Compensation, and Liability Act of 1980 and the Superfund



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1 Amendments and Reauthorization Act of 1986; and the groundwater protection rules adopted
2 by the Environmental Management Commission; and

3 Whereas, the General Assembly finds that the expenditure of public and private
4 resources on unnecessary remediation could better be channeled to other purposes, including
5 new development, renovation and repair, research and development, training and education,
6 and other activities that maintain and enhance North Carolina's competitive position in the
7 world and the excellent quality of life enjoyed by the citizens of North Carolina; and

8 Whereas, the General Assembly finds that North Carolina's groundwater is a
9 valuable public and private resource, serving as the drinking water source for one-half of the
10 State's population and also as a water supply for industrial and commercial uses; and

11 Whereas, the General Assembly finds that maintenance of North Carolina's surface
12 water and groundwater resources will become increasingly important to the continued
13 economic vitality of the State in the future; and

14 Whereas, the General Assembly finds that use of site-specific remediation standards
15 based on an objective, scientific, and uniform approach to the evaluation of the risk posed by
16 each contaminated site can be protective of public health, safety, and welfare and the
17 environment; and

18 Whereas, the General Assembly finds that use of site-specific remediation standards
19 in appropriate circumstances may encourage accelerated cleanup of contaminated industrial
20 sites; and

21 Whereas, the General Assembly intends that the levels of remediation that are
22 established for each contaminated site are to be applicable or relevant under federal remediation
23 programs; and

24 Whereas, the General Assembly intends that the protections afforded to public
25 health, safety, and welfare and to the environment by existing environmental, health, and safety
26 standards that apply to ongoing activities not be diminished in any way, in order that those
27 standards will continue to protect against the discharge or release of contaminants to the
28 environment that would result in additional contaminated sites; Now, therefore,
29 The General Assembly of North Carolina enacts:

30 **SECTION 1.** G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future
31 codification purposes.

32 **SECTION 2.** Article 9 of Chapter 130A of the General Statutes is amended by
33 adding a new Part to read:

34 "Part 8. Risk-Based Environmental Remediation of Industrial Sites.

35 "§ 130A-310.65. Definitions.

36 As used in this Part:

- 37 (1) "Background standard" means the naturally occurring concentration of a
38 substance in the absence of the release of a contaminant.
39 (2) "Commission" means the Environmental Management Commission created
40 pursuant to G.S. 143B-282.
41 (3) "Contaminant" means any substance regulated under any program listed in
42 G.S. 130A-310.67(a).
43 (4) "Contaminated industrial site" or "site" means any real property that meets
44 all of the following criteria:
45 a. The property is contaminated and may be subject to remediation
46 under any of the programs or requirements set out in
47 G.S. 130A-310.67(a).
48 b. The property is or has been used primarily for manufacturing or other
49 industrial activities for the production of a commercial product. This
50 includes a property used primarily for the generation of electricity.

- 1 This does not include a property used primarily for service industry
2 activities.
- 3 c. No contaminant associated with activities at the property has
4 migrated or will migrate to any adjacent properties above
5 unrestricted use standards for the contaminant.
- 6 (5) "Contamination" means a contaminant released into an environmental
7 medium that has resulted in or has the potential to result in an increase in the
8 concentration of the contaminant in the environmental medium in excess of
9 unrestricted use standards.
- 10 (6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established
11 pursuant to G.S. 130A-310.11.
- 12 (7) "Institutional controls" means nonengineered measures used to prevent
13 unsafe exposure to contamination, such as land-use restrictions.
- 14 (8) "Registered environmental consultant" means an environmental consulting
15 or engineering firm approved to implement and oversee voluntary remedial
16 actions pursuant to Part 3 of Article 9 of Chapter 130A of the General
17 Statutes and rules adopted to implement the Part.
- 18 (9) "Remedial action plan" means a plan for eliminating or reducing
19 contamination or exposure to contamination.
- 20 (10) "Remediation" means all actions that are necessary or appropriate to clean
21 up, mitigate, correct, abate, minimize, eliminate, control, or prevent the
22 spreading, migration, leaking, leaching, volatilization, spilling, transport, or
23 further release of a contaminant into the environment in order to protect
24 public health, safety, or welfare or the environment.
- 25 (11) "Systemic toxicant" means any substance that may enter the body and have a
26 harmful effect other than causing cancer.
- 27 (12) "Unrestricted use standards" means contaminant concentrations for each
28 environmental medium that are acceptable for all uses; that are protective of
29 public health, safety, and welfare and the environment; and that comply with
30 generally applicable standards, guidance, or methods established by statute
31 or adopted, published, or implemented by the Commission, the Commission
32 for Public Health, or the Department.

33 **§ 130A-310.66. Purpose.**

34 It is the purpose of this Part to authorize the Department to approve the remediation of
35 contaminated industrial sites based on site-specific remediation standards in circumstances
36 where site-specific remediation standards are adequate to protect public health, safety, and
37 welfare and the environment and are consistent with protection of current and anticipated future
38 use of groundwater and surface water affected or potentially affected by the contamination.

39 **§ 130A-310.67. Applicability.**

40 (a) This Part applies to contaminated industrial sites subject to remediation pursuant to
41 any of the following programs or requirements:

- 42 (1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9
43 of Chapter 130A of the General Statutes, including voluntary actions under
44 G.S. 130A-310.9 of that act, and rules promulgated pursuant to those
45 statutes.
- 46 (2) The hazardous waste management program administered by the State
47 pursuant to the federal Resource Conservation and Recovery Act of 1976,
48 Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended,
49 and Article 9 of Chapter 130A of the General Statutes.
- 50 (3) The solid waste management program administered pursuant to Article 9 of
51 Chapter 130A of the General Statutes.

- 1 (4) The federal Superfund program administered in part by the State pursuant to
2 the Comprehensive Environmental Response, Compensation, and Liability
3 Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as
4 amended, the Superfund Amendments and Reauthorization Act of 1986,
5 Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article
6 9 of Chapter 130A of the General Statutes.
- 7 (5) The groundwater protection corrective action requirements adopted by the
8 Commission pursuant to Article 21 of Chapter 143 of the General Statutes.
- 9 (6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2
10 of Article 21A of Chapter 143 of the General Statutes.
- 11 (b) This Part shall not apply to contaminated industrial sites subject to remediation
12 pursuant to any of the following programs or requirements:
- 13 (1) The Leaking Petroleum Underground Storage Tank Cleanup program under
14 Part 2A of Article 21A of Chapter 143 of the General Statutes and rules
15 promulgated pursuant to that statute.
- 16 (2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of
17 Chapter 143 of the General Statutes and rules promulgated pursuant to that
18 statute.
- 19 (3) The pre-1983 landfill assessment and remediation program established under
20 G.S. 130A-310.6(c) through (g).
- 21 (c) This Part shall apply only to sites where a discharge, spill, or release of
22 contamination has been reported to the Department prior to March 1, 2011.
- 23 **§ 130A-310.68. Remediation standards.**
- 24 (a) When conducting remediation activities pursuant to this Part, a person who proposes
25 to or is required to respond to the release of a contaminant at a contaminated industrial site
26 shall comply with one of the following standards:
- 27 (1) The unrestricted use standards applicable to each affected medium.
- 28 (2) The background standard, if the background standard exceeds the
29 unrestricted use standards.
- 30 (3) A site-specific remediation standard developed in accordance with
31 subsection (b) of this section that is approved by the Department.
- 32 (4) Any combination of remediation standards described in this subsection that
33 is approved by the Department.
- 34 (b) Site-specific remediation standards shall be developed for each medium as provided
35 in this subsection to achieve remediation that eliminates or reduces to protective levels any
36 substantial present or probable future risk to human health, including sensitive subgroups, and
37 the environment based upon the present or currently planned future use of the property
38 comprising the site. Site-specific remediation standards shall be developed in accordance with
39 all of the following:
- 40 (1) Remediation methods and technologies that result in emissions of air
41 pollutants shall comply with applicable air quality standards adopted by the
42 Commission.
- 43 (2) The site-specific remediation standard for surface waters shall be the water
44 quality standards adopted by the Commission.
- 45 (3) The current and probable future use of groundwater shall be identified and
46 protected. Site-specific sources of contaminants and potential receptors shall
47 be identified. Potential receptors must be protected, controlled, or eliminated
48 whether the receptors are located on or off the site where the source of
49 contamination is located. Natural environmental conditions affecting the fate
50 and transport of contaminants, such as natural attenuation, shall be
51 determined by appropriate scientific methods.

- 1 (4) Permits for facilities located at sites covered by any of the programs or
2 requirements set out in G.S. 130A-310.67(a) shall contain conditions to
3 avoid exceedances of applicable groundwater standards adopted by the
4 Commission pursuant to Article 21 of Chapter 143 of the General Statutes
5 due to operation of the facility.
- 6 (5) Soil shall be remediated to levels that no longer constitute a continuing
7 source of groundwater contamination in excess of the site-specific
8 groundwater remediation standards approved under this Part.
- 9 (6) Soil shall be remediated to unrestricted use standards on residential property
10 with the following exceptions:
- 11 a. For mixed-use developments where the ground level uses are
12 nonresidential and where all potential exposure to contaminated soil
13 has been eliminated, the Department may allow soil to remain on the
14 site in excess of unrestricted use standards.
- 15 b. If soil remediation is impracticable because of the presence of
16 preexisting structures or impracticability of removal, all areas of the
17 real property at which a person may come into contact with soil shall
18 be remediated to unrestricted use standards, and, on all other areas of
19 the real property, engineering and institutional controls that are
20 sufficient to protect public health, safety, and welfare and the
21 environment shall be implemented and maintained.
- 22 (7) The potential for human inhalation of contaminants from the outdoor air and
23 other site-specific indoor air exposure pathways shall be considered, if
24 applicable.
- 25 (8) The site-specific remediation standard shall protect against human exposure
26 to contamination through the consumption of contaminated fish or wildlife
27 and through the ingestion of contaminants in surface water or groundwater
28 supplies.
- 29 (9) For known or suspected carcinogens, site-specific remediation standards
30 shall be established at exposures that represent an excess lifetime cancer risk
31 of one in 1,000,000. The site-specific remediation standard may depart from
32 the one-in-1,000,000 risk level based on the criteria set out in 40 Code of
33 Federal Regulations § 300.430(e)(9) (July 1, 2003 Edition). The cumulative
34 excess lifetime cancer risk to an exposed individual shall not be greater than
35 one in 10,000 based on the sum of carcinogenic risk posed by each
36 contaminant present.
- 37 (10) For systemic toxicants, site-specific remediation standards shall represent
38 levels to which the human population, including sensitive subgroups, may be
39 exposed without any adverse health effect during a lifetime or part of a
40 lifetime. Site-specific remediation standards for systemic toxicants shall
41 incorporate an adequate margin of safety and shall take into account cases
42 where two or more systemic toxicants affect the same organ or organ
43 system.
- 44 (11) The site-specific remediation standards for each medium shall be adequate to
45 avoid foreseeable adverse effects to other media or the environment that are
46 inconsistent with the risk-based approach under this Part.

47 **§ 130A-310.69. Remedial investigation report; remedial action plans.**

48 (a) A person who proposes to conduct remediation pursuant to this Part shall submit a
49 remedial investigation report to the Department prior to submitting a remedial action plan. The
50 remedial investigation report shall include, but is not limited to, a legal description of the
51 location of the site; a map showing the location of the site; a description of the contaminants

1 involved and their concentration in the media of the site; a narrative description of the
2 methodology used in the investigation; a description of all on-site releases of contamination; a
3 site map, drawn to scale, showing benchmarks, directional arrow, location of property
4 boundaries, buildings, structures, all perennial and nonperennial surface water features,
5 drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities,
6 storage vessels, and existing on-site wells; identification of adjacent property owners and
7 adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the
8 site and adjacent properties for the existence of environmentally sensitive areas; a description
9 of groundwater monitoring well design and installation procedures; a map, drawn to scale, that
10 shows all groundwater sample locations; a description of field and laboratory quality control
11 and quality assurance procedures followed during the remedial investigation; a description of
12 methods used to manage investigation-derived wastes; tabulation of analytical results for all
13 sampling; copies of all laboratory reports; a description of procedures and the results of any
14 special assessments; and any other information required by the Department or considered
15 relevant by the investigator. The remedial investigation shall assess all contaminated areas of
16 the site, including types and levels of contamination, and the risk that the contamination poses
17 to public health, safety, and welfare and to the environment.

18 (b) A person who proposes to conduct remediation pursuant to this Part shall develop
19 and submit a proposed remedial action plan to the Department. A remedial action plan shall
20 provide for the protection of public health, safety, and welfare and the environment. A remedial
21 action plan shall do all of the following:

- 22 (1) Identify actions required to remove, treat, or otherwise appropriately
23 mitigate or isolate the source of contamination to ensure that the source will
24 not cause unrestricted use standards to be exceeded in any medium.
- 25 (2) Address contamination that moves from one medium to another in order to
26 prevent a violation of the remediation standards established under
27 G.S. 130A-310.68. A more stringent remediation standard may be required
28 for a particular medium to control impact on other media.
- 29 (3) Identify the current and anticipated future uses of property comprising the
30 contaminated site and address any concerns raised in public comment on the
31 proposed remedial action plan as to the proposed future uses of the property.
- 32 (4) Identify the current and anticipated future uses of groundwater in the
33 contaminated site and address any concerns raised in public comment on the
34 proposed remedial action plan as to the future uses of groundwater.
- 35 (5) Determine the appropriate method of remediation to achieve the site-specific
36 remediation standards.
- 37 (6) Specify any measures that may be necessary to prevent adverse effects to the
38 environment that may occur at levels of contamination that are lower than
39 the standard necessary to protect human health.
- 40 (7) Specify any measures that may be necessary to prevent any discharge into
41 surface waters during implementation of the remedial action plan that
42 violates applicable surface water quality standards adopted by the
43 Commission.
- 44 (8) Specify any measures that may be necessary to prevent any air emission
45 during implementation of the remedial action plan that violates applicable air
46 quality standards adopted by the Commission.
- 47 (9) Provide for attainment and maintenance of the remediation standards
48 established under G.S. 130A-310.68.
- 49 (10) Provide for methods and procedures to verify that the quantity,
50 concentration, range, or other measure of each contaminant remaining at the
51 contaminated site at the conclusion of the contaminant-reduction phase of

- 1 remediation meets the remediation standards established for the site, that an
2 acceptable level of risk has been achieved, and that no further remediation is
3 required.
- 4 (11) Provide for the imposition and recordation of land-use restrictions as
5 provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8,
6 130A-310.35, 143-215.84(f), and 143-215.85A if the remedial action plan
7 allows contamination in excess of the greater of unrestricted use standards or
8 background standards to remain on any real property or in groundwater that
9 underlies any real property.
- 10 (12) Provide for submission of an annual certification to the Department by the
11 property owner that land use at the site is in compliance with land-use
12 restrictions recorded pursuant to this Part and that the land-use restrictions
13 are still properly recorded in the chain of title for the property.
- 14 (13) Provide a detailed description of the proposed remedial action to be taken;
15 the results of any treatability studies and additional site characterization
16 needed to support the proposed remedial action; plans for postremedial and
17 confirmatory sampling; a project schedule; a schedule for progress reports to
18 the Department; and any other information required by the Department or
19 considered relevant by the person who submits the proposed remedial action
20 plan.
- 21 (14) Provide a description of measures that will be employed to ensure that the
22 safety and health of persons on properties in the vicinity of the site and
23 persons visiting or doing business on the site will not be adversely affected
24 by any remediation activity.
- 25 (15) Provide a reasonable estimate of the probable cost of the remedial action
26 sufficient for the Department to determine an acceptable level of financial
27 assurance.
- 28 (16) Provide proof of financial assurance as required by G.S. 130A-310.72.
- 29 (c) A remedial action plan shall also include an analysis of each of the following
30 factors:
- 31 (1) Long-term risks and effectiveness of the proposed remediation, including an
32 evaluation of all of the following:
- 33 a. The magnitude of risks remaining after completion of the
34 remediation.
- 35 b. The type, degree, frequency, and duration of any postremediation
36 activity that may be required, including, but not limited to, operation
37 and maintenance, monitoring, inspection, reports, and other activities
38 necessary to protect public health, safety, and welfare and the
39 environment.
- 40 c. Potential for exposure of human and environmental receptors to
41 contaminants remaining at the site.
- 42 d. Long-term reliability of any engineering and voluntary institutional
43 controls, including repair, maintenance, or replacement of
44 components.
- 45 e. Time required to achieve remediation standards.
- 46 (2) Toxicity, mobility, and volume of contaminants, including the amount of
47 contaminants that will be removed, contained, treated, or destroyed; the
48 degree of expected reduction in toxicity, mobility, and volume; and the type,
49 quantity, toxicity, and mobility of contaminants that will remain after
50 implementation of the remedial action plan.

1 (3) Short-term risks and effectiveness of the remediation, including the
2 short-term risks that may be posed to the community, workers, or the
3 environment during implementation of the remedial action plan, and the
4 effectiveness and reliability of protective measures to address short-term
5 risks.

6 (4) The ease or difficulty of implementing the remedial action plan, including
7 commercially available remedial measures; expected operational reliability;
8 available capacity and location of needed treatment, storage, and disposal
9 services for wastes; time to initiate remediation; and approvals necessary to
10 implement the remediation.

11 (d) The development of a remedial action plan may require supplemental submissions
12 and revisions based on Department review, remedial action pilot studies, and public comment
13 from local government and citizens.

14 **"§ 130A-310.70. Notice of intent to remediate.**

15 In addition to the public participation requirements of the individual programs listed in
16 G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a
17 notice of intent to remediate to all local governments having taxing or land-use jurisdiction
18 over the site, and to all adjoining landowners. The notice shall include all of the information
19 required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to
20 site-specific remediation standards. The person shall submit to the Department a copy of the
21 notice of intent provided to local governments and adjoining landowners, a certification that the
22 notice of intent to remediate was so provided to those parties, and all information and
23 comments that the person received in response to the notice. In addition, the person shall, when
24 appropriate, describe how the remediation plan was modified to address comments received in
25 response to the notice.

26 **"§ 130A-310.71. Review and approval of proposed remedial action plans.**

27 (a) The Department shall review and approve a proposed remedial action plan
28 consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set
29 out in this section. In its review of a proposed remedial action plan, the Department shall do all
30 of the following:

31 (1) Determine whether site-specific remediation standards are appropriate for a
32 particular contaminated site. In making this determination, the Department
33 shall consider proximity of the contamination to water supply wells or other
34 receptors; current and probable future reliance on the groundwater as a water
35 supply; current and anticipated future land use; environmental impacts; and
36 the feasibility of remediation to unrestricted use standards.

37 (2) Determine whether the party conducting the remediation has adequately
38 demonstrated through modeling or other scientific means acceptable to the
39 Department that no contamination will migrate to adjacent property at levels
40 above unrestricted use standards.

41 (3) Determine whether the proposed remedial action plan meets the
42 requirements of G.S. 130A-310.69.

43 (4) Determine whether the proposed remedial action plan meets the
44 requirements of any other applicable remediation program except those
45 pertaining to remediation standards.

46 (5) Establish the acceptable level or range of levels of risk to public health,
47 safety, and welfare and to the environment.

48 (6) Establish, for each contaminant, the maximum allowable quantity,
49 concentration, range, or other measures of contamination that will remain at
50 the contaminated site at the conclusion of the contaminant-reduction phase
51 of the remediation.

1 (7) Consider the technical performance, effectiveness, and reliability of the
2 proposed remedial action plan in attaining and maintaining compliance with
3 applicable remediation standards.

4 (8) Consider the ability of the person who proposes to remediate the site to
5 implement the proposed remedial action plan within a reasonable time and
6 without jeopardizing public health, safety, or welfare or the environment.

7 (9) Determine whether the proposed remedial action plan adequately provides
8 for the imposition and maintenance of engineering and institutional controls
9 and for sampling, monitoring, and reporting requirements necessary to
10 protect public health, safety, and welfare and the environment.

11 (10) Approve the circumstances under which no further remediation is required.

12 (b) The person who proposes a remedial action plan has the burden of demonstrating
13 that contamination from the site will not likely migrate in the reasonably foreseeable future to
14 adjacent property and that the remedial action plan is protective of public health, safety, and
15 welfare and the environment by virtue of its compliance with this Part.

16 (c) The Department may require a person who proposes a remedial action plan to
17 supply any additional information necessary for the Department to approve or disapprove the
18 plan.

19 (d) In making a determination on a proposed remedial action plan, the Department shall
20 consider the information provided by the person who proposes the remedial action plan as well
21 as information provided by local governments and adjoining landowners pursuant to
22 G.S. 130A-310.70. The Department shall disapprove a proposed remedial action plan unless the
23 Department finds that the plan is protective of public health, safety, and welfare and the
24 environment and complies with the requirements of this Part. If the Department disapproves a
25 proposed remedial action plan, the person who submitted the plan may seek review as provided
26 in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or
27 disapprove a proposed remedial action plan within 120 days after a complete plan has been
28 submitted, the person who submitted the plan may treat the plan as having been disapproved at
29 the end of that time period.

30 **"§ 130A-310.72. Financial assurance requirement.**

31 The person conducting remediation of a contaminated industrial site pursuant to the
32 provisions of this Part shall establish financial assurance that will ensure that sufficient funds
33 are available to implement and maintain the actions or controls specified in the remedial action
34 plan for the site. The person conducting remediation of a site may establish financial assurance
35 through one of the following mechanisms, or any combination of the following mechanisms, in
36 a form specified or approved by the Department: insurance products issued from entities having
37 no corporate or ownership association with the person conducting the remediation; funded
38 trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local
39 government financial tests; corporate guarantees; local government guarantees; capital reserve
40 funds; or any other financial mechanism authorized for the demonstration of financial
41 assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition)
42 and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
43 Administrative Code.

44 **"§ 130A-310.73. Attainment of the remediation standard.**

45 (a) Compliance with the approved remediation standards is attained for a site or portion
46 of a site when a remedial action plan approved by the Department has been implemented and
47 applicable soil, groundwater, surface water, and air emission standards have been attained. The
48 remediation standards may be attained through a combination of remediation activities that can
49 include treatment, removal, engineering, or institutional controls, except that the person
50 conducting the remediation may not demonstrate attainment of an unrestricted use standard or a
51 background standard through the use of institutional controls alone. When the remedial action

1 plan has been fully implemented, the person conducting the remediation shall submit a final
2 report to the Department, with notice to all local governments with taxing and land-use
3 jurisdiction over the site, that demonstrates that the remedial action plan has been fully
4 implemented, that any land-use restrictions have been certified on an annual basis, and that the
5 remediation standards have been attained. The final report shall be accompanied by a request
6 that the Department issue a determination that no further remediation beyond that specified in
7 the approved remedial action plan is required.

8 (b) The person conducting the remediation has the burden of demonstrating that the
9 remedial action plan has been fully implemented and that the remediation standards have been
10 attained in compliance with the requirements of this Part. The Department may require a person
11 who implements the remedial action plan to supply any additional information necessary for
12 the Department to determine whether the remediation standards have been attained.

13 (c) The Department shall review the final report, and, upon determining that the person
14 conducting the remediation has completed remediation to the approved remediation standard
15 and met all the requirements of the approved remedial action plan, the Department shall issue a
16 determination that no further remediation beyond that specified in the approved remedial action
17 plan is required at the site. Once the Department has issued a no further action determination,
18 the Department may require additional remedial action by the responsible party only upon
19 finding any of the following:

20 (1) Monitoring, testing, or analysis of the site subsequent to the issuance of the
21 no further action determination indicates that the remediation standards and
22 objectives were not achieved or are not being maintained.

23 (2) One or more of the conditions, restrictions, or limitations imposed on the site
24 as part of the remediation have been violated.

25 (3) Site monitoring or operation and maintenance activities that are required as
26 part of the remedial action plan or no further action determination for the site
27 are not adequately funded or are not adequately implemented.

28 (4) A contaminant or hazardous substance release is discovered at the site that
29 was not the subject of the remedial investigation report or the remedial
30 action plan.

31 (5) A material change in the facts known to the Department at the time the
32 written no further action determination was issued, or new facts, cause the
33 Department to find that further assessment or remediation is necessary to
34 prevent a significant risk to human health and safety or to the environment.

35 (6) The no further action determination was based on fraud, misrepresentation,
36 or intentional nondisclosure of information by the person conducting the
37 remediation.

38 (7) Installation or use of wells would induce the flow of contaminated
39 groundwater off the site.

40 (d) The Department shall issue a final decision on a request for a determination that
41 remediation has been completed to approved standards and that no further remediation beyond
42 that specified in the approved remedial action plan is required within 180 days after receipt of a
43 complete final report. Failure of the Department to issue a final decision on a no further
44 remediation determination within 180 days after receipt of a complete final report and request
45 for a determination of no further remediation may be treated as a denial of the request for a no
46 further remediation determination. The responsible person may seek review of a denial of a
47 request for a release from further remediation as provided in Article 3 of Chapter 150B of the
48 General Statutes.

49 (e) Once the Department issues a determination that no further remediation is required
50 beyond that specified in the approved remedial action plan for the site, any person who changes

1 the use of the property causing the level of risk to increase beyond the acceptable risk range
2 shall be required by the Department to undertake additional remediation measures.

3 **"§ 130A-310.74. Compliance with other laws.**

4 Where a site is covered by an agreement under the Brownfields Property Reuse Act of
5 1997, as codified as Part 5 of Article 9 Chapter 130A of the General Statutes, any work
6 performed by the prospective developer pursuant to that agreement is not required to comply
7 with this Part, but any work not covered by such agreement and performed at the site by
8 another person not a party to that agreement may be performed pursuant to this Part.

9 **"§ 130A-310.75. Use of registered environmental consultants.**

10 The Department may approve the use of a registered environmental consultant to provide
11 oversight for the assessment and remediation of a site under this Part. If remediation under this
12 Part is not undertaken voluntarily, the Department may not require the use of a registered
13 environmental consultant to provide oversight for the assessment and remediation of a site
14 under this Part.

15 **"§ 130A-310.76. Fees; permissible uses of fees.**

16 (a) A person who undertakes remediation of environmental contamination under
17 site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund
18 in an amount equal to three thousand five hundred dollars (\$3,500) for each acre or portion of
19 an acre of contamination, including any area that will become contaminated as a result of the
20 release; however, no person shall be required to pay more than one hundred twenty-five
21 thousand dollars (\$125,000) to the Fund for any individual site, regardless of its size. This
22 one-time fee shall be payable at the time the person undertaking remediation submits the
23 remedial action plan to the Department.

24 (b) Funds collected pursuant to subsection (a) of this section may be used only for the
25 following purposes:

- 26 (1) To pay for administrative and operating expenses necessary to implement
27 this Part.
28 (2) To establish, administer, and maintain a system for the tracking of land-use
29 restrictions recorded at sites that are remediated pursuant to this Part.

30 **"§ 130A-310.77. Construction of Part.**

31 This Part shall not be construed or implemented in any of the following ways:

- 32 (1) In any manner that would jeopardize federal authorization under any of the
33 federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or
34 would otherwise conflict with federal authority under those statutes,
35 programs, and requirements. This Part is supplemental to the programs and
36 requirements set out in G.S. 130A-310.67(a) that would otherwise govern
37 the remediation of a contaminated industrial site. Where the definitions,
38 provisions, or requirements of this Part conflict with the definitions,
39 provisions, or requirements of an otherwise applicable remediation program,
40 this Part shall control, unless expressly stated to the contrary.
41 (2) To limit the authority of the Department to require investigation, initial
42 response, or remediation of environmental contamination under any other
43 provision of State or federal law necessary to address an imminent threat to
44 public health, safety, or welfare or the environment.
45 (3) To alter the requirements of programs to prevent or mitigate the release or
46 discharge of contaminants to the environment, including permitting
47 requirements that regulate the handling of hazardous substances or wastes.
48 (4) To supersede or otherwise affect or prevent the enforcement of any land-use
49 or development regulation or ordinance adopted by a municipality pursuant
50 to Article 19 of Chapter 160A of the General Statutes or adopted by a county
51 pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a

1 site and any land-use restrictions imposed as part of a remedial action plan
2 shall comply with land-use and development controls adopted by a
3 municipality pursuant to Article 19 of Chapter 160A of the General Statutes
4 or adopted by a county pursuant to Article 18 of Chapter 153A of the
5 General Statutes."

6 SECTION 3. G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future
7 codification purposes.

8 SECTION 4. G.S. 130A-310.10(a) reads as rewritten:

9 "(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative
10 Commission on Governmental Operations, the Environmental Review Commission, and the
11 Fiscal Research Division on or before 1 October of each year. The report shall include at
12 ~~least:~~least the following:

- 13 (1) The Inactive Hazardous Waste Sites Priority ~~List;~~List.
- 14 (2) A list of remedial action plans requiring State funding through the Inactive
15 Hazardous Sites Cleanup ~~Fund;~~Fund.
- 16 (3) A comprehensive budget to implement these remedial action plans and the
17 adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the cost of
18 said ~~plans;~~plans.
- 19 (4) A prioritized list of sites that are eligible for remedial action under
20 CERCLA/SARA together with recommended remedial action plans and a
21 comprehensive budget to implement such plans. The budget for
22 implementing a remedial action plan under CERCLA/SARA shall include a
23 statement as to any appropriation that may be necessary to pay the State's
24 share of such ~~plan;~~plan.
- 25 (5) A list of sites and remedial action plans undergoing voluntary cleanup with
26 Departmental ~~approval;~~approval.
- 27 (6) A list of sites and remedial action plans that may require State funding, a
28 comprehensive budget if implementation of these possible remedial action
29 plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup
30 Fund to fund the possible costs of said ~~plans;~~plans.
- 31 (7) A list of sites that pose an imminent ~~hazard;~~hazard.
- 32 (8) A comprehensive budget to develop and implement remedial action plans for
33 sites that pose imminent hazards and that may require State funding, and the
34 adequacy of the Inactive Hazardous Sites Cleanup ~~Fund;~~ and Fund.
- 35 (8a) The amounts and sources of funds collected by year received under
36 G.S. 130A-310.76, the amounts and sources of those funds paid into the
37 Inactive Hazardous Sites Cleanup Fund established pursuant to
38 G.S. 130A-310.11, the number of acres of contamination for which funds
39 have been received pursuant to G.S. 130A-310.76, and a detailed annual
40 accounting of how the funds collected pursuant to G.S. 130A-310.76 have
41 been utilized by the Department to advance the purposes of Part 8 of Article
42 9 of Chapter 130A of the General Statutes.
- 43 (9) Any other information requested by the General Assembly or the
44 Environmental Review Commission."

45 SECTION 5. The Secretary of Environment and Natural Resources shall make all
46 reasonable efforts to obtain a written agreement from the United States Environmental
47 Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted
48 by Section 2 of this act, is consistent with the Comprehensive Environmental Response,
49 Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601,
50 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public
51 Law 99-499, 100 Stat. 1613, as amended.

1

SECTION 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 45 (Second Edition)

SHORT TITLE: Accelerate Cleanup of Industrial Properties.

SPONSOR(S): Representatives Gillespie, Cook, and Gibson

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	\$420,000	\$420,000	\$420,000	\$420,000	\$420,000
EXPENDITURES	\$321,131	\$310,562	\$331,734	\$346,842	\$359,555
POSITIONS (cumulative):	3	3	3	3	3
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources					
EFFECTIVE DATE: This bill is effective when it becomes law.					

BILL SUMMARY:

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site. The bill would require payment of a fee by a person undertaking a risk-based cleanup, the amount of which would be based on the size of the site to be remediated. The fee would be used by the Department of Environment and Natural Resources for expenses necessary to implement a risk-based cleanup program, and to establish and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated under such a program

(Source: Committee Counsel, Research Division)

ASSUMPTIONS AND METHODOLOGY:

In conjunction with the federal government, DENR's Division of Waste Management has several programs that address remediation or cleanup of environmental contamination. Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses, protect public health, safety, and welfare and the environment, and comply with applicable standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or DENR. Some State programs for cleanup of environmental contamination,

however, allow cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards. These programs include the Petroleum Underground Storage Tank Cleanup Program, the Dry-Cleaning Solvent Cleanup Program, and the State's Brownfields Property Reuse Act.

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site. Risk-based cleanup would be available for contaminated industrial sites that are governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control and where the release of contamination was reported to the Department of Environment and Natural Resources (DENR) prior to March 1, 2011. Risk-based cleanup would not be available for contaminated industrial sites that are governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

Site-specific remediation or cleanup standards would be developed for contaminated industrial sites to eliminate or reduce any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site.

A person who proposes a risk-based cleanup must prepare and submit: a remedial investigation report and a remedial action plan to DENR; a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners; and certification to DENR that the notice of intent was properly distributed and responses processed.

When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may only require additional cleanup under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

The fee for participation in a risk-based cleanup is \$3,500 for each acre or portion of an acre of contamination, with a cap of \$125,000. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

DENR expects that approximately 12 industrial sites per year would qualify for risk-based cleanup as defined in this legislation. This estimate is based on the assumption that current levels of voluntary cleanup participation would remain constant, and that approximately half of those sites would meet the legislation's criteria. DENR noted that participation in the first few years is expected to be much greater than subsequent years, as current remedial action projects would likely petition to change their statuses to the risk-based remedial option as defined in this legislation.

Expenditures

According to DENR, there would be no increase in voluntary cleanup participation, and therefore existing project managers and the Registered Environmental Consultant Program (which provides oversight under the Inactive Hazardous Sites Program) would be sufficient to oversee the remediation projects affected by this legislation.

However, House Bill 45 also introduces new demands for special reviews from toxicologists, financial analysts, and hydrogeologists to examine the transportation of groundwater contamination as well as to oversee land use restriction compliance and tracking. DENR estimated that a total of five new positions would be needed in order to meet the demands of this bill: a Hydrogeologist, an Engineer, an Industrial Hygiene Consultant (Toxicologist), a Financial Analyst, and an Environmental Program Supervisor II. Fiscal Research concurs that there will be sufficient increased workload to require three of these five positions, as follows:

- A Hydrogeologist to perform fate and transport modeling of contaminant migration, which are special reviews beyond that which the Division currently conducts.
- An Environmental Engineer position to develop and maintain a Geographic Information System, to track recorded land use restrictions, and to inspect compliance with those restrictions.
- A Toxicologist to conduct site-specific risk assessments at much higher levels of toxicological review than are currently conducted by existing staff.

Position Title	Annual Salary	Soc Sec	Ret	Health	Total Salary & Benefits FY 2011-12
Hydrogeologist-J	\$ 61,956	\$ 4,740	\$ 6,512	\$ 4,930	\$ 78,137
Engineer-J	\$ 62,523	\$ 4,783	\$ 6,571	\$ 4,930	\$ 78,807
Industrial Hygiene Consultant (Toxicologist)	\$ 67,816	\$ 5,188	\$ 7,127	\$ 4,930	\$ 85,061
				Total	\$ 242,006

Although DENR estimated that an additional Financial Analyst and Environmental Program Supervisor II would also be needed to fulfill the requirements of House Bill 45, Fiscal Research estimates that DENR's existing staff can absorb the remainder of the work required by this bill. At this time, 19 staff are working on the 290 sites addressed by the Inactive Hazardous Sites Program. Based on the Department's estimate that only 12 sites would be affected by this legislation, Fiscal Research concludes that the additional supervisory and financial work required by this bill could be absorbed by existing staff.

The total salaries and benefits of positions required by this legislation are calculated to include inflationary increases for each year. Additional operating costs, including travel, supplies, maintenance agreements and communications, would be \$79,125 in FY 2011-12 and \$54,500 in subsequent years. The initial costs in FY 2011-12 are due to the contractual services, computer hardware and software costs related to establishing the GIS system required by the legislation;

additionally, travel for the three new positions will be extensive due to required training and multiple visits to projects statewide. The total amount required by DENR for FY 2011-12, including salaries, benefits, and operating costs, is estimated to be \$321,131.

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Salaries and Fringes	\$ 242,006	\$ 256,062	\$ 277,234	\$ 292,342	\$ 305,055
Operating Costs	\$ 79,125	\$ 54,500	\$ 54,500	\$ 54,500	\$ 54,500
Total	\$ 321,131	\$ 310,562	\$ 331,734	\$ 346,842	\$ 359,555

Revenues

The revenues gained by fees included in this legislation may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions. The fee for participation in a risk-based cleanup is \$3,500 for each acre or portion of an acre of contamination, with a cap of \$125,000 regardless of the size of the site.

Based on DENR's data on existing groundwater contaminant plume sites, the average site size is 10 acres. Twelve sites per year multiplied by 10 acres per site totals 120 acres that would be affected by this legislation. The average amount per site that could be realized as revenue from fees would be \$35,000 (10 acres * \$3,500 per acre). The total amount of annual revenue that could be realized from fees would be \$420,000 (12 sites * \$35,000 per site). The revenues realized from this fee would be deposited in the existing Inactive Hazardous Sites Cleanup Fund, within which an account specifically designated for tracking these funds would need to be established.

SOURCES OF DATA: Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS:

House Bill 45 provides that the fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program. Based on DENR's estimate of 12 sites per year at an average of 10 acres each, the \$3,500 fee in House Bill 45 would generate more revenue than needed to support the staff and operating costs estimated to be required by the legislation.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Claire Hester

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 3, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



North Carolina General Assembly
House Committee on Finance

Minutes

~
March 16, 2011

The House Committee on Finance met on Wednesday, March 16, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Faison, Hackney, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson Starnes called the meeting to order at 8:30 am and recognized the four (4) pages present: (1) Alan Bridges of Cleveland County sponsored by Representative Moore; (2) Kris Faheem of Wake County sponsored by Representative Gill; (3) Shanell Jones of Cumberland County sponsored by Representative Floyd; and (4) Will Brooks of Cumberland County sponsored by Representative Parfitt.

The first bill considered by the Committee was **SB 99 Reform UI Tax Structure/Expedite Analysis** (see **attachment 3**). The Chair recognized Senator Rucho to explain the bill. Following the explanation, the Chair recognized Representative Warren who made a motion to hear the proposed committee substitute. The motion carried. Senator Rucho explained the proposed committee substitute. Chairperson Starnes recognized Lockhart Taylor, Director of Government Relations with the Employment Security Commission to answer questions from members. The Chair also recognized Secretary Keith Criscoe with the Department of Commerce who spoke in favor of the bill and also answered questions from members. Representative Howard moved that SB 99 be given a favorable report to the proposed House committee substitute, unfavorable report to the original bill. The motion carried.

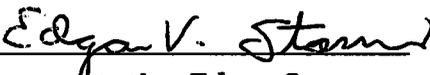
HB 26 Henderson County Fire Districts (see **attachment 4**) was the next bill heard by the Committee. Chairperson Starnes recognized Representative McGrady to explain the bill. Following Representative McGrady's explanation, Representative McGee moved that HB 26 be given a favorable report. The motion carried.

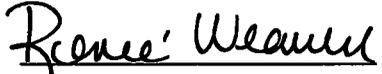
The next bill up for discussion was **HB 167 Extend Assessment Refund Period** (see **attachment 5**). The Chair recognized Representative Warren who moved that the proposed committee substitute be before the committee. The motion carried. The Chair then recognized Representative Iler who explained the bill. Chairperson Starnes recognized Representative Hill who moved that HB 167 be given a favorable report to the committee substitute, unfavorable report to the original bill. The motion was held for discussion on the bill. The Chair questioned whether anyone from the Town of Boiling Spring Lakes was present. No one was present. Chairperson Starnes pulled the bill from the calendar until such a time that a representative from the Town of Boiling Spring Lakes can be present to discuss the issue.

The last bill heard was **HB 171 Municipal Self-Annexations** (see **attachment 6**). The Chair recognized Representative Warren who moved that the proposed committee substitute be before the committee. The motion carried. Representative Brown was recognized to explain the bill. Chairperson Starnes recognized Representative Folwell who moved that HB 171 be given a favorable report to the committee substitute, unfavorable report to the original bill. The motion carried.

Chairperson Starnes adjourned the meeting at 9:34 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 26 A BILL TO BE ENTITLED AN ACT TO ALLOW HENDERSON COUNTY TO
INCLUDE ALL UNINCORPORATED AREAS IN A FIRE PROTECTION DISTRICT.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 171 A BILL TO BE ENTITLED AN ACT TO RESTATE THAT A MUNICIPALITY HAS NO AUTHORITY TO PETITION ITSELF FOR SELF-ANNEXATION OF PROPERTY IT DOES NOT OWN OR HAVE ANY LEGAL INTEREST IN, SUCH AS STATE-MAINTAINED STREETS.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 99 A BILL TO BE ENTITLED AN ACT TO EXPEDITE THE ANALYSIS OF THE TAX STRUCTURE FOR UNEMPLOYMENT INSURANCE IN NORTH CAROLINA GIVEN THE SUBSTANTIAL NEGATIVE BALANCE IN THE STATE'S UNEMPLOYMENT INSURANCE TRUST FUND AND THE SUBSTANTIAL FEDERAL LOAN BALANCE OWED BY THE STATE FOR PAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS.

With a favorable report as to the House committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

AGENDA
House Finance Committee

Wednesday, March 16, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 26 Henderson County Fire Districts
Representatives McGrady, Guice

HB 167 Extend Assessment Refund Period
Representatives Iler, Hill

HB 171 Municipal Self-Annexations
Representative Brown

SB 99 Reform UI Tax Structure/Expedite Analysis
Senators Clary, Rucho, Hartsell

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: MAR. 16, 2011 Room: 544

House Sgt-At Arms:

- 1. Name: FRED HINES
- 2. Name: JOHN BRANDON
- 3. Name: EARL COKER
- 4. Name: KEN KIRBY
- 5. Name: _____

Senate Sgt-At Arms:

- 1. Name: _____
- 2. Name: _____
- 3. Name: _____
- 4. Name: _____
- 5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE FINANCE DATE 03-16-11

1. Name: Alan Bridges

County: Cleveland

Sponsor: Tim Moore

2. Name: ~~Kris Fahren~~ Kris Fahren

County: Wake

Sponsor: Rosa Cim

3. Name: Shanell Jones

County: Cumberland

Sponsor: Elmer Floyd

4. Name: Will Brooks

County: Cumberland

Sponsor: Diane Parfitt

5. Name: _____

County: _____

Sponsor: _____

VISITOR REGISTRATION SHEET

Finance
Name of Committee

3-16-11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Will Culpeper	MVA
Connie Wilson	ECNC
RICHARD CLARKE	COMMERCE
Michelle Frasier	MF+S
Raymond Laughlin	NS
Jimmie Fitzgerald	MLC
Lachelle Pulliam	Rep. Wainwright
Preston Howard	MGIC
J Goodman	NC CHAMBER
Allison Walker	Charlotte Chamber
John Jefferson	NCEOA

VISITOR REGISTRATION SHEET

FINANCE

MARCH 16, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mike Dunn	NCSIA CEO
Tim KENT	NC Beer & Wine Wholesalers
Jake Cashion	WS Chamber
Heaven Hufalt	N.C.B.A.
Debra Dew	ESC
Rockhart Taylor	ESC
Cady Thomas	NCAR
David McBowen	"
Rick Zechin	Progress Energy
Ratie Stanley	Dept. of Commerce
Pam Meyer	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 99
PROPOSED HOUSE COMMITTEE SUBSTITUTE S99-CSR-11 [v.1]

3/8/2011 3:41:41 PM

Short Title: Reform UI Tax Structure/Expedite Analysis. (Public)

Sponsors:

Referred to:

February 22, 2011

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A BILL TO BE ENTITLED

AN ACT TO EXPEDITE THE ANALYSIS OF THE TAX STRUCTURE FOR UNEMPLOYMENT INSURANCE IN NORTH CAROLINA GIVEN THE SUBSTANTIAL NEGATIVE BALANCE IN THE STATE'S UNEMPLOYMENT INSURANCE TRUST FUND AND THE SUBSTANTIAL FEDERAL LOAN BALANCE OWED BY THE STATE FOR PAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS.

Whereas, North Carolina's Unemployment Insurance Trust Fund balance had a deficit of \$2,500,000,000, as of December 31, 2010, according to the Employment Security Commission; and

Whereas, the State owes the federal government \$2,500,000,000 for loan liabilities incurred by the Employment Security Commission to continue unemployment insurance benefits payments to jobless North Carolinians during the current economic crisis; and

Whereas, the total collected by the State in unemployment insurance taxes in the 12-month period ending December 2010 amounted to \$955,200,000, while the sum paid in unemployment insurance benefits for the same period totaled \$1,900,000,000; and

Whereas, businesses large and small pay into the unemployment insurance system with the expectation that their contributions will be sufficient to provide assistance to their qualified former jobless employees; and

Whereas, it is in the best interest of the employers and employees of this State to have the most efficient and cost effective unemployment insurance tax structure; and

Whereas, the current unemployment insurance tax structure no longer serves the businesses and citizens of this State in the manner required by these and future economic times; and

Whereas, major reforms regarding the unemployment insurance tax structure must be developed and implemented as soon as practicable; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that the State must take swift and prudent action to address the two billion five hundred million dollars (\$2,500,000,000) in debt liability for unemployment insurance benefits currently owed to the federal government and the substantial deficit in the North Carolina Unemployment Insurance Trust Fund. To that end, the Department of Commerce shall contract with an independent consulting firm specializing in unemployment insurance and employment security reform to obtain recommendations on what tax structure changes would be fair to the employers of North Carolina and how these revenues,



1 and other financial options, might be used in servicing and liquidating the State's debt and
2 deficits incurred to pay unemployment insurance benefits.

3 **SECTION 2.** A contract to obtain services of a consultant pursuant to this act is not
4 subject to Article 3C of Chapter 143 of the General Statutes. The consultation contract may be
5 funded from (i) funds available within the Employment Security Commission, including State
6 funds and any federal funds that may be used for the purposes of this act and (ii) non-State or
7 nongovernmental funds, grants, and in-kind contributions specifically designated for the
8 purpose of carrying out the analysis required by this act.

9 **SECTION 3.** The Department of Commerce shall provide the Fiscal Research
10 Division and the Program Evaluation Division with periodic updates on the progress of the
11 analysis. Within 45 days from the completion of the independent consultant's analysis, the
12 Department of Commerce shall report to the Governor and to the General Assembly on the
13 independent consultant's recommendations for reform of the State's unemployment insurance
14 tax structure.

15 **SECTION 4.** The Employment Security Commission and the Department of
16 Revenue shall cooperate fully with the Department of Commerce, the Fiscal Research Division,
17 and the Program Evaluation Division by giving all information and all data within their
18 possession or ascertainable from their records necessary to carry out the purposes of this act.

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



SENATE PCS 99: Reform UI Tax Structure/Expedite Analysis

2011-2012 General Assembly

Committee:	House Finance	Date:	March 15, 2011
Introduced by:	Sens. Clary, Rucho, Hartsell	Prepared by:	Cindy Avrette
Analysis of:	PCS to First Edition S99-CSR-11		Committee Counsel

SUMMARY: *Senate Bill 99 would authorize the Department of Commerce to hire a consultant to analyze the State's unemployment insurance (UI) tax structure. Although the bill instructs the Department to begin work immediately to identify a qualified consultant and to expedite a contract with a consultant, the bill does not exempt the agency from the purchase and contract provisions of Article 3C of Chapter 143. The proposed House committee substitute addresses this issue by explicitly exempting Commerce from Article 3C. The bill does not appropriate funds for the contract. The consultant's services may be funded with departmental funds available as well as non-State funds, grants, and in-kind contributions. The proposed House committee substitute provides that "funds available within the Employment Security Commission" may be used.*

CURRENT LAW: Article 3C of Chapter 143 directs the Department of Administration to ensure that consultant contracts be let to other agencies of the State if there is an agency that can reasonably perform the service, and if there is not an agency that can reasonably perform the consulting service, that a sufficient number of sources for the contract be solicited through competitive proposals. In furtherance of this policy, G.S. 143-64.21 prohibits a State agency from contracting for the services of a consultant unless the Governor approves the request in writing after making the following findings:

- The contract is reasonably necessary to the proper function of the agency.
- The services cannot be performed within the resources of the agency.
- The estimated cost of the service is reasonable compared to the likely benefits or results of the service.
- The General Assembly has appropriated funds for the contract or funds are otherwise available.

G.S. 143-64.23 states that a contract that is let without following these requirements is not binding on the State and that the State employee who violates these statutory provisions is liable to repay any amount expended.

BILL ANALYSIS: The proposed House committee substitute for Senate Bill 99 directs the Department of Commerce to contract with a consultant to conduct a thorough analysis of the State's UI tax structure and it exempts the Department from purchase and contract requirements of Article 3C as they relate to this contract. The PCS does not appropriate any funds to the Department for the contract. The bill states that the Department may seek and accept non-State funds, grants, and in-kind contributions to pay for the analysis as well as use funds available within the Employment Security Commission, including State and federal funds that may be used for this purpose. The Department must provide periodic updates on the progress of the analysis and it must report the findings and recommendations of the analysis to the General Assembly within 45 days after the analysis is complete.

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

S99-SMRB-18(CSRB-11) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

H

1

HOUSE BILL 26*

Short Title: Henderson County Fire Districts. (Local)

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

Referred to: Government.

February 2, 2011.

A BILL TO BE ENTITLED

AN ACT TO ALLOW HENDERSON COUNTY TO INCLUDE ALL UNINCORPORATED AREAS IN A FIRE PROTECTION DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 2000-4 reads as rewritten:

"Section 1. (a) Notwithstanding G.S. 69-25.11, the boundaries of any fire protection district in Henderson County established under Article 3A of Chapter 69 of the General Statutes may be changed by resolution of the Board of Commissioners of Henderson County to follow the boundaries shown on the map in Attachment A to a resolution adopted by that board on March 17, 1999.

(b) Notwithstanding G.S. 69-25.11, the boundaries of any fire protection district in Henderson County established under Article 3A of Chapter 69 of the General Statutes may be changed by resolution of the Board of Commissioners of Henderson County to include any unincorporated area of the county not already in such a fire protection district if (i) in that resolution all of such unincorporated areas, other than those owned by the United States, are placed in some fire protection district and (ii) no fire district contains any new noncontiguous territory other than a noncontiguity caused by exclusion of property owned by the United States. Any resolution adopted under this subsection becomes effective the first day of the next fiscal year."

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





HOUSE BILL 26: Henderson County Fire Districts

2011-2012 General Assembly

Committee: House Finance	Date: March 15, 2011
Introduced by: Reps. McGrady, Guice	Prepared by: Martha Walston
Analysis of: First Edition	Committee Counsel

SUMMARY: *HB 26 is a local bill that would allow Henderson County to include all unincorporated areas in a fire protection district. The bill was given a favorable report in House Government.*

[As introduced, this bill was identical to S44, as introduced by Sen. Apodaca, which is currently in Senate State and Local Government.]

CURRENT LAW: Fire protection in areas outside cities is provided through the establishment of fire protection districts. The statutes provide for the creation of three types of rural fire districts described in the Background section of this summary. During the 2000 Session, local legislation was enacted to allow the Henderson County Commissioners to change the boundaries of certain fire districts in the County without having to meet the requirements in G.S. 69-25.11. The changes made to the boundaries were pursuant to a resolution adopted by the County Commissioners on March 17, 1999. (S.L. 2000-4). The legislation applied to fire districts established under Article 3A of Chapter 69 of the General Statutes. Such fire districts are created by petition and an election, and the fire protection is paid from a special tax levied and collected on all taxable property in the fire district at a rate not exceeding 15 cents per \$100 assessed valuation of property.

BILL ANALYSIS: House Bill 26 would amend the 2000 legislation to also allow the Henderson County Commissioners, by resolution, to change the boundaries of any fire protection district in the County to include any unincorporated area of the County not already in a fire protection district if the following requirements are met:

- The resolution places all such unincorporated areas, other than those areas owned by the U.S., in the same fire protection district.
- No fire district contains any new noncontiguous territory other than a noncontiguity caused by exclusion of property owned by the U.S.

Any resolution adopted becomes effective the first day of the next fiscal year.

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

BACKGROUND: The General Statutes provide for the creation of three types of rural fire districts:

- Insurance districts. G.S. 153A-233 authorizes counties to designate fire districts and prescribes their boundaries for insurance-grading purposes. To pay for this protection, the county is authorized to appropriate funds "not otherwise limited as to use by law."
- Tax-supported fire districts. Article 3A of Chapter 69 authorizes tax-supported fire districts. They are created by a petition signed by at least 35% of the owners of real property who reside in the area, which must be situated outside the corporate limits. The question of levying a special tax to pay for the fire protection is then submitted to the voters who own real property in the area. If approved, the tax is collected on all taxable property in the district, but may not exceed 15 cents per \$100 assessed valuation.

House Bill 26

Page 2

- County service districts for fire protection. Article 16 of Chapter 153A authorizes the county commissioners to define service districts for fire protection after a public hearing and adoption of a resolution. To pay for this protection, a county may levy an additional property tax within the district for the purposes of financing fire protection services.

"§ 69-25.11. Changes in area of district.

After a fire protection district has been established under the provisions of this Article and fire protection commissioners have been appointed, changes in the area may be made as follows:

- (1) The area of any fire protection district may be increased by including within the boundaries of the district any adjoining territory upon the application of the owner, or a two-thirds majority of the owners, of the territory to be included, the unanimous recommendation in writing of the fire protection commissioners of said district, the approval of a majority of the members of the board of directors of the corporation furnishing fire protection to the district, and the approval of the board or boards of county commissioners in the county or counties in which said fire protection district is located. However, before said fire protection district change is approved by the county commissioners, notice shall be given once a week for two successive calendar weeks in a newspaper having general circulation in said district, and notice shall be posted at the courthouse door in each county affected, and at three public places in the area to be included, said notices inviting interested citizens to appear at a designated meeting of said county commissioners, said notice to be published the first time and posted not less than fifteen days prior to the date fixed for hearing before the county commissioners.

..."
H26-SMLA-6(e1) v2

#5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 167
Committee Substitute Favorable 3/7/11
PROPOSED COMMITTEE SUBSTITUTE H167-CSTM-1 [v.1]

3/9/2011 2:41:54 PM

Short Title: Extend Assessment Refund Period.

(Public)

Sponsors:

Referred to:

February 24, 2011

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A BILL TO BE ENTITLED
AN ACT TO EXTEND THE PERIOD FOR LOCAL GOVERNMENTS TO REFUND
SPECIFIED UNUSED ASSESSMENTS.
The General Assembly of North Carolina enacts:
SECTION 1. Section 7 of S.L. 2010-129 reads as rewritten:
"SECTION 7. A local government that imposed an assessment prior to ~~2007-2012~~ to
finance a capital project that has been assumed by another unit of local government may return
unused assessments to the person that paid the assessment."
SECTION 2. This act is effective when it becomes law.





HOUSE PCS 167: Extend Assessment Refund Period

2011-2012 General Assembly

Committee:	House Finance	Date:	March 10, 2011
Introduced by:	Reps. Iler, Hill	Prepared by:	Greg Roney
Analysis of:	PCS to Second Edition H167-CSTM-1		Committee Counsel

SUMMARY: *House Bill 167 authorizes local governments to refund assessments imposed before 2012 where the assessment financed a capital project that was assumed by another local government.*

CURRENT LAW: Counties are authorized to impose assessments for certain capital improvements under Article 9 of Chapter 153A. Cities are authorized to impose assessments for certain capital improvements under Article 10 of Chapter 160A. These statutes do not provide a mechanism for refunds of unused assessments because assessments are imposed to reimburse local governments for the cost of completed projects.

S.L. 2010-129 authorized local governments to refund assessments imposed before 2007 where the assessment financed a capital project that was assumed by another local government.

BILL ANALYSIS: House Bill 167 would extend by five years the authority granted to local governments under S.L. 2010-129 to refund unused assessments. The bill does not change the other requirements of S.L. 2010-129 that the assessment finance a capital project and that the capital project be assumed by another local government.

BACKGROUND: House Bill 167 would allow Boiling Spring Lakes to refund unused assessments made to finance a capital project that was assumed by the county. Boiling Spring Lakes obtained a federal loan to pay for a water project, transferred its water project to the county, and now seeks to refund the unused assessments.

EFFECTIVE DATE: Effective when it becomes law.

R. Erika Churchill, counsel to House Government, substantially contributed to this summary.

H167-SMTM-1(CSTM-1) v5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 171
PROPOSED COMMITTEE SUBSTITUTE H171-CSSV-5 [v.2]

3/15/2011 5:57:30 PM

Short Title: Municipal Self-Annexations. (Public)

Sponsors:

Referred to:

February 24, 2011

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A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A MUNICIPALITY HAS NO AUTHORITY TO PETITION ITSELF FOR SELF-ANNEXATION OF PROPERTY IT DOES NOT OWN OR HAVE ANY LEGAL INTEREST IN, SUCH AS STATE-MAINTAINED STREETS, AND TO CLARIFY THAT A PETITION FOR VOLUNTARY SATELLITE ANNEXATION MUST BE SIGNED AND, IF NO SIGNATURE IS REQUIRED FOR CERTAIN PROPERTY, THE PROPERTY MAY NOT BE INCLUDED IN THE PETITION OVER THE OWNER'S OBJECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(a) reads as rewritten:

"(a) Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, a city may annex an area not contiguous to its primary corporate limits when the area meets the standards set out in subsection (b) of this section. The petition need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations. A petition is not valid in any of the following circumstances:

- (1) It is unsigned.
- (2) It is signed by the city for the annexation of property the city does not own or have a legal interest in. For the purpose of this subdivision, a city has no legal interest in a State-maintained street unless it owns the underlying fee and not just an easement."
- (3) It is for the annexation of property for which a signature is not required and the property owner objects to the annexation."

SECTION 2. G.S. 160A-58.7 reads as rewritten:

"§ 160A-58.7. Annexation of municipal property.

(a) The city council may initiate annexation of property not contiguous to the primary corporate limits and owned by the city by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The property must satisfy the requirements of G.S. 160A-58.1. The resolution shall contain an adequate description of the property and fix a date for a public hearing on the question of annexation. Notice of the public hearing shall be published once at least 10 days before the date of the hearing. At the hearing, any resident of the city may appear and be heard on the question of the desirability of the annexation. If the council finds that annexation is in the public interest, it may adopt an ordinance annexing the



1 property. The ordinance may be made effective immediately or on any specified date within six
2 months from the date of passage.

3 (b) A city has no authority to adopt a resolution or petition itself under this Part for
4 annexation of property it does not own or have any legal interest in. For the purpose of this
5 subsection, a city has no legal interest in a State-maintained street unless it owns the underlying
6 fee and not just an easement."

7 SECTION 3. G.S. 160A-31 reads as rewritten:

8 "§ 160A-31. Annexation by petition.

9 (a) The governing board of any municipality may annex by ordinance any area
10 contiguous to its boundaries upon presentation to the governing board of a petition signed by
11 the owners of all the real property located within such area. The petition shall be signed by each
12 owner of real property in the area and shall contain the address of each such owner.

13 (b) The petition shall be prepared in substantially the following form:

14 DATE:

15 To the _____ (name of governing board) of the (City or Town) of
16 _____

17 1. We the undersigned owners of real property respectfully request that the area described
18 in paragraph 2 below be annexed to the (City or Town) of _____

19 2. The area to be annexed is contiguous to the (City or Town) of _____ and the
20 boundaries of such territory are as follows: _____

21 (c) Upon receipt of the petition, the municipal governing board shall cause the clerk of
22 the municipality to investigate the sufficiency thereof and to certify the result of his
23 investigation. Upon receipt of the certification, the municipal governing board shall fix a date
24 for a public hearing on the question of annexation, and shall cause notice of the public hearing
25 to be published once in a newspaper having general circulation in the municipality at least 10
26 days prior to the date of the public hearing; provided, if there be no such paper, the governing
27 board shall have notices posted in three or more public places within the area to be annexed and
28 three or more public places within the municipality.

29 (d) At the public hearing all persons owning property in the area to be annexed who
30 allege an error in the petition shall be given an opportunity to be heard, as well as residents of
31 the municipality who question the necessity for annexation. The governing board shall then
32 determine whether the petition meets the requirements of this section. Upon a finding that the
33 petition meets the requirements of this section, the governing board shall have authority to pass
34 an ordinance annexing the territory described in the petition. The governing board shall have
35 authority to make the annexing ordinance effective immediately or on any specified date within
36 six months from the date of passage of the ordinance.

37 (e) From and after the effective date of the annexation ordinance, the territory and its
38 citizens and property shall be subject to all debts, laws, ordinances and regulations in force in
39 such municipality and shall be entitled to the same privileges and benefits as other parts of such
40 municipality. Real and personal property in the newly annexed territory on the January 1
41 immediately preceding the beginning of the fiscal year in which the annexation becomes
42 effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of
43 annexation falls between June 1 and June 30, and the effective date of the privilege license tax
44 ordinance of the annexing municipality is June 1, then businesses in the area to be annexed
45 shall be liable for taxes imposed in such ordinance from and after the effective date of
46 annexation.

47 (f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the
48 petition is submitted, such area either abuts directly on the municipal boundary or is separated
49 from the municipal boundary by a street or street right-of-way, a creek or river, or the
50 right-of-way of a railroad or other public service corporation, lands owned by the municipality
51 or some other political subdivision, or lands owned by the State of North Carolina. In

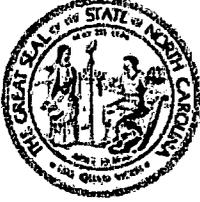
1 describing the area to be annexed in the annexation ordinance, the municipal governing board
2 may include within the description any territory described in this subsection which separates
3 the municipal boundary from the area petitioning for annexation.

4 (g) The governing board may initiate annexation of contiguous property owned by the
5 municipality by adopting a resolution stating its intent to annex the property, in lieu of filing a
6 petition. The resolution shall contain an adequate description of the property, state that the
7 property is contiguous to the municipal boundaries and fix a date for a public hearing on the
8 question of annexation. Notice of the public hearing shall be published as provided in
9 subsection (c) of this section. The governing board may hold the public hearing and adopt the
10 annexation ordinance as provided in subsection (d) of this section.

11 (h) A city council which receives a petition for annexation under this section may by
12 ordinance require that the petitioners file a signed statement declaring whether or not vested
13 rights with respect to the properties subject to the petition have been established under
14 G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been
15 established, the city may require petitioners to provide proof of such rights. A statement which
16 declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1
17 shall be binding on the landowner and any such vested right shall be terminated.

18 (i) A municipality has no authority to adopt a resolution or petition itself under this Part
19 for annexation of property it does not own or have any legal interest in. For the purpose of this
20 subsection, a municipality has no legal interest in a State-maintained street unless it owns the
21 underlying fee and not just an easement."

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



HOUSE PCS 171: Municipal Self-Annexations

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. L. Brown
Analysis of: PCS to First Edition
H171-CSSV-5

Date: March 16, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 171 clarifies that a municipality does not have the authority to petition itself for annexation of property that it does not own or in which it does not have a legal interest.*

The PCS further clarifies that a petition for voluntary satellite annexation must be signed and may not include property for which no signature is required if the owner objects to the annexation. This clarification codifies principles established by North Carolina case law.

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

- **Legislative Act.** The General Assembly has the authority to extend the boundaries of any town or city through local acts.
- **Voluntary Contiguous Annexation.** The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. The municipality then determines whether or not to annex. If the the property is owned by the municipality itself, then, under the current general law, the municipality may initiate annexation of property owned by the municipality by adopting a resolution stating its intent to annex. A public hearing is required prior to the adoption of the ordinance to annex. [G.S. 160A-31(g)].
- **Voluntary Satellite Annexation.** This method allows a town or city to annex a noncontiguous area into the town or city limits upon receipt of a petition signed by all of the owners of real property in the area to be annexed. [G.S. 160A-58.1] If the property is owned by the municipality itself, then, under the current general law, the municipality may adopt a resolution stating its intent to annex, in lieu of filing a petition, provided the property meets all other prerequisites for satellite annexation. A public hearing is required prior to the adoption of the ordinance to annex. [G.S. 160A-58.7].
- **Involuntary Annexation.** The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed through a statutorily prescribed process.

BILL ANALYSIS: The bill clarifies that, with respect to voluntary contiguous and satellite annexation, a municipality does not have the authority to petition itself for annexation of property it does not own or otherwise have a legal interest in. The bill would also clarify that a municipality has no legal interest in a State-maintained street unless it owns the underlying fee.

The PCS adds a new Section 1 to the bill. This section further clarifies that a petition for voluntary satellite annexation is not valid if any of the following circumstances exist:

1. The petition is unsigned.
2. The petition is signed by the city, but the city does not own the property it seeks to annex. This is the same language being added to G.S. 160A-58.7 and G.S. 160A-31 in Sections 2 and 3 of this bill.

House PCS 171

Page 2

3. The petition is for the annexation of property for which a signature is not required and the property owner objects to the annexation.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: This is a public bill with general applicability. However, the genesis of this bill relates to the Town of Lewisville's attempt to annex approximately three miles of eight State-maintained roads near the town limits using the voluntary satellite annexation process. The Town received a petition under G.S. 160A-58.1, signed by the City Manager, to annex this property. Under G.S. 160A-58.1, a petition must be signed by all of the owners of real property in the area to be annexed. The statute further provides that certain categories of owners need not sign the petition.¹ The North Carolina Court of Appeals case of *County of Brunswick v. Town of Bolivia*² suggests that even though G.S. 160A-58.1 does not require the signature of certain property owners, the petition must be signed by at least one property owner to be a valid petition.³ The case also sets forth the principle that an owner who is not required to sign a satellite annexation petition may object to annexation of its property and force the town to remove it from the annexation area. Otherwise, the signature provision would convert this voluntary annexation procedure into an involuntary one for any owner not required to sign the petition.

In this situation, the Town initiated the annexation process through the use of a petition under G.S. 160A-58.1 rather than by adopting a resolution of intent under G.S. 160A-58.7. Under either method, the Town could not proceed. Since the Town does not own the property it sought to annex, it could not proceed under G.S. 160A-58.7, and since the petition did not contain the signatures of all the real property owners,⁴ it could not proceed under G.S. 160A-58.1. On March 11, 2011, the Lewisville Town Council voted unanimously to withdraw its annexation petition. The bill clarifies the current law, which supports the fact that the Town's petition was not valid, and is consistent with North Carolina case law.

Erika Churchill, counsel to House Government Committee, substantially contributed to this summary.

H171-SMSV-12(CSSV-5) v2

¹ Owners of property "wholly exempt from property taxation," railroad companies, public utilities, and electric or telephone membership companies.

² 56 N.C. App. 732 (1982).

³ In that case, the Town of Bolivia attempted to satellite-annex certain county property. The petition was signed by a number of residents of the Town and surrounding areas. The county did not sign the petition because the property was exempt from taxation. The Court of Appeals found the petition invalid because G.S. 160A-58.1 does not require, or even authorize, the signature of non-property owners. Therefore, the signatures of all those who did not own property in the annexation area should have been excluded from consideration. Doing that left the petition with no signatures since the county was not required to sign the petition. Therefore, there was nothing for the town to consider. This reasoning suggests that a petition without any valid signatures is not a valid petition.

⁴ For purposes of state roads or highways, only the fee simple owners of the land beneath the right-of-way are owners with the power to sign the petition; the holder of an easement is not considered the owner of the property.



North Carolina General Assembly
House Committee on Finance

Minutes

March 17, 2011

The House Committee on Finance met on Thursday, March 17, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

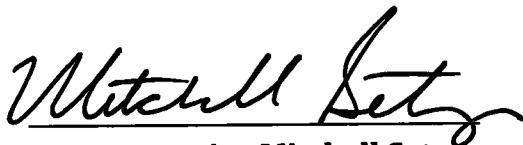
Chairperson Setzer called the meeting to order at 8:35 am and recognized the four (4) pages present: (1) Tiara Jones of Forsyth County sponsored by Representative Womble; (2) Kris Faheem of Wake County sponsored by Representative Gill; (3) Tah-leel Minnigan of Robeson County sponsored by Representative Tillis; and (4) Zinaha Minnigan of Robeson County sponsored by Representative Pierce.

The first bill considered by the Committee was **HB 129 Level Playing Field/Local Gov't Competition** (see **attachment 3**). The Chair recognized Representative Starnes who moved to adopt the proposed committee substitute for discussion. The motion carried. Chairperson Setzer recognized Representative Avila to explain the bill. The Chair then recognized Representative Faison who sent forth amendment 1 that moved to amend the bill on page 2, lines 6 through 8 by rewriting those lines and also on page 4, line 25, by deleting the term "ninety percent (90%)" and substituting the term "fifty percent (50%)" (see **attachment 4**). While the amendment was being distributed, Heather Fennell of Research explained the changes in the proposed committee substitute. Representative Faison was then recognized to explain his amendment. Representative Faison answered questions from members. Being no further discussion or debate, the Chair called for a show of hands for the amendment (14) and against (12), the amendment passed. The Chair

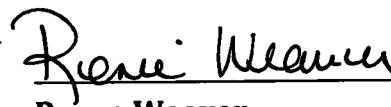
then recognized Representative Alexander who sent forth amendment 2 that moved to amend the bill on page 3, lines 18 through 29 (see **attachment 5**). Representative Alexander explained the amendment and answered questions from members. Being no further discussion or debate, the Chair called for a show of hands for the amendment (10) and against (16), the amendment failed. Chairperson Setzer recognized Representative Starnes who moved for a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion was held for further discussion on the bill. The Chair recognized Representative Warren who sent forth amendment 3 that moved to amend the bill on page 4, lines 27 through 30 and on page 8, lines 1 through 3 (see **attachment 6**). Representative Warren explained the amendment and answered questions from members. Being no further discussion or debate, the Chair called for a show of hands for the amendment (15) and against (13), the amendment passed. The Chair then recognized Representative Ross who sent forth amendment 4 that moved to amend the bill on page 3, lines 18 through 29 and on page 3, line 41 (see **attachment 7**). Representative Ross then explained her amendment and answered questions from members. Being no further discussion or debate, the Chair called for a show of hands for the amendment (12) and against (16), the amendment failed. Chairperson Setzer then brought the discussion to an end with the announcement that the bill will be brought back to committee next Wednesday, March 23, 2011 and comments from the public, as well as any additional amendments will be heard.

Chairperson Setzer adjourned the meeting at 9:45 am.

Respectfully submitted,



Representative Mitchell Setzer
Presiding Chair



Renee Weaver
Clerk, House Committee on
Finance

AGENDA
House Finance Committee

Thursday, March 17, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Mitchell Setzer

Call to Order

Introduction of Pages

Bills:

HB 129 Level Playing Field/Local Gov't Competition
Representatives Avila, Howard, Carney, Wainwright

HB 315 Taxpayer Information Act
Representatives Pridgen, Folwell, Collins, Stone

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: MAR. 17, 2011 Room: 544

House Sgt-At Arms:

- 1. Name: FRED HINES
- 2. Name: JOHN BRANDON
- 3. Name: EARL COKER
- 4. Name: KEN KIRBY
- 5. Name: _____

Senate Sgt-At Arms:

- 1. Name: _____
- 2. Name: _____
- 3. Name: _____
- 4. Name: _____
- 5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE FINANCE DATE 03-17-11

1. Name: Tiara Jones

County: Forsyth

Sponsor: Rep. Lamy Wamble

2. Name: Tah-leel Minnigan

County: Probeson

Sponsor: Thom Tillis

3. Name: Kris Fahren

County: Wake

Sponsor: Rep. Rosa Gill

4. Name: Zinaha Minnigan

County: Probeson

Sponsor: Garlin Pierce

5. Name: _____

County: _____

Sponsor: _____

VISITOR REGISTRATION SHEET

House Finance Committee

3-17-11

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
David Starling	NCDST
Andrew Lynch	NCDST
Michelle Frazia	MF+S
John Murrell	MF+S
Patrick Bafflin	MCAEC
Camm Hendry	Electrical City
Kristen Laster	Fetzer Strategic
Tom Fetzer	Fetzer Strategic
AGNES SPETCHES	CITY OF WILSON
Patsy McGhee	Nash County
Dave Tremie	City of Salisbury

VISITOR REGISTRATION SHEET

House Finance Committee
Name of Committee

3-17-11
Date

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Chris Carney	Town of Mooresville
Jack Straley	Time Warner Cable
Kyle Wallace	Time Warner Cable
Mary Ann Smith	Time Warner Cable
Buck Chabonough	NC Cable Telecommunications Assn.
Samantha Jackson	e-NC
Annie Bailey	The e-NC Authority
MARIL TURNER	TAXPAYER
Dianna Downey	Public Staff PSNCC
Lemuel Hinton	NCUC
Daniel Long	NCUC

VISITOR REGISTRATION SHEET

House Finance Committee

3-17-11

Name of Committee

Date

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Paul Thorne	NCFB
Voice Alliance	NC DST
Tom Lee	WCSR; Raleigh, NC
Cynthia Polz	self
Fred Bonn	Bonn! Assn.
John Polz	NCFB
Tom Mann	W. L. W. Weaver
DANIEL BAUM	TROUTMAN SAUNDERS
Stan Pace	Frontier Communications

VISITOR REGISTRATION SHEET

House Finance Committee

3-17-11

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Marus Traki	Book's Place
Steve Brewer	CenturyLink
Jack Cogost	Wilson
Bo Health	MWC
Wendy Kelly	Policy Group
Justin Burkholder	Rep. Solomon
Nathan Yinger	
Cady Thomas	NLAR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

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HOUSE BILL 129*
PROPOSED COMMITTEE SUBSTITUTE H129-CSTDx-8 [v.17]

3/16/2011 9:21:39 PM

Short Title: Level Playing Field/Local Gov't Competition.

(Public)

Sponsors:

Referred to:

February 21, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT JOBS AND INVESTMENT BY REGULATING LOCAL
3 GOVERNMENT COMPETITION WITH PRIVATE BUSINESS.

4 Whereas, certain cities in the State have chosen to compete with private providers of
5 communications services; and

6 Whereas, these cities have been permitted to enter into competition with private
7 providers as a result of a decision of the North Carolina Court of Appeals rather than legislation
8 enacted by the General Assembly; and

9 Whereas, the communications industry is an industry of economic growth and job
10 creation; and

11 Whereas, as expressed in G.S. 66-58, known as the Umstead Act, it is against the
12 public policy of this State for any unit, department, or agency of the State, or any division or
13 subdivision of a unit, department, or agency of the State to engage directly or indirectly in the
14 sale of goods, wares, or merchandise in competition with citizens of the State; and

15 Whereas, to protect jobs and to promote investment, it is necessary to ensure that the
16 State does not indirectly subsidize competition with private industry through actions by cities
17 and to ensure that where there is competition between the private sector and the State, directly
18 or through its subdivisions, it exists under a framework that does not discourage private
19 investment and job creation; Now, therefore,

20 The General Assembly of North Carolina enacts:

21 SECTION 1.(a) Chapter 160A of the General Statutes is amended by adding a new
22 Article to read as follows:

23 "Article 16A. Provision of Communications Service by Cities.

24 "§ 160A-340. Definitions.

25 The following definitions apply in this Article:

- 26 (1) City-owned communications service provider. – A city that provides
27 communications service using a communications network, whether directly,
28 indirectly, or through an interlocal agreement or a joint agency.
- 29 (2) Communications network. – A wired or wireless network for the provision
30 of communications service.
- 31 (3) Communications service. – The provision of cable, video programming,
32 telecommunications, broadband, or high-speed Internet access service to the
33 public, or any sector of the public, for a fee, regardless of the technology
34 used to deliver the service. The terms "cable service," "telecommunications



1 service," and "video programming service" have the same meanings as in
2 G.S. 105-164.3. Neither the sharing of data between the governmental
3 entities for governmental purposes nor the provision of free services to the
4 public or a subset thereof shall be considered the provision of
5 communication service.

6 (4) High-speed Internet access service. – Internet access service with
7 transmission speeds that are consistent with requirements for basic
8 broadband service as defined by the Federal Communications Commission.

9 (5) Interlocal agreement. – An agreement between units of local government as
10 authorized by Part 1 of Article 20 of Chapter 160A of the General Statutes.

11 (6) Joint agency. – A joint agency created under Part 1 of Article 20 of Chapter
12 160A of the General Statutes.

13 **"§ 160A-340.1. City-owned communications service provider requirements.**

14 (a) A city-owned communications service provider shall meet all of the following
15 requirements:

16 (1) Comply in its provision of communications service with all local, State, and
17 federal laws, regulations, or other requirements applicable to the provision of
18 the communications service if provided by a private communications service
19 provider.

20 (2) In accordance with the provisions of Chapter 159 of the General Statutes, the
21 Local Government Finance Act, establish one or more separate enterprise
22 funds for the provision of communications service, use the enterprise funds
23 to separately account for revenues, expenses, property, and source of
24 investment dollars associated with the provision of communications service,
25 and prepare and publish an independent annual report and audit in
26 accordance with generally accepted accounting principles that reflect the
27 fully allocated cost of providing the communications service, including all
28 direct and indirect costs. An annual independent audit conducted under
29 G.S. 159-34 and submitted to the Local Government Commission satisfies
30 the audit requirement of this subdivision.

31 (3) Limit the provision of communications service to the following:

32 a. Persons within the corporate limits of the city providing the
33 communications service.

34 b. For a city or joint agency providing communications service as of
35 January 1, 2011, persons within the service area boundaries as
36 described in subsection (d) of this section of the city or joint agency
37 providing the communications service.

38 c. Existing customers of the communications service as of April 1,
39 2011. Service to customers outside the service area of the city or
40 joint agency shall comply with the open bidding procedures of
41 Article 8 of Chapter 143 upon the expiration or termination of the
42 existing service contract.

43 (4) Shall not, directly or indirectly, under the powers of a city, exercise power or
44 authority in any area, including zoning or land-use regulation, or exercise
45 power to withhold or delay the provision of monopoly utility service, to
46 require any person, including residents of a particular development, to use or
47 subscribe to any communications service provided by the city-owned
48 communications service provider.

49 (5) Shall provide nondiscriminatory access to private communications service
50 providers on a first-come, first-served basis to rights-of-way, poles, or
51 conduits owned, leased, or operated by the city unless the facilities have

1 insufficient capacity for the access and additional capacity cannot reasonably
2 be added to the facilities. For purposes of this subdivision, the term
3 "nondiscriminatory access" means that, at a minimum, access shall be
4 granted on the same terms and conditions as that given to a city-owned
5 communications service provider.

6 (6) Shall not air advertisements or other promotions for the city-owned
7 communications service on a public, educational, or governmental access
8 channel if the city requires another communications service provider to carry
9 the channel. The city shall not use city resources that are not allocated for
10 cost accounting purposes to the city-owned communications service to
11 promote city-owned communication service in comparison to private
12 services or, directly or indirectly, require city employees, officers, or
13 contractors to purchase city services.

14 (7) Shall not subsidize the provision of communications service with funds from
15 any other noncommunications service, operation, or other revenue source,
16 including any funds or revenue generated from electric, gas, water, sewer, or
17 garbage services.

18 (8) Shall not price any communications service below the cost of providing the
19 service, including any direct or indirect subsidies received by the city-owned
20 communications service provider and allocation of costs associated with any
21 shared use of buildings, equipment, vehicles, and personnel with other city
22 departments. The city shall, in calculating the costs of providing the
23 communications service, impute (i) the cost of the capital component that is
24 equivalent to the cost of capital available to private communications service
25 providers in the same locality and (ii) an amount equal to all taxes, including
26 property taxes, licenses, fees, and other assessments that would apply to a
27 private communications service provider including federal, State, and local
28 taxes; rights-of-way, franchise, consent, or administrative fees; and pole
29 attachment fees.

30 (9) The city shall annually remit to the general fund of the city an amount
31 equivalent to all taxes or fees a private communications service provider
32 would be required to pay the city or county in which the city is located,
33 including any applicable tax refunds received by the city-owned
34 communications service provider because of its government status and a sum
35 equal to the amount of property tax that would have been due if the
36 city-owned communications service provider were a private communications
37 service provider.

38 (b) A city-owned communications service provider shall not be required to obtain voter
39 approval under G.S. 160A-321 prior to the sale or discontinuance of the city's communications
40 network.

41 (c) Subdivisions (7), (8), and (9) of subsection (a) of this section, shall not apply to a
42 city or joint agency providing communications service as of January 1, 2011.

43 (d) The service area boundaries are the following:

44 (1) For the joint agency operated by the cities of Davidson and Mooresville, the
45 service area is the service area designated in the initial notice of franchise
46 filed with the Secretary of State, and the contiguous area where the agency is
47 offering service as of the effective date of this act connecting the cities of
48 Davidson and Mooresville with areas set forth in the initial areas of
49 franchise.

- 1 (2) For the city of Salisbury, the service area is the cities of Salisbury, Spencer,
2 East Spencer, Rockwell, Granite Quarry, and the corridors between
3 Salisbury and those cities.
- 4 (3) For all other cities or joint agency offering communications service, the
5 service area is the area designated in the map filed as part of the initial notice
6 of franchise with the Secretary of State as of January 1, 2011.

7 **"§ 160A-340.2. Exemptions.**

8 (a) The provisions of G.S. 160A-340.1, 160A-340.4, G.S. 160A-340.5, and 160A-340.6
9 do not apply to the purchase, lease, construction, or operation of facilities by a city to provide
10 communications service within the city's corporate limits for the city's internal governmental
11 purposes, including the sharing of data between governmental entities for governmental
12 purposes, or within the corporate limits of another unit of local government that is a party with
13 the city to an interlocal agreement under Part 1 of Article 20 of Chapter 160A of the General
14 Statutes for the provision of internal government services.

15 (b) The provisions of G.S. 160A-340.1, 160A-340.4, and G.S. 160A-340.5 do not apply
16 to the provision of communications service in an unserved area. A city seeking to provide
17 communications service in an unserved area shall petition the North Carolina Utilities
18 Commission for a determination that an area is unserved. The petition shall identify with
19 specificity the geographic area for which the designation is sought. Any private
20 communications service provider, or any other interested party, may, within a time established
21 by order of the Commission, which time shall be no fewer than 30 days, file with the
22 Commission an objection to the designation on the grounds that one or more areas designated
23 in the petition is not an unserved area or that the city is not otherwise eligible to provide the
24 service. For purposes of this subsection, the term "unserved area" means a geographical area in
25 which at least ninety percent (90%) of households either have no access to high-speed Internet
26 service or have access to high-speed Internet service only from a satellite provider.

27 (c) The provisions of G.S. 160A-340.3, G.S. 160A-340.4, G.S. 160A-340.5, and
28 G.S. 160A-340.6 do not apply to a city or joint agency providing communications service as of
29 January 1, 2011 provided the city or joint agency limits the provision of communications
30 service to the area provided in G.S. 160A-340.1(a)(3).

31 **"§ 160A-340.3. Notice; public hearing.**

32 A city or joint agency that proposes to provide communications service shall hold not less
33 than two public hearings, which shall be held not fewer than 30 days apart, for the purpose of
34 gathering information and comment. Notice of the hearings shall be published at least once a
35 week for four consecutive weeks in the predominant newspaper of general circulation in the
36 area in which the city is located. The notice shall also be provided to the North Carolina
37 Utilities Commission, which shall post the notice on its Web site, and to all companies that
38 have requested service of the notices from the city clerk. The city shall deposit the notice in the
39 U.S. mail to companies that have requested notice at least 45 days prior to the hearing subject
40 to the notice. Private communications service providers shall be permitted to participate fully in
41 the public hearings by presenting testimony and documentation relevant to their service
42 offerings and the city's plans. Any feasibility study, business plan, or public survey conducted
43 or prepared by the city in connection with the proposed communications service project is a
44 public record as defined by G.S. 132-1 and shall be made available to the public prior to the
45 public hearings required by this section. This section does not apply to the repair, rebuilding,
46 replacement or improvement of an existing communications network, or equipment relating
47 thereto.

48 **"§ 160A-340.4. Financing.**

49 (a) A city or joint agency subject to the provisions of G.S. 160A-340.1 shall not enter into
50 a contract under G.S. 160A-19 or G.S. 160A-20 to purchase or to finance the purchase of
51 property for use in a communications network or to finance the construction of fixtures or

1 improvements for use in a communications network unless it complies with subsection (b) of
2 this section. The provisions of this section shall not apply to the repair, rebuilding, replacement,
3 or improvement of an existing communications network, or equipment relating thereto.

4 (b) A city shall not incur debt for the purpose of constructing a communications system
5 without first holding a special election under G.S. 163-287 on the question of whether the city
6 should incur debt for the proposed purposes. If a majority of the votes cast in the special
7 election are for the city incurring the debt, the city may provide the communication service. If a
8 majority of the votes cast in the special election are against the city incurring the debt, the city
9 shall not provide the communications service. However, nothing in this section shall prohibit a
10 city from revising its plan to offer communications service and calling another special election
11 on the question prior to providing or offering to provide the service. A special election required
12 under Chapter 159 of the General Statutes as a condition to the issuance of bonds shall satisfy
13 the requirements of this section.

14 **"§ 160A-340.5. Taxes; payments in lieu of taxes.**

15 (a) A communications network owned or operated by a city or joint agency shall be
16 exempt from property taxes. However, each city possessing an ownership share of a
17 communications network and a joint agency owning a communications network shall, in lieu of
18 property taxes, pay to any county authorized to levy property taxes the amount which would be
19 assessed as taxes on real and personal property if the communications network were otherwise
20 subject to valuation and assessment. Any payments in lieu of taxes shall be due and shall bear
21 interest, if unpaid, as in the case of taxes on other property.

22 (b) A city-owned communications service provider shall pay to the State, on an annual
23 basis, an amount in lieu of taxes that would otherwise be due the State if the communications
24 service was provided by a private communications service provider, including State income,
25 franchise, vehicle, motor fuel, and other similar taxes. The amount of the payment in lieu of
26 taxes shall be set annually by the Department of Revenue and shall approximate the taxes that
27 would be due if the communications service was undertaken by a private communications
28 service provider. A city-owned communications provider must provide information requested
29 by the Secretary of Revenue necessary for calculation of the assessment. The Department must
30 inform each city-owned communications provider of the amount of the assessment by January
31 1 of each year. The assessment is due by March 15 of each year. If the assessment is unpaid,
32 the State may withhold the amount due, including interest on late payments, from distributions
33 otherwise due the city under G.S. 105-164.44I.

34 (c) A city-owned communications service provider or a joint agency that provides
35 communications service shall not be eligible for a refund under G.S. 105-164.14(c) for sales
36 and use taxes paid on purchases of tangible personal property and services related to the
37 provision of communications service, except to the extent a private communications service
38 provider would be exempt from taxation.

39 **"§ 160A-340.6. Public-private partnerships for communications service.**

40 (a) Prior to undertaking to construct a communications network for the provision of
41 communications service, a city shall first solicit proposals from private business in accordance
42 with the procedures of this section.

43 (b) The city shall issue request for proposals that specifies the nature and scope of the
44 requested communications service, the area in which it is to be provided, any specifications and
45 performance standards, and information as to the city's proposed participation in providing
46 equipment, infrastructure, or other aspects of the service. The city may prescribe the form and
47 content of proposals, and may require that proposals contain sufficiently detailed information to
48 allow for an objective evaluation of proposals using the factors stated in subsection (c) of this
49 section. Each proposal shall at minimum contain:

- 50 (1) Information regarding the proposer's experience and qualifications to
51 perform the requirements of the proposal.

- 1 (2) Information demonstrating the proposer's ability to secure financing needed
2 to perform the requirements of the proposal.
- 3 (3) Information demonstrating the proposer's ability to provide staffing,
4 implement work tasks and carry out all other responsibilities necessary to
5 perform the requirements of the proposal.
- 6 (4) Information clearly identifying and specifying all elements of cost of the
7 proposal for the term of the proposed contract, including the cost of the
8 purchase or lease of equipment and supplies, design, installation, operation,
9 management, and maintenance of any system, and any proposed services.
- 10 (5) Any other information the city determines has a material bearing on its
11 ability to evaluate the proposal.

12 (c) The city shall provide notice that it is requesting proposals in accordance with this
13 subsection. The notice shall state the time and place where plans and specifications for the
14 proposed service may be obtained and the time and place for opening proposals. Any notice
15 given under this subsection shall reserve to the city the right to reject any or all proposals.
16 Notice of request for proposals shall be given by all of the following methods:

- 17 (1) By mailing a notice of request for proposals to each firm that has obtained a
18 license or permit to use the public rights-of-way in the city to provide a
19 communications service within the city by depositing such notices in the
20 U.S. mail at least 30 days prior to the date specified for the opening of
21 proposals. In identifying firms, the city may rely upon lists provided by the
22 Office of the Secretary of State and the North Carolina Utilities
23 Commission.
- 24 (2) By posting a notice of request for proposals on the city's website at least 30
25 days before the time specified for the opening of proposals.
- 26 (3) By publishing a notice of request for proposals in a newspaper of general
27 circulation in the county in which the city is predominantly located at least
28 30 days before the time specified for the opening of proposals.

29 (d) In evaluating proposals, the city may consider any relevant factors, including system
30 design, system reliability, operational experience, operational costs, compatibility with existing
31 systems and equipment, and emerging technology. The city may negotiate aspects of any
32 proposal with any responsible proposer with regard to these factors to determine which
33 proposal is the most responsive. A determination of most responsive proposer by the city shall
34 be final.

35 (e) The city may negotiate a contract with the most responsive proposer for the
36 performance of communications services specified in the request for proposals. All contracts
37 entered into pursuant to this section shall be approved and awarded by the governing body of
38 the city.

39 (f) If the city is unable to successfully negotiate the terms of a contract with the most
40 responsive proposer with 60 days of the opening of the proposals, the city may proceed to
41 negotiate with the firm determined to be the next most responsive proposer if such a proposer
42 exists. If the city is unable to successfully negotiate the terms of a contract with the next most
43 responsive proposer within 60 days, it may proceed under this Article to provide
44 communications services.

45 (g) All proposals shall be sealed and shall be opened in public."

46 **SECTION 1.(b)** G.S. 105-164.14 is amended by adding a new subsection to read:

47 "(d2) A city subject to the provisions of G.S. 160A-340.5 is not allowed a refund of sales
48 and use taxes paid by it under this Article for purchases related to the provision of
49 communications services as defined in Article 16A of Chapter 160A."

50 **SECTION 1.(c)** Subsection (b) of this section is effective when it becomes law and
51 applies to sales made on or after that date.

1 SECTION 2.(a) G.S. 62-3(23) is amended by adding the following new
2 sub-subdivision to read:

3 "l. The term "public utility" shall include a city or a joint agency under
4 Part 1 of Article 20 of Chapter 160A of the General Statutes that
5 provides service as defined in G.S. 62-3(23)a.6. and is subject to the
6 provisions of G.S. 160A-340.1."

7 SECTION 2.(b) This section shall not be construed to change the regulatory nature
8 of or requirements applicable to any particular service currently regulated by the Commission
9 under Chapter 62.

10 SECTION 3. Subchapter IV of Chapter 159 of the General Statutes is amended by
11 adding a new Article to read as follows:

12 "Article 9A. Borrowing by Cities for Competitive Purposes.

13 "§ 159-175.10. Additional requirements for review of city financing application;
14 communications service.

15 The Commission shall apply additional requirements to an application for financing by a
16 city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes for the
17 construction, operation, expansion, or repair of a communications system or other infrastructure
18 for the purpose of offering communications service, as that term is defined in
19 G.S. 160A-340(2), that is or will be competitive with communications service offered by a
20 private communications service provider. This section does not apply to the repair, rebuilding,
21 replacement or improvement of an existing communications network, or equipment relating
22 thereto, but does apply to the expansion of such existing network. The additional requirements
23 are the following:

- 24 (1) Prior to submitting an application to the Commission, a city or joint agency
25 shall comply with the provisions of G.S. 160A-340.3 requiring at least two
26 public hearings on the proposed communications service project and notice
27 of the hearings to private communications service providers who have
28 requested notice.
- 29 (2) At the same time the application is submitted to the Commission, the city or
30 joint agency shall serve a copy of the application on each person that
31 provides competitive communications service within the city's jurisdictional
32 boundaries or in areas adjacent to the city. No hearing on the application
33 shall be heard by the Commission until at least 60 days after the application
34 is submitted to the Commission.
- 35 (3) Upon the request of a communications service provider, the Commission
36 shall accept written and oral comments from competitive private
37 communications service providers in connection with any hearing or other
38 review of the application.
- 39 (4) In considering the probable net revenues of the proposed communications
40 service project, the Commission shall consider and make written findings on
41 the reasonableness of the city or joint agency's revenue projections in light of
42 the current and projected competitive environment for the services to be
43 provided, taking into consideration the potential impact of technological
44 innovation and change on the proposed service offerings and the level of
45 demonstrated community support for the project.
- 46 (5) The city or joint agency making the application to the Commission shall bear
47 the burden of persuasion with respect to subdivisions (1) through (4) of this
48 section."

49 SECTION 4. G.S. 159-81(3) is amended by adding a new sub-subdivision to read:
50 "q. Cable television systems."

1 **SECTION 5.** Sections 2, 3, and 4 of this act do not apply to a city or joint agency
2 providing communications service as of January 1, 2011 provided the city or joint agency
3 limits the provision of communications service to the area provided in G.S. 160A-340.1(a)(3).

4 **SECTION 6.** Any city that is designated as a public utility under Chapter 62 of the
5 General Statutes when this act becomes law shall not be subject to the provisions of this act
6 with respect to any of its operations that are authorized by that Chapter.

7 **SECTION 7.** If any provision of this act or the application thereof to any person or
8 circumstance is held invalid, the invalidity shall not affect other provisions or applications of
9 this act which can be given effect without the invalid provision or application, and to that end
10 the provisions of this act are declared to be severable.

11 **SECTION 8.** Except as otherwise provided, this act is effective when it becomes
12 law and applies to the provision of communications service by a city or joint agency under Part
13 1 of Article 20 of Chapter 160A of the General Statutes on and after that date.



HOUSE PCS 129: Level Playing Field/Local Gov't Competition

2011-2012 General Assembly

Committee:	House Finance	Date:	March 17, 2011
Introduced by:	Reps. Avila, Howard, Carney, Wainwright	Prepared by:	Heather Fennell
Analysis of:	PCS to First Edition H129-CSTDx-8		Committee Counsel

SUMMARY: *House Bill 129 would create new requirements for cities and joint agencies that operate a communications service that is offered to the public for a fee. All of the changes made in the PCS are provided in the bill analysis section below. In summary, the PCS makes the following changes:*

- Clarifies those cities currently providing communications service are only subject to the first 6 requirements of G.S. 160A-340.1. The cities that currently offer communications service are exempt from the remaining provisions of the bill.
- Provides a mechanism for cities to seek public-private partnerships to provide communications service.
- Provides that cities that begin offering service after January 1, 2011, and therefore, are subject to all of the provisions of this bill, may issue revenue bonds for cable television systems.

CURRENT LAW: Under G.S. 160A-311, cities are authorized to operate and finance a number of public enterprises, including cable television systems. A North Carolina Court of Appeals case, *BellSouth Telecommunications, Inc. v. City of Laurinburg*, 168 N.C. App. 75, 606 S.E. 2d 721 (2005), interprets the statutory authority to operate a cable television system to include operation of a fiber optic network. Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson (Greenlight), and Mooresville and Davidson (MiConnection) currently offer cable and internet service as a public enterprise.

The cities that currently operate cable and internet systems financed their systems through the installment purchase contract method authorized by G.S. 160A-20. This financing mechanism is commonly known as certificates of participation. Under this financing method, a city enters into an installment contract secured by a security interest in the system that is constructed. Unlike the issuance of general obligation bonds, installment purchase financing is not subject to a vote of the people. The Local Government Commission must approve a local unit's use of certificates of participation and the unit must give notice and hold a public hearing before it can enter into certificates of participation involving real property.

BILL ANALYSIS: House Bill 129 would create a new Article 16A in Chapter 160A of the General Statutes. The new Article would provide the following:

Communications Service Definition: The bill defines "communications service" as the provision of cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public for a fee. "City-owned communications service provider" includes cities that offer the service through an interlocal agreement or joint agency. The PCS clarifies that data sharing between governmental entities and service offered to the public for free are not included in the definition of "communications service" and therefore, not subject to the limitations in the bill.

Requirements for City-owned Communications Providers: The bill would require city-owned communications service providers to comply with all of the following:

House PCS 129

Page 2

- All State, local, and federal laws and regulations that a private company providing the same service would be subject to. The PCS clarifies that city-owned communication providers must comply with the laws and regulations applicable to the provision of communication service.
- Establish separate enterprise funds for the communications service. Conduct annual audits of the communications service. The PCS clarifies that the annual audit conducted under G.S. 159-34 satisfies this requirement.
- Limit the provision of service to the jurisdictional boundaries of the city. The PCS adds that service can be provided to individuals within the "service area boundary" of the cities, and existing customers of the service as of April 1, 2011 provided that contracts outside the service area is subject to public bidding upon expiration. The "service area boundary" is the following:
 - For MI-Connection – the area designated in the initial notice of franchise, and the contiguous area where the agency is offering service as of the effective date of this act connecting the cities of Davidson and Mooresville with areas set forth in the initial areas of franchise.
 - For the city of Salisbury – the cities of Salisbury, Spencer, East Spencer, Rockwell, Granite Quarry, and the corridors between those cities.
 - For all other cities and joint agencies – the area designated in the map filed with the notice of franchise.
- Prohibit the use of the city's authority to require individuals or developments to subscribe to the communications service.
- Provide nondiscriminatory access to other service providers to the city's rights-of-way, poles, or conduits. The PCS removes the term "other distribution facilities."
- Prohibit advertisements of the city-owned communications service on PEG channels of competing providers. The PCS clarifies that advertisements on PEG channels are prohibited if the channel is required to be carried by another service provider. Prohibit the use of funds not allocated to the communications service for advertisement.
- Prohibit the subsidization of the communications service with other revenue. **This provision does not apply to a city-owned communications service that was provided as of January 1, 2011.**
- The service must not be priced below the cost of providing the service. The cost of providing the service must include the cost of capital components that would be equal to the cost of capital components a private provider would incur and an amount equal to all taxes a private provider would pay. **This provision does not apply to a city-owned communications service that was provided as of January 1, 2011.**
- Remit to its General Fund an amount equal to all the taxes and fees a private provider would pay if the private provider supplied the service. **This provision does not apply to a city-owned communications service that was provided as of January 1, 2011.**

Cities that choose to sell or discontinue a city-owned communications service would not be required to hold a referendum prior to sale or discontinuous of the service.

House PCS 129

Page 3

Exemptions: The bill provides the following exemptions:

- A city that provides communications services within its jurisdictional boundaries for the city's governmental purposes is exempt from the provider requirements, limitations on installment purchase contract financing, and requirements of payments in lieu of taxes. The PCS clarifies that this exemption also applies to intergovernmental data sharing.
- The provision of communications services in an area that has been established by order of the Utilities Commission to be an "unserved area" are exempt from the provider requirements, public hearing requirements, limitations on installment purchase contract financing, and requirements of payments in lieu of taxes. For the purposes of this determination, unserved area is an area in which 90% of the households have no access to high-speed internet, or only access to high-speed internet from a satellite provider.

The PCS exempts city-owned communications service provided as of January 1, 2011 from all of the remaining provisions of the bill.

Public Hearings: Prior to offering communications services, cities will be required to hold at least 2 public hearings for comment on the service. The cities are required to provide notice for the hearings in the local newspaper and with the Utilities Commission. Private communications providers must be allowed to participate in the hearings. Feasibility studies, business plans, and public surveys for the communications service are deemed public records and must be available to the public prior to the hearings. The PCS provides that the public hearing requirement does not apply to the repair or upgrade of an existing service.

Financing: Cities and joint agencies would be prohibited from using installment purchase contracts and certificates of participation to finance a communications network. This prohibition would not apply to repairs or improvements of an existing system. A new provider can finance a communications system with certificates of participation if it holds a special election.

Taxes, Payments in Lieu of Taxes: Cities and joint agencies operating a communications service would be required to make the following payments in lieu of taxes:

- To the applicable county, a payment of the amount of property taxes that would be due if the communications system was subject to the property tax.
- To the State, an amount set by the Department of Revenue that approximates the amount of income, franchise, vehicle, motor fuel and other taxes that would be due if the communications system was subject to these taxes. The PCS provides that cities subject to this provision must provide information to the Department of Revenue necessary for the calculation of the payment. The PCS also provides that the amount of the assessment is set by January 1 of each year, and due by March 15 of each year.
- Cities and joint agencies would not receive a sales tax refund for purchases related to the provision of the communications service. The PCS makes a conforming change to Chapter 105 regarding the sales tax refund.

Added in the PCS – Public-Private Partnerships for Communications Service: The PCS provides that cities must solicit proposals from private providers before constructing a communications network.

House PCS 129

Page 4

Designation as Public Utility: Cities and joint agencies that provide telephone service would be included in the term "public utility" as defined by Chapter 62 of the General Statutes. Telephone service provided by these entities would be subject to oversight by the Utilities Commission. The PCS clarifies that this section does not expand the regulatory authority of the Utilities Commission in regards to telephone service.

Additional Financing Requirements: For review by the Local Government Commission (LGC) of an application for financing the construction, operation, expansion, or repair of a communications system by a city or joint agency, the following apply:

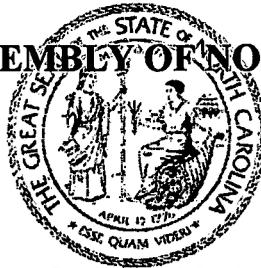
- The public hearings required by the bill must be held before an application for financing may be submitted.
- A copy of the application must be given to private communications providers that serve the city and areas adjacent to the city. The LGC must accept written and oral comments from private providers as a part of the application review.
- The LGC must consider and make written findings regarding the reasonableness of the revenue projections of the service in light of the current and projected competitive environment, the impact of innovation, and the level of community support for the project.

Added in the PCS – Revenue Bonds: The PCS provides that cities may issue revenue bonds to provide a cable television system.

EFFECTIVE DATE: This act is effective when it becomes law and applies to the provision of communications services by cities or joint agencies on or after that date.

H129-SMTD-11(CSTDx-8) v5

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 16, 2011
TO: House Finance Committee
FROM: Sandra Johnson
Fiscal Research Division
RE: House Bill 129 (Unknown Edition)

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES *No Fiscal Impact on Current Municipal Broadband Systems*
 Payment in Lieu of Taxes Estimated at \$18.98 per Subscriber for Future Systems

EXPENDITURES

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: North Carolina Department of Revenue; North Carolina Department of State Treasurer, Local Government Commission

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: House Bill (HB) 129 implements new regulatory, public information, and financial requirements for cities and joint agencies providing communication services to the public for a fee. Four cities/joint agencies, Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson

(Greenlight), Mooresville-Davidson (MI Connection), currently offer municipal broadband services that could fall within the purview of HB 129. The bill, however, specifically exempts these groups by exempting entities providing telecom services prior to January 1, 2011.

The new regulations set forth in HB 129 require that future municipal broadband companies:

- Comply with all State, local and federal laws and regulations adhered to by private communication companies.
- Establish separate enterprise funds for the communications service, and conduct annual audits.
- Limit the communication services to the jurisdictional boundaries of the city.
- Eliminate the practice of requiring individuals or developments subscribe to municipal broadband services.
- Provide other service providers with access to the city's rights-of-way, conduits, and other distribution facilities.
- Prohibit advertisements for municipal broadband on the public, education, and government (PEG) channels of competing providers.
- Limit the revenue used to finance communication services to the income generated from the service.
- Price municipal communication services a rate equal to the cost of providing the service. The price should include adjustments for capital costs and taxes incurred in the private sector.

The new public information standards set forth in HB 129 require that municipal broadband companies:

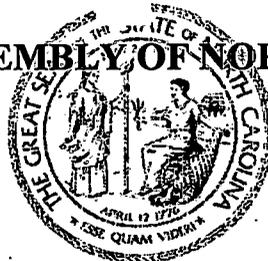
- Hold two public hearings prior to offering services.
- Provide notice for the public hearings in local newspaper and with the Utilities Commission.
- Provide the public with all feasibility studies, business plans, and surveys prior to the hearings.
- Allow private communications providers to participate in the hearing.

The new financial standards set forth in HB 129 require that municipal broadband companies:

- Eliminate the practice of using certificates of participation to finance the construction of a system.
- Make payments in lieu of property taxes to the county/counties in which the services are contained.
- Remit to the State payments in lieu of taxes (PiLoTs), an amount set by the Department of Revenue equivalent to the income, franchise, vehicle, motor fuel, and other taxes due if operating as a private enterprise.

ASSUMPTIONS AND METHODOLOGY: Should HB 129 be enacted, newly operational municipal broadband companies will be required to make payments in lieu of taxes (PiLoTs) of roughly \$202,000 annually. PiLoTs will serve as a significant barrier to entry for municipal broadband companies. The PiLoT estimates are based on information provided by the North Carolina Cable Telecommunications Association. According to the association, private telecommunication providers pay roughly, \$19 per subscriber in State and local taxes. Table 1 provides a breakdown of the estimated state and local taxes paid by revenue type.

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Table 1: Payment in Lieu of Taxes for Public Entities Providing Communication Services

Tax	Description	Estimated Tax Revenue per Subscriber
Sales and Use Tax	Governmental entities would no longer be eligible to receive sales and use tax refunds under G.S. 105-164.14(c) for tangible personal property utilized in providing communication services.	\$2.07
Corporate Income Tax	Income generated from providing communication services would no longer be eligible for the income tax exemption for governmental units provided under G.S. 105-103.11, but subject to the 6.9% corporate income tax as described in G.S. 105-103.3.	\$2.91
Franchise Tax	G.S. 105-122 levies a franchise/privilege tax on corporations at a rate of \$1.50 per \$1,000 on one of three bases: 1) the profits apportioned to the State, 2) 55% of the value of real property owned in the state and subject to local property tax, 3) the book value of real and tangible personal property less any debt used to acquire real property in the state.	\$2.21
Property Tax	Government entities would be required to remit taxes on real property (buildings, land, etc.) used in conjunction with providing communication services.	\$11.79
Total Tax Due Per Subscriber		\$18.98
Source: North Carolina Cable Telecommunications Association; Time Warner Cable		

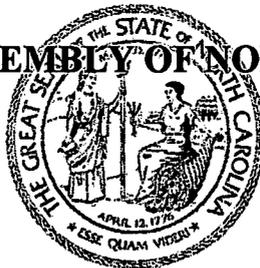
The four public broadband enterprises operating as of January 2011, Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson (Greenlight), Mooresville-Davidson (MI Connection), jointly serve a region covering 42,761 households. Table 2, provides a snapshot of the regions in which these systems operate, years of operation, number of households served, as well as income and assets for the 2010, fiscal year. As illustrated, only one system, CoMPAS, in Morganton, operated at a net profit during the 2010 fiscal year. CoMPAS began providing telecommunication services in 1992, financing the system's construction through debt and revenue from other utility services. The city upgraded the system in 2004 using funding provided through low interest debt called certificates of

participation (COPs). Morganton made its final COPs payment in December 2010 and expects to generate roughly one million dollars in net income annually in future years.

Table 2. Financial and Customer Data on Existing Municipal Broadband Providers, 2010

Provider	City Detail	Length of Operation	Certificates of Participation (\$ In Millions)	Number of Households in Service Area, 2010	2010 Net Income/(Loss) (\$ In Millions)	Assets (\$ In Millions)	
						Real Property (Buildings, Land)	Tangible Personal Property
Greenlight	Wilson, Wilson County, NC	2.8 years	31.80	19,799	(1.37)	0.93	8.47
Fibrant (2)	Salisbury, Rowan County, NC	3 months	29.10	7,562	(0.45)	4.59	
MI Connection (3)	Mooresville-Davidson	3.1 years	79.65	9,000 (actual); 13,489 (projected)	(5.60)	0.65	0.701
CoMPAS (4)	Morganton, Burke County, NC	Began in 1992 (infrastructure financed through utility system revenue), system upgrade occurred in 2004	7.32	6,400	0.2	Owned by Burke County	
Total			\$147.87	42,761	\$ (7.22)		

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

SOURCES OF DATA:

North Carolina Department of Revenue and North Carolina State Treasurer, Local Government Commission

(2) Numbers represent projected information gathered through the Local Government Commission, Certificates of Participation Application, City of Salisbury, and Annual Financial Report City of Salisbury, "Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2010." Available at: <http://www.ci.salisbury.nc.us/finance/audit/2010/Supplemental.pdf>.

(3) Numbers represent projected information gathered through Local Government Commission, Certificates of Participation Application, City of Mooresville, and Annual Financial Report for MI Connection;

(4) Numbers represent projected information gathered through Local Government Commission, Certificates of Participation Application, City of Morganton, and Annual Financial Report for City of Morganton, and conversations with Bill Harkins (CoMPAS General Manager)

TECHNICAL CONSIDERATIONS: None



#4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H129-ATD-8 [v.2]

Page 1 of 1

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

Date 3.17, 2011

Representative Faison

- 1 moves to amend the bill on page 2, lines 6 through 8, by rewriting those lines to read:
- 2 "(4) High-speed Internet access service. – Internet access service with
- 3 transmission speeds that are consistent with requirements for the national
- 4 broadband availability target as defined by the Federal Communications
- 5 Commission on July 16, 2010, and as may be modified by the Federal
- 6 Communications Commission from time to time.";
- 7
- 8 and on page 4, line 25, by deleting the term "ninety percent (90%)" and substituting the term
- 9 "fifty percent (50%)".
- 10
- 11
- 12

SIGNED _____

Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED

14/12



* H 1 2 9 - A T D - 8 - V - 2 *



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

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

H129-ATD-8 [v.2]

Page 1 of 1

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

Date _____, 2011

Representative Faison

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moves to amend the bill on page 2, lines 6 through 8, by rewriting those lines to read:
"(4) High-speed Internet access service. – Internet access service with transmission speeds that are consistent with requirements for the national broadband availability target as defined by the Federal Communications Commission on July 16, 2010, and as may be modified by the Federal Communications Commission from time to time.";
and on page 4, line 25, by deleting the term "ninety percent (90%)" and substituting the term "fifty percent (50%)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* H 1 2 9 - A T D - 8 - V - 2 *



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H129-ATD-7 [v.3]

Page 1 of 1

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

Date 3.17.11, 2011

Representative K. Alexander

- 1 moves to amend the bill on page 3, lines 18 through 29, by rewriting those lines to read:
- 2 "No provider, private or municipal, shall price any communications service below the cost of
- 3 providing the service including any direct or indirect subsidies received by the individual
- 4 franchise operation, including the allocation of costs associated with any shared use of
- 5 building, equipment, vehicles, call centers, personnel, and financial resources."
- 6

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____





#6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H129-ATD-10 [v.1]

Page 1 of 1

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

Date _____, 2011

Representative H. Warren

- 1. moves to amend the bill on page 4, lines 27 through 30, by rewriting those lines to read:
- 2. "(c) The provisions of G.S. 160A-340.3, G.S. 160A-340.4, G.S. 160A-340.5, and
- 3. G.S. 160A-340.6 do not apply to a city or joint agency providing communications service as of
- 4. January 1, 2011.";
- 5.
- 6. and on page 8, lines 1 through 3, by rewriting those lines to read:
- 7. "SECTION 5. Sections 2, 3, and 4 of this act do not apply to a city or joint agency
- 8. providing communications service as of January 1, 2011."
- 9.
- 10.
- 11.
- 12.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

15/13



* H 1 2 9 - A T D - 1 0 - V - 1 *

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H129-CSTD x-8

DATE 3/17/11

S. B. No. _____

Amendment No. 4

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

(Rep.) Ross
Sen.)

1 moves to amend the bill on page 3, line S 18-29

2 () WHICH CHANGES THE TITLE

3 by deleting the lines and renumbering the
4 remaining subdivision;

5
6 and on p. 3, line 41, by rewriting the line
7 to read:

8 "(c) Subdivisions (7) and (8) of subsection (a)
9 of this section, shall not apply to a"

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SIGNED [Signature]

12/16

ADOPTED _____ FAILED TABLED _____



North Carolina General Assembly
House Committee on Finance

Minutes

March 23, 2011

The House Committee on Finance met on Wednesday, March 23, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, and Weiss. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:30 am and recognized the three (3) pages present: (1) Sidney Parham of Swain County sponsored by Representative Haire; (2) Elise Karsten of Wake County sponsored by Representative Martin and; (3) Samantha Enochs of Iredell County sponsored by Representative Mills.

The bill considered by the Committee was **HB 129 Level Playing Field/Local Gov't Competition** (see **attachment 3**) and the hearing of this bill was continued from the March 17, 2011 meeting. The Chair indicated that members of the audience would be allowed to give public comments prior to discussions on the bill. While the speeches are taking place, all amendments are to be brought forth. Chairperson Howard invited people who signed up to speak to proceed to the podium when their name was called. Each speaker was given two minutes to speak. The following people spoke: Mayor Pro-Tem Becky Blackwell, City of Salisbury; Bob Murphy, County Manager, Nash County; Vance Holliman, Deputy Treasurer for Local and State Government, Treasurer's Office; Mayor Pro-Tem Chris Carney, Town of Mooresville (see **attachment 4**); Steve Brewer, CenturyLink; Michelle Frazier, City of Morganton; Robert Van Goens, Director, Rowan Works EDC; Arek Kempinski, Orange County (see **attachment 5**); Tom Vanderbeck (see **attachment 6**), Chatham County; Catharine Rice, Triangle J Council of Government Broadband Consortium; Mark Turner, Concerned Citizen (see **attachment 7**); Timothy Lee, VP of Legal Affairs, Center for Individual Freedom (see **attachment 8**); Dallas Woodhouse, Americans for Prosperity (see **attachment 9**); and Jack

Cozort, City of Wilson. In addition to speakers, Matt Price, George and Shirley Campbell, Dr. Susan Murphey of Foscoe Medical Clinic, PLLC and Michael Solo and Keith Johnson with Poyner Spruill provided written comments via email that was distributed to members (see **attachment 10**).

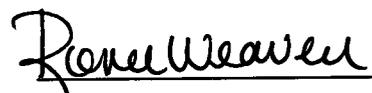
Chairwoman Howard recognized Representative Avila to make any comments. The Chair then recognized Representative Collins who made the motion to reconsider the vote for which amendment 1 passed. (Amendment 1 was presented by Representative Faison at the March 17th meeting.) Representative Faison was recognized to debate the motion. Being no further discussion or debate, the Chair called for a show of hands on Representative Collins' motion to reconsider amendment 1. The vote being 17 affirmative and 10 against. The motion carried. Amendment 1, being back before the Committee as amendment 5, moved to amend the bill on page 2, lines 6 through 8 by rewriting those lines and also on page 4, line 25, by deleting the term "ninety percent (90%)" and substituting the term "fifty percent (50%)" (see **attachment 11**). The Chair called for a show of hands for amendment 5. The vote being 10 affirmative and 16 against. The amendment failed. The Chair reminded the Committee that Representative Starnes had moved for a favorable report as to the proposed Committee substitute, unfavorable report to the original bill. That motion being on the floor from the March 17th meeting. The Chair recognized Representative Luebke who sent forth amendment 6 that moved to amend the bill on page 1, line 2, through page 8, line 13, by rewriting those lines (see **attachment 12**). Representative Luebke was recognized to explain his amendment and moved for a favorable vote on amendment 6. The Chair called for a show of hands for amendment 6. The vote being 9 affirmative and 18 against, the amendment failed. Chairwoman Howard recognized Representative Moore for a motion to reconsider the vote for which amendment 3 passed at the March 17th meeting. (Amendment 3 was presented by Representative Warren at the March 17th meeting). Representative Warren was recognized for comments and stated he was opposed to reconsidering amendment 3. Being no further discussion or debate, the Chair called for a show of hands on Representative Moore's motion to reconsider amendment 3. The vote being 17 affirmative and 11 against, the motion carried. Amendment 3, being back before the Committee as amendment 7, amended the bill on page 4, lines 27 through 30 by rewriting those lines (see **attachment 13**) and was now back before the Committee. Heather Fennell of the Research Department explained the amendment. The vote now being before the Committee is amendment 7. The Chair called for a show of hands for amendment 7. The vote being 11 affirmative and 17 against, the amendment failed. Chairwoman Howard recognized Representative Warren who sent forth amendment 8 that moved to amend the bill, on page 2, lines 31 through 42, by rewriting the lines; and also on page 3, line 41, through page 4, line 6 by deleting those lines; and on page 4, lines 27 through 30 by rewriting those lines; and on page 8, lines 1 through 3, by rewriting those lines (see **attachment 14**). Representative Warren explained his amendment. Being no further discussion or debate, the Chair called for a show of hands for amendment 8. The vote being 26 affirmative and 1 against, the amendment passed. Chairwoman Howard recognized Representative Faison who sent forth amendment 9 that moved to amend the bill on page 4, line 25 deleting the term "ninety percent (90%)" and substituting the term "fifty percent (50%)" (see **attachment 15**). Representative Faison explained the amendment. Being no further debate or discussion, the Chair called for a show of hands for amendment 9. The vote being 21 affirmative and 6 against, the amendment passed. The Chair then recognized Representative Faison who sent forth amendment 10 that moved to amend the bill on page 4, lines 30 and 31, by inserting between the lines (see **attachment 16**).

Representative Faison explained the amendment and answered questions from members. Being no further debate or discussion, the Chair called for the ayes and noes on amendment 10. The motion to adopt amendment 10 failed the voice vote. Chairwoman Howard recognized Representative Faison who sent forth amendment 11 that moved to amend the bill on page 3, lines 9 through 13, by rewriting those lines; and on page 3, lines 14 through 29, by deleting those lines and renumbering the remaining subdivision; and on page 3, line 41, by rewriting the line (see **attachment 17**). Representative Faison explained the amendment. Being no further discussion or debate, the Chair called for a show of hands for amendment 11. The vote being 10 affirmative and 18 against, the amendment failed. The Chair recognized Representative Faison who sent forth amendment 12 that moved to amend the bill on page 3, lines 30 through 37, by deleting those lines; and on page 3, lines 41 through 42, by rewriting those lines; and on page 4, line 8, by rewriting the line; and on page 4, line 15, by rewriting the line; and on page 4, lines 27 through 28, by rewriting those lines; and on page 5, lines 14 through 38, by deleting those lines; and on page 5, line 39, by deleting the term "G.S. 160A-340.6" and substituting "G.S. 160A-340.5"; and on page 6, lines 46 through 51, by deleting those lines (see **attachment 18**). Representative Faison explained his amendment. Being no further discussion or debate, the Chair called for a show of hands for amendment 12. The vote being 10 affirmative and 18 against, the amendment failed. The Chair stated again there was a motion on the floor from Representative Starnes. Representative Starnes was recognized to repeat the motion and moved that HB129 be given a favorable report to the proposed committee substitute as amended, unfavorable report to the original bill. The Chair called for a show of hands for the motion. The vote being 20 affirmative and 9 against, the motion carried.

There being no further business presently before the Committee, Chairwoman Howard adjourned the meeting at 9:47 am.

Respectfully submitted,


Representative Julia Howard
Presiding Senior Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 129 A BILL TO BE ENTITLED AN ACT TO PROTECT JOBS AND INVESTMENT BY REGULATING LOCAL GOVERNMENT COMPETITION WITH PRIVATE BUSINESS.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

AGENDA
House Finance Committee

Wednesday, March 23, 2011

8:30 am

Room 544 LOB

Chaired by: Representative Julia C. Howard

Call to Order

Introduction of Pages

Comments from the Public

Bills:

HB 129 Level Playing Field/Local Gov't Competition

Representatives Avila, Howard, Carney, Wainwright

Adjournment

Committee Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: MAR. 23, 2011 Room: 544

House Sgt-At Arms:

- 1. Name: FRED HINES
- 2. Name: JOHN BRANDON
- 3. Name: EARL COKER
- 4. Name: KEN KIRBY
- 5. Name: _____

Senate Sgt-At Arms:

- 1. Name: _____
- 2. Name: _____
- 3. Name: _____
- 4. Name: _____
- 5. Name: _____

HOUSE PAGES

NAME OF COMMITTEE FINANCE DATE 03-23-11

1. Name: Sidney Parham

County: Swain

Sponsor: ^{Rep.} Phil Haire

2. Name: Elise Karsten

County: Wake

Sponsor: ^{Rep.} Martin

3. Name: Samantha Enochs

County: Iredell

^{Rep.} Sponsor: Grey Mills

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

VISITOR REGISTRATION SHEET

House Finance

March 23, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kristen Laster	Fetzer Strategic U
Robert VanGers	Rowan EDC
MAGGIE BLACKWELL	MAYOR PROTEN, CITY OF SALISBURY
Doug Paris	CITY OF SALISBURY
Vince Holloman	NCDS 7
Dave Treme	Salisbury
BRIAN MURER	SALISBURY
Cynthia R. Pds	self
Catherine R. R. R.	Action Audits
Tom Fetzer	Fetzer Strategic Partners
Michael Crowell	City of Salisbury

VISITOR REGISTRATION SHEET

House Finance

March 23, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ARER KEMPINSKI	CITIZEN OF ORANGE COUNTY
Patsy McGhee	Nash County
Bob Murphy	Nash County
Becki Gray	Johns Locke Foundation
MARK TURNER	CONCERNED CITIZEN
Lachelle Pulliam	Rep. Wainwright's Office
Mary Boock	WINDSTREAM
Bob Wells	North Star
Michelle Frazio	MF+S
Jack Hunt	Wilson
BU SCOBIA	TSS

VISITOR REGISTRATION SHEET

House Finance

March 23, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

CS Hollis	TSS
Paul Meyer	NCLM
DAVID BRAMES	PS
Keeli Lalama	NCLM
Patrick Bagg	ALARC
Rochelle Malone	Wisconsin Times
Tim KENT	NC Beer/Wine Wholesalers
Amy McConkey	NC Bev Ass'n
David Mc Gowan	NC Realtors
Will Polk	Gov Office.
Dwight Allen	Allen Law Office

VISITOR REGISTRATION SHEET

House Finance

March 23, 2011

Name of Committee

Date

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Tuan Hoa	Edith W. Moore
David Miner	GRG, INC
Randy Fraser	APT
David Starling	NC DST
Jason Snelfield	DST
Sam Alton	DST
Bill Rowe	NC Justice Center
Sohari	DST
Bob Kelly	McGee Wood
Christine Weason	American Cancer Society
Lee Evanko	ACS

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House Finance

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Steve Bruner	CountryLink
Joe Stewart	NC Chouder
Keith Boston	Time Warner Cable
Rhett P. Fisenberg	Mooresville Commissioner
Chris Carney	Town of Mooresville
Dick Yarbrough	NC Cable Telecommunications Assoc.
Kyle Wallace	Time Warner Cable
John Marshall	MWC LLC. Ton
Will Culpeper	MWC
W. Jordan Calkins	Visitor

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House Finance

March 23, 2011

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Date

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TS Cotts	Campbell law
Jon Lane	Crybell
Jackson Wicker	Campbell Law
Fernest Gilliam	Governor's Office
Mark Bibbs	Bibbs Law Office
TIMOTHY LEE	CENTER FOR INDIVIDUAL FREEDOM
Angie Bailey	The e-NC Authority
Lemuel Hinton	NCUC Staff
JACK Stanley	Time Warner Cable
Bill [unclear]	DWC
Mark [unclear]	Bibbs Field

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House Finance

March 23, 2011

Name of Committee

Date

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Caroline Payne	MWC
Dana Fenton	City of Charlotte
GEORGE Suddarth	PBV
Emily Ford	Salisbury Post
Henri BUNG	MWC
Sammy Robertson	TWC
Kathy Hawkins	Duke Energy
Wendy Kelly	Policy Group
TOM PERENSON	NCEON
Michael Horser	NC POR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 129*
PROPOSED COMMITTEE SUBSTITUTE H129-CSTDx-8 [v.17]

3/16/2011 9:21:39 PM

Short Title: Level Playing Field/Local Gov't Competition.

(Public)

Sponsors:

Referred to:

February 21, 2011

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A BILL TO BE ENTITLED

AN ACT TO PROTECT JOBS AND INVESTMENT BY REGULATING LOCAL GOVERNMENT COMPETITION WITH PRIVATE BUSINESS.

Whereas, certain cities in the State have chosen to compete with private providers of communications services; and

Whereas, these cities have been permitted to enter into competition with private providers as a result of a decision of the North Carolina Court of Appeals rather than legislation enacted by the General Assembly; and

Whereas, the communications industry is an industry of economic growth and job creation; and

Whereas, as expressed in G.S. 66-58, known as the Umstead Act, it is against the public policy of this State for any unit, department, or agency of the State, or any division or subdivision of a unit, department, or agency of the State to engage directly or indirectly in the sale of goods, wares, or merchandise in competition with citizens of the State; and

Whereas, to protect jobs and to promote investment, it is necessary to ensure that the State does not indirectly subsidize competition with private industry through actions by cities and to ensure that where there is competition between the private sector and the State, directly or through its subdivisions, it exists under a framework that does not discourage private investment and job creation; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 160A of the General Statutes is amended by adding a new Article to read as follows:

"Article 16A. Provision of Communications Service by Cities.

"§ 160A-340. Definitions.

The following definitions apply in this Article:

- (1) City-owned communications service provider. – A city that provides communications service using a communications network, whether directly, indirectly, or through an interlocal agreement or a joint agency.
- (2) Communications network. – A wired or wireless network for the provision of communications service.
- (3) Communications service. – The provision of cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public, or any sector of the public, for a fee, regardless of the technology used to deliver the service. The terms "cable service," "telecommunications



1 service," and "video programming service" have the same meanings as in
2 G.S. 105-164.3. Neither the sharing of data between the governmental
3 entities for governmental purposes nor the provision of free services to the
4 public or a subset thereof shall be considered the provision of
5 communication service.

6 (4) High-speed Internet access service. – Internet access service with
7 transmission speeds that are consistent with requirements for basic
8 broadband service as defined by the Federal Communications Commission.

9 (5) Interlocal agreement. – An agreement between units of local government as
10 authorized by Part 1 of Article 20 of Chapter 160A of the General Statutes.

11 (6) Joint agency. – A joint agency created under Part 1 of Article 20 of Chapter
12 160A of the General Statutes.

13 **"§ 160A-340.1. City-owned communications service provider requirements.**

14 (a) A city-owned communications service provider shall meet all of the following
15 requirements:

16 (1) Comply in its provision of communications service with all local, State, and
17 federal laws, regulations, or other requirements applicable to the provision of
18 the communications service if provided by a private communications service
19 provider.

20 (2) In accordance with the provisions of Chapter 159 of the General Statutes, the
21 Local Government Finance Act, establish one or more separate enterprise
22 funds for the provision of communications service, use the enterprise funds
23 to separately account for revenues, expenses, property, and source of
24 investment dollars associated with the provision of communications service,
25 and prepare and publish an independent annual report and audit in
26 accordance with generally accepted accounting principles that reflect the
27 fully allocated cost of providing the communications service, including all
28 direct and indirect costs. An annual independent audit conducted under
29 G.S. 159-34 and submitted to the Local Government Commission satisfies
30 the audit requirement of this subdivision.

31 (3) Limit the provision of communications service to the following:

32 a. Persons within the corporate limits of the city providing the
33 communications service.

34 b. For a city or joint agency providing communications service as of
35 January 1, 2011, persons within the service area boundaries as
36 described in subsection (d) of this section of the city or joint agency
37 providing the communications service.

38 c. Existing customers of the communications service as of April 1,
39 2011. Service to customers outside the service area of the city or
40 joint agency shall comply with the open bidding procedures of
41 Article 8 of Chapter 143 upon the expiration or termination of the
42 existing service contract.

43 (4) Shall not, directly or indirectly, under the powers of a city, exercise power or
44 authority in any area, including zoning or land-use regulation, or exercise
45 power to withhold or delay the provision of monopoly utility service, to
46 require any person, including residents of a particular development, to use or
47 subscribe to any communications service provided by the city-owned
48 communications service provider.

49 (5) Shall provide nondiscriminatory access to private communications service
50 providers on a first-come, first-served basis to rights-of-way, poles, or
51 conduits owned, leased, or operated by the city unless the facilities have

1 insufficient capacity for the access and additional capacity cannot reasonably
2 be added to the facilities. For purposes of this subdivision, the term
3 "nondiscriminatory access" means that, at a minimum, access shall be
4 granted on the same terms and conditions as that given to a city-owned
5 communications service provider.

6 (6) Shall not air advertisements or other promotions for the city-owned
7 communications service on a public, educational, or governmental access
8 channel if the city requires another communications service provider to carry
9 the channel. The city shall not use city resources that are not allocated for
10 cost accounting purposes to the city-owned communications service to
11 promote city-owned communication service in comparison to private
12 services or, directly or indirectly, require city employees, officers, or
13 contractors to purchase city services.

14 (7) Shall not subsidize the provision of communications service with funds from
15 any other noncommunications service, operation, or other revenue source,
16 including any funds or revenue generated from electric, gas, water, sewer, or
17 garbage services.

18 (8) Shall not price any communications service below the cost of providing the
19 service, including any direct or indirect subsidies received by the city-owned
20 communications service provider and allocation of costs associated with any
21 shared use of buildings, equipment, vehicles, and personnel with other city
22 departments. The city shall, in calculating the costs of providing the
23 communications service, impute (i) the cost of the capital component that is
24 equivalent to the cost of capital available to private communications service
25 providers in the same locality and (ii) an amount equal to all taxes, including
26 property taxes, licenses, fees, and other assessments that would apply to a
27 private communications service provider including federal, State, and local
28 taxes; rights-of-way, franchise, consent, or administrative fees; and pole
29 attachment fees.

30 (9) The city shall annually remit to the general fund of the city an amount
31 equivalent to all taxes or fees a private communications service provider
32 would be required to pay the city or county in which the city is located,
33 including any applicable tax refunds received by the city-owned
34 communications service provider because of its government status and a sum
35 equal to the amount of property tax that would have been due if the
36 city-owned communications service provider were a private communications
37 service provider.

38 (b) A city-owned communications service provider shall not be required to obtain voter
39 approval under G.S. 160A-321 prior to the sale or discontinuance of the city's communications
40 network.

41 (c) Subdivisions (7), (8), and (9) of subsection (a) of this section, shall not apply to a
42 city or joint agency providing communications service as of January 1, 2011.

43 (d) The service area boundaries are the following:

44 (1) For the joint agency operated by the cities of Davidson and Mooresville, the
45 service area is the service area designated in the initial notice of franchise
46 filed with the Secretary of State, and the contiguous area where the agency is
47 offering service as of the effective date of this act connecting the cities of
48 Davidson and Mooresville with areas set forth in the initial areas of
49 franchise.

1 (2) For the city of Salisbury, the service area is the cities of Salisbury, Spencer,
2 East Spencer, Rockwell, Granite Quarry, and the corridors between
3 Salisbury and those cities.

4 (3) For all other cities or joint agency offering communications service, the
5 service area is the area designated in the map filed as part of the initial notice
6 of franchise with the Secretary of State as of January 1, 2011.

7 **"§ 160A-340.2. Exemptions.**

8 (a) The provisions of G.S. 160A-340.1, 160A-340.4, G.S. 160A-340.5, and 160A-340.6
9 do not apply to the purchase, lease, construction, or operation of facilities by a city to provide
10 communications service within the city's corporate limits for the city's internal governmental
11 purposes, including the sharing of data between governmental entities for governmental
12 purposes, or within the corporate limits of another unit of local government that is a party with
13 the city to an interlocal agreement under Part 1 of Article 20 of Chapter 160A of the General
14 Statutes for the provision of internal government services.

15 (b) The provisions of G.S. 160A-340.1, 160A-340.4, and G.S. 160A-340.5 do not apply
16 to the provision of communications service in an unserved area. A city seeking to provide
17 communications service in an unserved area shall petition the North Carolina Utilities
18 Commission for a determination that an area is unserved. The petition shall identify with
19 specificity the geographic area for which the designation is sought. Any private
20 communications service provider, or any other interested party, may, within a time established
21 by order of the Commission, which time shall be no fewer than 30 days, file with the
22 Commission an objection to the designation on the grounds that one or more areas designated
23 in the petition is not an unserved area or that the city is not otherwise eligible to provide the
24 service. For purposes of this subsection, the term "unserved area" means a geographical area in
25 which at least ninety percent (90%) of households either have no access to high-speed Internet
26 service or have access to high-speed Internet service only from a satellite provider.

27 (c) The provisions of G.S. 160A-340.3, G.S. 160A-340.4, G.S. 160A-340.5, and
28 G.S. 160A-340.6 do not apply to a city or joint agency providing communications service as of
29 January 1, 2011 provided the city or joint agency limits the provision of communications
30 service to the area provided in G.S. 160A-340.1(a)(3).

31 **"§ 160A-340.3. Notice; public hearing.**

32 A city or joint agency that proposes to provide communications service shall hold not less
33 than two public hearings, which shall be held not fewer than 30 days apart, for the purpose of
34 gathering information and comment. Notice of the hearings shall be published at least once a
35 week for four consecutive weeks in the predominant newspaper of general circulation in the
36 area in which the city is located. The notice shall also be provided to the North Carolina
37 Utilities Commission, which shall post the notice on its Web site, and to all companies that
38 have requested service of the notices from the city clerk. The city shall deposit the notice in the
39 U.S. mail to companies that have requested notice at least 45 days prior to the hearing subject
40 to the notice. Private communications service providers shall be permitted to participate fully in
41 the public hearings by presenting testimony and documentation relevant to their service
42 offerings and the city's plans. Any feasibility study, business plan, or public survey conducted
43 or prepared by the city in connection with the proposed communications service project is a
44 public record as defined by G.S. 132-1 and shall be made available to the public prior to the
45 public hearings required by this section. This section does not apply to the repair, rebuilding,
46 replacement or improvement of an existing communications network, or equipment relating
47 thereto.

48 **"§ 160A-340.4. Financing.**

49 (a) A city or joint agency subject to the provisions of G.S. 160A-340.1 shall not enter into
50 a contract under G.S. 160A-19 or G.S. 160A-20 to purchase or to finance the purchase of
51 property for use in a communications network or to finance the construction of fixtures or

1 improvements for use in a communications network unless it complies with subsection (b) of
2 this section. The provisions of this section shall not apply to the repair, rebuilding, replacement,
3 or improvement of an existing communications network, or equipment relating thereto.

4 (b) A city shall not incur debt for the purpose of constructing a communications system
5 without first holding a special election under G.S. 163-287 on the question of whether the city
6 should incur debt for the proposed purposes. If a majority of the votes cast in the special
7 election are for the city incurring the debt, the city may provide the communication service. If a
8 majority of the votes cast in the special election are against the city incurring the debt, the city
9 shall not provide the communications service. However, nothing in this section shall prohibit a
10 city from revising its plan to offer communications service and calling another special election
11 on the question prior to providing or offering to provide the service. A special election required
12 under Chapter 159 of the General Statutes as a condition to the issuance of bonds shall satisfy
13 the requirements of this section.

14 **"§ 160A-340.5. Taxes; payments in lieu of taxes.**

15 (a) A communications network owned or operated by a city or joint agency shall be
16 exempt from property taxes. However, each city possessing an ownership share of a
17 communications network and a joint agency owning a communications network shall, in lieu of
18 property taxes, pay to any county authorized to levy property taxes the amount which would be
19 assessed as taxes on real and personal property if the communications network were otherwise
20 subject to valuation and assessment. Any payments in lieu of taxes shall be due and shall bear
21 interest, if unpaid, as in the case of taxes on other property.

22 (b) A city-owned communications service provider shall pay to the State, on an annual
23 basis, an amount in lieu of taxes that would otherwise be due the State if the communications
24 service was provided by a private communications service provider, including State income,
25 franchise, vehicle, motor fuel, and other similar taxes. The amount of the payment in lieu of
26 taxes shall be set annually by the Department of Revenue and shall approximate the taxes that
27 would be due if the communications service was undertaken by a private communications
28 service provider. A city-owned communications provider must provide information requested
29 by the Secretary of Revenue necessary for calculation of the assessment. The Department must
30 inform each city-owned communications provider of the amount of the assessment by January
31 1 of each year. The assessment is due by March 15 of each year. If the assessment is unpaid,
32 the State may withhold the amount due, including interest on late payments, from distributions
33 otherwise due the city under G.S. 105-164.44I.

34 (c) A city-owned communications service provider or a joint agency that provides
35 communications service shall not be eligible for a refund under G.S. 105-164.14(c) for sales
36 and use taxes paid on purchases of tangible personal property and services related to the
37 provision of communications service, except to the extent a private communications service
38 provider would be exempt from taxation.

39 **"§ 160A-340.6. Public-private partnerships for communications service.**

40 (a) Prior to undertaking to construct a communications network for the provision of
41 communications service, a city shall first solicit proposals from private business in accordance
42 with the procedures of this section.

43 (b) The city shall issue request for proposals that specifies the nature and scope of the
44 requested communications service, the area in which it is to be provided, any specifications and
45 performance standards, and information as to the city's proposed participation in providing
46 equipment, infrastructure, or other aspects of the service. The city may prescribe the form and
47 content of proposals, and may require that proposals contain sufficiently detailed information to
48 allow for an objective evaluation of proposals using the factors stated in subsection (c) of this
49 section. Each proposal shall at minimum contain:

- 50 (1) Information regarding the proposer's experience and qualifications to
51 perform the requirements of the proposal.

- 1 (2) Information demonstrating the proposer's ability to secure financing needed
2 to perform the requirements of the proposal.
- 3 (3) Information demonstrating the proposer's ability to provide staffing,
4 implement work tasks and carry out all other responsibilities necessary to
5 perform the requirements of the proposal.
- 6 (4) Information clearly identifying and specifying all elements of cost of the
7 proposal for the term of the proposed contract, including the cost of the
8 purchase or lease of equipment and supplies, design, installation, operation,
9 management, and maintenance of any system, and any proposed services.
- 10 (5) Any other information the city determines has a material bearing on its
11 ability to evaluate the proposal.

12 (c) The city shall provide notice that it is requesting proposals in accordance with this
13 subsection. The notice shall state the time and place where plans and specifications for the
14 proposed service may be obtained and the time and place for opening proposals. Any notice
15 given under this subsection shall reserve to the city the right to reject any or all proposals.
16 Notice of request for proposals shall be given by all of the following methods:

- 17 (1) By mailing a notice of request for proposals to each firm that has obtained a
18 license or permit to use the public rights-of-way in the city to provide a
19 communications service within the city by depositing such notices in the
20 U.S. mail at least 30 days prior to the date specified for the opening of
21 proposals. In identifying firms, the city may rely upon lists provided by the
22 Office of the Secretary of State and the North Carolina Utilities
23 Commission.
- 24 (2) By posting a notice of request for proposals on the city's website at least 30
25 days before the time specified for the opening of proposals.
- 26 (3) By publishing a notice of request for proposals in a newspaper of general
27 circulation in the county in which the city is predominantly located at least
28 30 days before the time specified for the opening of proposals.

29 (d) In evaluating proposals, the city may consider any relevant factors, including system
30 design, system reliability, operational experience, operational costs, compatibility with existing
31 systems and equipment, and emerging technology. The city may negotiate aspects of any
32 proposal with any responsible proposer with regard to these factors to determine which
33 proposal is the most responsive. A determination of most responsive proposer by the city shall
34 be final.

35 (e) The city may negotiate a contract with the most responsive proposer for the
36 performance of communications services specified in the request for proposals. All contracts
37 entered into pursuant to this section shall be approved and awarded by the governing body of
38 the city.

39 (f) If the city is unable to successfully negotiate the terms of a contract with the most
40 responsive proposer with 60 days of the opening of the proposals, the city may proceed to
41 negotiate with the firm determined to be the next most responsive proposer if such a proposer
42 exists. If the city is unable to successfully negotiate the terms of a contract with the next most
43 responsive proposer within 60 days, it may proceed under this Article to provide
44 communications services.

45 (g) All proposals shall be sealed and shall be opened in public."

46 SECTION 1.(b) G.S. 105-164.14 is amended by adding a new subsection to read:

47 "(d2) A city subject to the provisions of G.S. 160A-340.5 is not allowed a refund of sales
48 and use taxes paid by it under this Article for purchases related to the provision of
49 communications services as defined in Article 16A of Chapter 160A."

50 SECTION 1.(c) Subsection (b) of this section is effective when it becomes law and
51 applies to sales made on or after that date.

1 **SECTION 2.(a)** G.S. 62-3(23) is amended by adding the following new
2 sub-subdivision to read:

3 "l. The term "public utility" shall include a city or a joint agency under
4 Part 1 of Article 20 of Chapter 160A of the General Statutes that
5 provides service as defined in G.S. 62-3(23)a.6. and is subject to the
6 provisions of G.S. 160A-340.1."

7 **SECTION 2.(b)** This section shall not be construed to change the regulatory nature
8 of or requirements applicable to any particular service currently regulated by the Commission
9 under Chapter 62.

10 **SECTION 3.** Subchapter IV of Chapter 159 of the General Statutes is amended by
11 adding a new Article to read as follows:

12 "Article 9A. Borrowing by Cities for Competitive Purposes.

13 **"§ 159-175.10. Additional requirements for review of city financing application;**
14 **communications service.**

15 The Commission shall apply additional requirements to an application for financing by a
16 city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes for the
17 construction, operation, expansion, or repair of a communications system or other infrastructure
18 for the purpose of offering communications service, as that term is defined in
19 G.S. 160A-340(2), that is or will be competitive with communications service offered by a
20 private communications service provider. This section does not apply to the repair, rebuilding,
21 replacement or improvement of an existing communications network, or equipment relating
22 thereto, but does apply to the expansion of such existing network. The additional requirements
23 are the following:

- 24 (1) Prior to submitting an application to the Commission, a city or joint agency
25 shall comply with the provisions of G.S. 160A-340.3 requiring at least two
26 public hearings on the proposed communications service project and notice
27 of the hearings to private communications service providers who have
28 requested notice.
- 29 (2) At the same time the application is submitted to the Commission, the city or
30 joint agency shall serve a copy of the application on each person that
31 provides competitive communications service within the city's jurisdictional
32 boundaries or in areas adjacent to the city. No hearing on the application
33 shall be heard by the Commission until at least 60 days after the application
34 is submitted to the Commission.
- 35 (3) Upon the request of a communications service provider, the Commission
36 shall accept written and oral comments from competitive private
37 communications service providers in connection with any hearing or other
38 review of the application.
- 39 (4) In considering the probable net revenues of the proposed communications
40 service project, the Commission shall consider and make written findings on
41 the reasonableness of the city or joint agency's revenue projections in light of
42 the current and projected competitive environment for the services to be
43 provided, taking into consideration the potential impact of technological
44 innovation and change on the proposed service offerings and the level of
45 demonstrated community support for the project.
- 46 (5) The city or joint agency making the application to the Commission shall bear
47 the burden of persuasion with respect to subdivisions (1) through (4) of this
48 section."

49 **SECTION 4.** G.S. 159-81(3) is amended by adding a new sub-subdivision to read:
50 "q. Cable television systems."

1 **SECTION 5.** Sections 2, 3, and 4 of this act do not apply to a city or joint agency
2 providing communications service as of January 1, 2011 provided the city or joint agency
3 limits the provision of communications service to the area provided in G.S. 160A-340.1(a)(3).

4 **SECTION 6.** Any city that is designated as a public utility under Chapter 62 of the
5 General Statutes when this act becomes law shall not be subject to the provisions of this act
6 with respect to any of its operations that are authorized by that Chapter.

7 **SECTION 7.** If any provision of this act or the application thereof to any person or
8 circumstance is held invalid, the invalidity shall not affect other provisions or applications of
9 this act which can be given effect without the invalid provision or application, and to that end
10 the provisions of this act are declared to be severable.

11 **SECTION 8.** Except as otherwise provided, this act is effective when it becomes
12 law and applies to the provision of communications service by a city or joint agency under Part
13 1 of Article 20 of Chapter 160A of the General Statutes on and after that date.



HOUSE PCS 129: Level Playing Field/Local Gov't Competition

2011-2012 General Assembly

Committee:	House Finance	Date:	March 17, 2011
Introduced by:	Reps. Avila, Howard, Carney, Wainwright	Prepared by:	Heather Fennell
Analysis of:	PCS to First Edition H129-CSTDx-8		Committee Counsel

SUMMARY: *House Bill 129 would create new requirements for cities and joint agencies that operate a communications service that is offered to the public for a fee. All of the changes made in the PCS are provided in the bill analysis section below. In summary, the PCS makes the following changes:*

- Clarifies those cities currently providing communications service are only subject to the first 6 requirements of G.S. 160A-340.1. The cities that currently offer communications service are exempt from the remaining provisions of the bill.
- Provides a mechanism for cities to seek public-private partnerships to provide communications service.
- Provides that cities that begin offering service after January 1, 2011, and therefore, are subject to all of the provisions of this bill, may issue revenue bonds for cable television systems.

CURRENT LAW: Under G.S. 160A-311, cities are authorized to operate and finance a number of public enterprises, including cable television systems. A North Carolina Court of Appeals case, *BellSouth Telecommunications, Inc. v. City of Laurinburg*, 168 N.C. App. 75, 606 S.E. 2d 721 (2005), interprets the statutory authority to operate a cable television system to include operation of a fiber optic network. Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson (Greenlight), and Mooresville and Davidson (MiConnection) currently offer cable and internet service as a public enterprise.

The cities that currently operate cable and internet systems financed their systems through the installment purchase contract method authorized by G.S. 160A-20. This financing mechanism is commonly known as certificates of participation. Under this financing method, a city enters into an installment contract secured by a security interest in the system that is constructed. Unlike the issuance of general obligation bonds, installment purchase financing is not subject to a vote of the people. The Local Government Commission must approve a local unit's use of certificates of participation and the unit must give notice and hold a public hearing before it can enter into certificates of participation involving real property.

BILL ANALYSIS: House Bill 129 would create a new Article 16A in Chapter 160A of the General Statutes. The new Article would provide the following:

Communications Service Definition: The bill defines "communications service" as the provision of cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public for a fee. "City-owned communications service provider" includes cities that offer the service through an interlocal agreement or joint agency. The PCS clarifies that data sharing between governmental entities and service offered to the public for free are not included in the definition of "communications service" and therefore, not subject to the limitations in the bill.

Requirements for City-owned Communications Providers: The bill would require city-owned communications service providers to comply with all of the following:

House PCS 129

Page 2

- All State, local, and federal laws and regulations that a private company providing the same service would be subject to. The PCS clarifies that city-owned communication providers must comply with the laws and regulations applicable to the provision of communication service.
- Establish separate enterprise funds for the communications service. Conduct annual audits of the communications service. The PCS clarifies that the annual audit conducted under G.S. 159-34 satisfies this requirement.
- Limit the provision of service to the jurisdictional boundaries of the city. The PCS adds that service can be provided to individuals within the "service area boundary" of the cities, and existing customers of the service as of April 1, 2011 provided that contracts outside the service area is subject to public bidding upon expiration. The "service area boundary" is the following:
 - For MI-Connection – the area designated in the initial notice of franchise, and the contiguous area where the agency is offering service as of the effective date of this act connecting the cities of Davidson and Mooresville with areas set forth in the initial areas of franchise.
 - For the city of Salisbury – the cities of Salisbury, Spencer, East Spencer, Rockwell, Granite Quarry, and the corridors between those cities.
 - For all other cities and joint agencies – the area designated in the map filed with the notice of franchise.
- Prohibit the use of the city's authority to require individuals or developments to subscribe to the communications service.
- Provide nondiscriminatory access to other service providers to the city's rights-of-way, poles, or conduits. The PCS removes the term "other distribution facilities."
- Prohibit advertisements of the city-owned communications service on PEG channels of competing providers. The PCS clarifies that advertisements on PEG channels are prohibited if the channel is required to be carried by another service provider. Prohibit the use of funds not allocated to the communications service for advertisement.
- Prohibit the subsidization of the communications service with other revenue. **This provision does not apply to a city-owned communications service that was provided as of January 1, 2011.**
- The service must not be priced below the cost of providing the service. The cost of providing the service must include the cost of capital components that would be equal to the cost of capital components a private provider would incur and an amount equal to all taxes a private provider would pay. **This provision does not apply to a city-owned communications service that was provided as of January 1, 2011.**
- Remit to its General Fund an amount equal to all the taxes and fees a private provider would pay if the private provider supplied the service. **This provision does not apply to a city-owned communications service that was provided as of January 1, 2011.**

Cities that choose to sell or discontinue a city-owned communications service would not be required to hold a referendum prior to sale or discontinuance of the service.

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Exemptions: The bill provides the following exemptions:

- A city that provides communications services within its jurisdictional boundaries for the city's governmental purposes is exempt from the provider requirements, limitations on installment purchase contract financing, and requirements of payments in lieu of taxes. The PCS clarifies that this exemption also applies to intergovernmental data sharing.
- The provision of communications services in an area that has been established by order of the Utilities Commission to be an "unserved area" are exempt from the provider requirements, public hearing requirements, limitations on installment purchase contract financing, and requirements of payments in lieu of taxes. For the purposes of this determination, unserved area is an area in which 90% of the households have no access to high-speed internet, or only access to high-speed internet from a satellite provider.

The PCS exempts city-owned communications service provided as of January 1, 2011 from all of the remaining provisions of the bill.

Public Hearings: Prior to offering communications services, cities will be required to hold at least 2 public hearings for comment on the service. The cities are required to provide notice for the hearings in the local newspaper and with the Utilities Commission. Private communications providers must be allowed to participate in the hearings. Feasibility studies, business plans, and public surveys for the communications service are deemed public records and must be available to the public prior to the hearings. The PCS provides that the public hearing requirement does not apply to the repair or upgrade of an existing service.

Financing: Cities and joint agencies would be prohibited from using installment purchase contracts and certificates of participation to finance a communications network. This prohibition would not apply to repairs or improvements of an existing system. A new provider can finance a communications system with certificates of participation if it holds a special election.

Taxes, Payments in Lieu of Taxes: Cities and joint agencies operating a communications service would be required to make the following payments in lieu of taxes:

- To the applicable county, a payment of the amount of property taxes that would be due if the communications system was subject to the property tax.
- To the State, an amount set by the Department of Revenue that approximates the amount of income, franchise, vehicle, motor fuel and other taxes that would be due if the communications system was subject to these taxes. The PCS provides that cities subject to this provision must provide information to the Department of Revenue necessary for the calculation of the payment. The PCS also provides that the amount of the assessment is set by January 1 of each year, and due by March 15 of each year.
- Cities and joint agencies would not receive a sales tax refund for purchases related to the provision of the communications service. The PCS makes a conforming change to Chapter 105 regarding the sales tax refund.

Added in the PCS – Public-Private Partnerships for Communications Service: The PCS provides that cities must solicit proposals from private providers before constructing a communications network.

House PCS 129

Page 4

Designation as Public Utility: Cities and joint agencies that provide telephone service would be included in the term "public utility" as defined by Chapter 62 of the General Statutes. Telephone service provided by these entities would be subject to oversight by the Utilities Commission. The PCS clarifies that this section does not expand the regulatory authority of the Utilities Commission in regards to telephone service.

Additional Financing Requirements: For review by the Local Government Commission (LGC) of an application for financing the construction, operation, expansion, or repair of a communications system by a city or joint agency, the following apply:

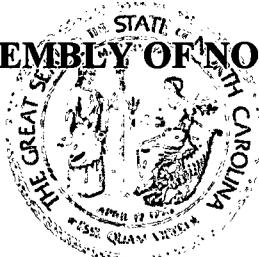
- The public hearings required by the bill must be held before an application for financing may be submitted.
- A copy of the application must be given to private communications providers that serve the city and areas adjacent to the city. The LGC must accept written and oral comments from private providers as a part of the application review.
- The LGC must consider and make written findings regarding the reasonableness of the revenue projections of the service in light of the current and projected competitive environment, the impact of innovation, and the level of community support for the project.

Added in the PCS – Revenue Bonds: The PCS provides that cities may issue revenue bonds to provide a cable television system.

EFFECTIVE DATE: This act is effective when it becomes law and applies to the provision of communications services by cities or joint agencies on or after that date.

H129-SMTD-11(CSTDx-8) v5

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: March 16, 2011

TO: House Finance Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: House Bill 129 (Unknown Edition)

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES *No Fiscal Impact on Current Municipal Broadband Systems*
 Payment in Lieu of Taxes Estimated at \$18.98 per Subscriber for Future Systems

EXPENDITURES

POSITIONS (cumulative):

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** North Carolina Department of Revenue; North Carolina Department of State Treasurer, Local Government Commission

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: House Bill (HB) 129 implements new regulatory, public information, and financial requirements for cities and joint agencies providing communication services to the public for a fee. Four cities/joint agencies, Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson

(Greenlight), Mooresville-Davidson (MI Connection), currently offer municipal broadband services that could fall within the purview of HB 129. The bill, however, specifically exempts these groups by exempting entities providing telecom services prior to January 1, 2011.

The new regulations set forth in HB 129 require that future municipal broadband companies:

- Comply with all State, local and federal laws and regulations adhered to by private communication companies.
- Establish separate enterprise funds for the communications service, and conduct annual audits.
- Limit the communication services to the jurisdictional boundaries of the city.
- Eliminate the practice of requiring individuals or developments subscribe to municipal broadband services.
- Provide other service providers with access to the city's rights-of-way, conduits, and other distribution facilities.
- Prohibit advertisements for municipal broadband on the public, education, and government (PEG) channels of competing providers.
- Limit the revenue used to finance communication services to the income generated from the service.
- Price municipal communication services a rate equal to the cost of providing the service. The price should include adjustments for capital costs and taxes incurred in the private sector.

The new public information standards set forth in HB 129 require that municipal broadband companies:

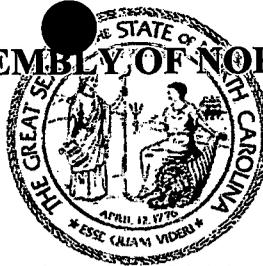
- Hold two public hearings prior to offering services.
- Provide notice for the public hearings in local newspaper and with the Utilities Commission.
- Provide the public with all feasibility studies, business plans, and surveys prior to the hearings.
- Allow private communications providers to participate in the hearing.

The new financial standards set forth in HB 129 require that municipal broadband companies:

- Eliminate the practice of using certificates of participation to finance the construction of a system.
- Make payments in lieu of property taxes to the county/counties in which the services are contained.
- Remit to the State payments in lieu of taxes (PiLoTs), an amount set by the Department of Revenue equivalent to the income, franchise, vehicle, motor fuel, and other taxes due if operating as a private enterprise.

ASSUMPTIONS AND METHODOLOGY: Should HB 129 be enacted, newly operational municipal broadband companies will be required to make payments in lieu of taxes (PiLoTs) of roughly \$202,000 annually. PiLoTs will serve as a significant barrier to entry for municipal broadband companies. The PiLoT estimates are based on information provided by the North Carolina Cable Telecommunications Association. According to the association, private telecommunication providers pay roughly, \$19 per subscriber in State and local taxes. Table 1 provides a breakdown of the estimated state and local taxes paid by revenue type.

GENERAL ASSEMBLY OF NORTH CAROLINA



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Table 1: Payment in Lieu of Taxes for Public Entities Providing Communication Services

Tax	Description	Estimated Tax Revenue per Subscriber
Sales and Use Tax	Governmental entities would no longer be eligible to receive sales and use tax refunds under G.S. 105-164.14(c) for tangible personal property utilized in providing communication services.	\$2.07
Corporate Income Tax	Income generated from providing communication services would no longer be eligible for the income tax exemption for governmental units provided under G.S. 105-103.11, but subject to the 6.9% corporate income tax as described in G.S. 105-103.3.	\$2.91
Franchise Tax	G.S. 105-122 levies a franchise/privilege tax on corporations at a rate of \$1.50 per \$1,000 on one of three bases: 1) the profits apportioned to the State, 2) 55% of the value of real property owned in the state and subject to local property tax, 3) the book value of real and tangible personal property less any debt used to acquire real property in the state.	\$2.21
Property Tax	Government entities would be required to remit taxes on real property (buildings, land, etc.) used in conjunction with providing communication services.	\$11.79
Total Tax Due Per Subscriber		\$18.98
Source: North Carolina Cable Telecommunications Association; Time Warner Cable		

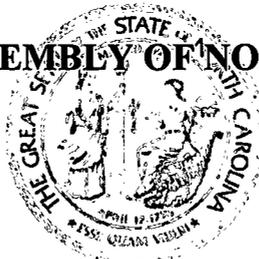
The four public broadband enterprises operating as of January 2011, Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson (Greenlight), Mooresville-Davidson (MI Connection), jointly serve a region covering 42,761 households. Table 2, provides a snapshot of the regions in which these systems operate, years of operation, number of households served, as well as income and assets for the 2010, fiscal year. As illustrated, only one system, CoMPAS, in Morganton, operated at a net profit during the 2010 fiscal year. CoMPAS began providing telecommunication services in 1992, financing the system's construction through debt and revenue from other utility services. The city upgraded the system in 2004 using funding provided through low interest debt called certificates of

participation (COPs). Morganton made its final COPs payment in December 2010 and expects to generate roughly one million dollars in net income annually in future years.

Table 2. Financial and Customer Data on Existing Municipal Broadband Providers, 2010

Provider	City Detail	Length of Operation	Certificates of Participation (\$ In Millions)	Number of Households in Service Area, 2010	2010 Net Income/(Loss) (\$ In Millions)	Assets (\$ In Millions)	
						Real Property (Buildings, Land)	Tangible Personal Property
Greenlight	Wilson, Wilson County, NC	2.8 years	31.80	19,799	(1.37)	0.93	8.47
Fibrant (2)	Salisbury, Rowan County, NC	3 months	29.10	7,562	(0.45)	4.59	
MI Connection (3)	Mooresville-Davidson	3.1 years	79.65	9,000 (actual); 13,489 (projected)	(5.60)	0.65	0.701
CoMPAS (4)	Morganton, Burke County, NC	Began in 1992 (infrastructure financed through utility system revenue), system upgrade occurred in 2004	7.32	6,400	0.2	Owned by Burke County	
Total			\$147.87	42,761	\$ (7.22)		

GENERAL ASSEMBLY OF NORTH CAROLINA



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SOURCES OF DATA:

North Carolina Department of Revenue and North Carolina State Treasurer, Local Government Commission

(2) Numbers represent projected information gathered through the Local Government Commission, Certificates of Participation Application, City of Salisbury, and Annual Financial Report City of Salisbury, "Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2010." Available at: <http://www.ci.salisbury.nc.us/finance/audit/2010/Supplemental.pdf>.

(3) Numbers represent projected information gathered through Local Government Commission, Certificates of Participation Application, City of Mooresville, and Annual Financial Report for MI Connection;

(4) Numbers represent projected information gathered through Local Government Commission, Certificates of Participation Application, City of Morganton, and Annual Financial Report for City of Morganton, and conversations with Bill Harkins (CoMPAS General Manager)

TECHNICAL CONSIDERATIONS: None



Town of Mooresville
NORTH CAROLINA

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March 22, 2011

The Honorable Tim Moffitt
NC House of Representatives
16 West Jones Street, Room 1025
Raleigh, NC 27601-1096

Dear Representative Moffitt,

I want to share with you information about a topic discussed in the Finance committee last week that will be on the agenda again this week – municipal broadband.

In Mooresville, we made the decision to offer broadband to our citizens and serve them only after the private sector was unwilling – we met with them and asked them to do so – that would have been our preference. In fact, we are still open to partnering with the private sector on our system and our goal is to one day return our broadband system to the private sector, which can only be done once the debt is paid off. Today, the result is that everyone in our town has equal access to high speed broadband. All of our citizens are served.

While I was not able to attend the Finance committee last week, I was very pleased to see the committee pass Representative Warren’s amendment to fully and completely exempt us from the bill, which we believe is the right thing to do. I ask for your continued support of Representative Warren’s amendment. We are very appreciative of the time spent by many other members on this issue.

While it may make sense to apply the new regulations and provisions in the bill (H 129) to new systems moving forward as they can include the provisions in their business plan and models and then determine if they should move forward with the investment, applying them after the fact to community systems that have already issued debt is not only unfair, but is also dangerous as it jeopardizes the ability of these entities to repay their debt and be successful. This has been confirmed to us by the Local Government Commission and our own legal and financial staff.

Thank you for your continued support of Rep. Warren and a full and complete exemption from the bill for existing systems.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Montgomery". The signature is written in a cursive, slightly stylized font.

Chris Montgomery, Mayor

Chair, members of the committee; I'm Arek Kempinski, Orange County, Cedar Grove.

I ask that you vote NO to House Bill 129.

Our State's official broadband map advertises that our community should have access to Time-Warner, CenturyLink, and Verizon.

In error <?>, these companies told you, the e-NC authority, and the FCC that they provide broadband service to our community.

Time-Warner and CenturyLink told us <!>, that they **do not**, and **have no plans to** <!>, serve our community.

Verizon provides wireless service, but the access speeds are less than **10% of what e-NC advertises**.

We pay full price for this "broadband" service, but get dialup speeds, or NO service at all!

With all the **flawed** information, we understand your confusion, but this is reality for us <!> and the half of the communities in the State.

Without broadband;

We **cannot access** government services, development permits, job applications, or education programs,

We **cannot compete** in an online marketplace, since we **cannot access** that marketplace,

We **cannot even rely** on contemporary phone service to make emergency calls for police, fire, or ambulance!

According to one ex-CenturyLink official, the company could provide internet service in Northern Orange County, if they only purchased a **17-hundred dollar** piece of equipment and upgrade what they installed ¾-mile from my house in late 1990s - but they won't do it<!> – they rather spend it on these lawyers here<!>, and fight the interests of the very constituents you are here to represent.

Broadband is the infrastructure we need <!> to access basic: health, safety, economic, and social services;

So, **why are you still debating** <?> whether we have the right <?> to access these basic services?

Please, **just stand aside**, and let our communities deliver the services that You, Time-Warner and CenturyLink will not provide. Please **don't worry** about the profits of multi-billion-dollar out-of-state companies; But,

Do <!>, be concerned <!>, that we might not be able to make an emergency call when we need to.

Do <!>, **be concerned** <!>, that my wife's business struggles to get adequate internet service, on top of dealing with the real economic challenges.

Do <!>, **send a message** <!>, that you support efforts of communities and business actually located in this State.

Vote NO to HB129!

REMARKS OF TOM VANDERBECK**TO FINANCE COMMITTEE****MARCH 23, 2011 – 8:30 – ROOM 544 - H129 ANTI-LOCAL BROADBAND BILL**

GOOD MORNING. MY NAME IS TOM VANDERBECK. I AM A FORMER COUNTY COMMISSIONER, CURRENT MEMBER ON e-NC'S GOVERNING COMMISSION AND I SPEAK TODAY AS A CHATHAM COUNTY RESIDENT.

I AM HERE TO TELL THE BROADBAND STORY OF OUR RURAL RESIDENTS AND BUSINESSES -- WHICH IS A VERY DIFFERENT STORY FROM OUR URBAN AREAS.

CHATHAM COUNTY SITS DIRECTLY WEST OF THE RESEARCH TRIANGLE PARK AND SOUTHWEST OF CHAPEL HILL. WHILE WE REMAIN A FARMING COMMUNITY, WE HAVE WATCHED THE SIGNIFICANT DECLINE OF OUR POULTRY INDUSTRY. OUR 20,000 HOMES ARE SPREAD OVER A 700 SQUARE MILE DISTANCE.

BECAUSE OF OUR LOW HOUSEHOLD DENSITY, AND LOWER INCOMES, ESPECIALLY IN THE WESTERN PORTION OF THE COUNTY, SIGNIFICANT PORTIONS OF THE COUNTY ARE UNSERVED OR UNDERSERVED BY PRIVATE SECTOR BROADBAND PROVIDERS: TIME WARNER CABLE, CENTURYLINK AND CHARTER.

AS A RESULT, OUR PUBLIC SCHOOLS ARE REPORTING THAT PARENTS ARE SITTING IN THE SCHOOL PARKING LOTS SO THEIR KIDS CAN GET ACCESS TO BROADBAND TO DO THEIR HOMEWORK.

ANOTHER PITTSBORO RESIDENT REPORTED THAT HE HAS TO DRIVE HIS CHILD 10 MILES TO A FIND A BROADBAND CONNECTION TO DO HIS HOMEWORK. [CENTURYLINK TOLD HIM THEY HOPE TO GET HIM DSL BY 2012.]

ANOTHER RESIDENT WAS TOLD BY TIME WARNER CABLE THAT HE AND HIS 12 NEIGHBORS WOULD HAVE TO PAY THEM \$50,000 TO HAVE CABLE MODEM SERVICE INSTALLED. THIS WAS ESPECIALLY DISCOURAGING BECAUSE THESE RESIDENTS KNOW THERE IS A HIGH-END GOLF COMMUNITY ONE MILE AWAY THAT HAS THE FULL TRIPLE PLAY OF SERVICES

CELL SERVICE IS EQUALLY NON EXISTENT OR SPOTTY. THE LOCAL LIBRARIAN SAID SHE HAS TO CALL HER HUSBAND BEFORE SHE GETS TO A CERTAIN POINT ON 87 NORTH ON HER WAY HOME TO ALAMANCE, BECAUSE CELL SERVICE CUTS OUT ON HER WAY HOME. I'D SAY THAT IS A PUBLIC SAFETY ISSUE. SIMILARLY, EMPLOYEES FROM A NEW CANADIAN-BASED WOOD PRODUCT PLANT NOW LOCATED IN OUR MONCURE AREA HAVE TO WALK OUTSIDE TO A

FAR CORNER OF THEIR OF CAMPUS TO USE THEIR CELL PHONES. THAT'S NOT GOOD FOR BUSINESS.

ESPECIALLY BECAUSE OF OUR LARGE DISTANCES, ACCESS TO BROADBAND SERVICES IS ESSENTIAL FOR CHATHAM TO ACCESS MODERN EDUCATION, HEALTHCARE AND ECONOMIC OPPORTUNITIES.

H129, AS ORIGINALLY WRITTEN WITH ITS 7 PAGES OF REGULATIONS, MAKES THE PRIVATE COMPANIES THE ONLY OPTION WHEN YOU WANT TO BUY BROADBAND SERVICE -- SERVICE THOSE PRIVATE COMPANIES HAVE ALREADY TOLD MUCH OF OUR COUNTY WE CAN'T HAVE. WITHOUT AN EXEMPTION FOR UNDERSERVED AREAS, CHATHAM WILL EFFECTIVELY BE PREVENTED FROM PARTNERING WITH THE PRIVATE SECTOR, WHICH IS OUR FIRST PREFERENCE, OR PARTNERING WITH OUR TOWNS, TO BRING OUR BUSINESSES AND RESIDENTS THE ESSENTIAL INFRASTRUCTURE THEY NEED TO LIVE AND FUNCTION IN OUR COUNTY. OUR RESIDENTS ONLY OTHER CHOICE IS TO MOVE OUT OF THE COUNTY.

WE DON'T WANT TO COMPETE WITH TWC OR CENTURYLINK WHO ARE MULTI-BILLION DOLLAR COMPANIES BY THE WAY, -- WE JUST WANT OUR BUSINESSES AND STUDENTS TO BE ABLE TO COMPETE IN THIS GLOBAL ECONOMY.

H129 HURTS OUR RURAL ECONOMIES AND WILL MAKE OUR CHILDREN DIGITAL-HAVE NOTS. PLEASE VOTE NO ON THIS BILL.

THANK YOU FOR LISTENING.

My name is Mark Turner and I'm a technology advocate from East
Raleigh. I

want to share a true story that will show you what I think House Bill
129 is about and why you should oppose it.

On a recent Sunday I took my family to the local library. While my kids
browsed for books, I overheard a mother and her son, about 10 years
old,
pleading with the librarian. The boy had a school project to do but all
of
the library's computers were full, and the librarian had to turn him
away.

I really felt for this mother. All she wanted, was for her son to get
some time

on the Internet, so he could get his homework done. It was clear by
the looks on their faces that they had just missed their last chance. I
will never forget how defeated that young man looked.

I knew right then how fortunate, I am to have broadband available and
to be

able to afford it. Many folks in our state, especially folks in rural areas,
either can't get broadband or can't afford it. These are honest, hard-
working folks like you and me, and these are the folks who will be hurt
most by this bill.

Now, as political leaders y'all are great role models and I'm sure you get invited all the time to speak to school kids. The next time you're out talking with our leaders of tomorrow, ask to see their encyclopedias. Chances are they won't have any. The Internet is such a part of today's education that kids do almost all of their research using Internet sources. But, there are almost never enough computers in the classroom to go around, so any kid without broadband connection at home is falling behind.

So I ask you today to think, about the many families in our state, like that family in the library, who can't get Internet time at their library, or

at their school, and for whatever reason, can't even get it home! This bill will take away our cities' ability to serve these folks, and if the cities can't serve them then no one else will.

Please don't shut the door on these folks and turn them into second-class citizens. Please vote no on this bill. Thank you.

Testimony of Timothy Lee, Center for Individual Freedom Vice President of Legal and Public Affairs

Before The North Carolina House Finance Committee

H.B. 129 – Level Playing Field/Local Government Competition

March 23, 2011

Chairwoman Howard and Members of the Committee: My name is Timothy Lee, and I am the Vice President of Legal and Public Affairs for the Center for Individual Freedom (“CFIF”), a constitutional and free-market organization with more than 300,000 activists and supporters nationwide, including more than 4,200 activists here in North Carolina. It is a pleasure to testify before you today in support of HB 129, and I thank you very much for the opportunity.

The issue presented by HB 129 is not whether broadband expansion is a good thing. On that we all agree. The issue is instead whether, given today’s realities, government should be in the business of operating communications networks, competing with private investment and creating even more debt for which struggling taxpayers will ultimately be liable.

By any meaningful measure, the history of public broadband is a history of failure.

From Taipei, Taiwanⁱ to Sydney, Australiaⁱⁱ; from Chicago, Illinoisⁱⁱⁱ, to Houston, Texas^{iv}; from Burlington, Vermont^v to Marietta, Georgia^{vi}; and even here in North Carolina^{vii}, we are unaware of a single instance in which a public broadband project has even managed to break even financially.

Regardless of one’s position on this bill, the facts speak for themselves.

While every public network begins with the sincere belief that “this time is different” and “we can make it work here,” public broadband projects ultimately end in financial failure, eradicate good-paying private-sector jobs, deter private investment and delay or outright stifle innovation.

North Carolina localities such as Salisbury (Fibrant) or Davidson and Mooresville (MI-Connection) are currently providing Internet service to their citizens, but at what cost? Mooresville and Davidson face millions of dollars in debt due to their purchase of MI-Connection Communications System in 2007. According to a Davidsonnews.Net report, “this year’s system budget calls for Davidson and Mooresville to kick in a total of \$6.46 million to help pay this year’s costs -- \$4.44 million from Mooresville and \$2.02 million from Davidson.”^{viii} And, according to MI-Connection’s own debt payment schedule contained in a fiscal year 2009-2010 audit, it will require over \$7 million in debt payments for each of the next five fiscal years, starting in 2011.

Furthermore, the private investment in private high-speed networks is enormous -- in the tens of billions of dollars annually.^{ix} When government moves into a competitive stance or subsidizes private competitors, it's not only unfair, in the end it's highly destructive.

It is unfair because private networks are extremely expensive, and even though all public networks eventually fail, they temporarily compete with existing networks, which stand to lose business, shed employees and send the signal to the market that investments in other such networks is a bad bet, since government may move in to compete.

Those who conveniently vilify existing network providers often fail to consider that the shareholders who own these companies include retirees and even public pension funds, not some select few highly paid CEOs. Additionally, private networks employ North Carolinian workers, who stand to lose their jobs due to temporary market disruptions and displacements -- this, at a time when unemployment remains unacceptably high.

Government "competition" is especially damaging to private investment in rural networks. After all, what investor in his or her right mind would risk capital in a rural network -- where profit margins are already very thin -- if a government backstopped by taxpayers suddenly moves in on that business, or subsidizes a competitor? The likely result is that the flow of private investment in rural networks will dry up quickly.

So, in an effort to "improve" rural North Carolinians' broadband access, the government may in fact damage rural broadband badly, leaving fewer people served.

Finally, private broadband providers are continually upgrading their networks to meet consumer demands and support rapid innovation over their networks. One need only turn on his or her television -- regardless of the time of day -- to see ads for 3G and 4G wireless -- "G" standing for "Generation." Advertisements for faster and faster service abound. The market does not stand still.

To illustrate, consider where we were just 5 years ago. Systems just five years old are already largely obsolete. Do municipalities wishing to erect public networks have a plan to stay on the cutting edge? Or are planned public networks based on a snapshot of the current market that is certain to be outdated in a few short years? Again, in every case across the country that my organization has studied and reviewed, the latter is true. Making matters worse, taxpayers invariably get left holding the bag, ultimately bailing out a public network that quickly became obsolete.

Accordingly, what may currently seem like high-speed broadband will seem slow in the near future. Not only must any government system struggle to break even, it must somehow generate sufficient revenue to maintain, upgrade and improve those networks.

This is something that government-operated networks have failed every time to achieve.

For these and other reasons, H.B. 129 is a commonsense bill that will help preserve jobs, protect taxpayers and ultimately result in private network expansion and improvement. Federal, state and local governments already have enough responsibilities, and face enough budgetary difficulties, without exacerbating them through counterproductive endeavors better addressed via private investment and innovation.

Thank you again for this opportunity to testify today.

ⁱ Jim Huang, *Charting a Wireless Course*, TAIWAN REVIEW, December 1, 2007 (<http://taiwanreview.nat.gov.tw/ct.asp?xItem=24945&CtNode=128>).

ⁱⁱ Asher Moses, *Free Sydney WiFi Plan Bites the Dust*, THE SYDNEY MORNING HERALD, May 1, 2008 (<http://www.smh.com.au/news/technology/free-sydney-wifi-plan-bites-the-dust/2008/05/01/1209235036576.html>).

ⁱⁱⁱ *Chicago Opts Out of Municipal WiFi Network*, CHICAGO TRIBUNE, August 28, 2007 (<http://www.cedmagazine.com/Chicago-opts-out-muni-WiFi.aspx>).

^{iv} Alexis Grant, *Penalty Fee Lets White Revamp City's WiFi Plan*, HOUSTON CHRONICLE, December 1, 2007, (<http://www.chron.com/dispatch/story.mpl/tech/news/5352555.html>).

^v Dave Gram, *Vermont City Stumbles in Effort to do Telecom Itself*, Huffington Post, December 5, 2010 (<http://www.huffingtonpost.com/huff-wires/20101205/us-troubled-telecom/>).

^{vi} Frank Rizzo, *Cities Shouldn't Run Broadband*, ATLANTA JOURNAL-CONSTITUTION, March 26, 2009 (<http://www.ajc.com/services/content/printedition/2009/03/26/rizzoed0326.html>).

^{vii} David Boraks, *MI-Connection Audit is 'Clean'; Board Discusses Pricing*, DAVIDSONNEWS.NET, November 19, 2010 (<http://davidsonnews.net/2010/11/19/mi-connection-audit-is-clean-board-discusses-pricing/>).

^{viii} *Id.*

^{ix} *US Wireless Industry Broadband Adoption and Use*, CTIA – The Wireless Association, August 19, 2009 (http://www.broadband.gov/docs/ws_adoption_fixed/ws_adoption_fixed_guttman.pdf).

POLICY PAPER

March 2009
No. 0309

Published by AMERICANS FOR PROSPERITY

Municipal Broadband's Record of Failure *A Profile in Market Intrusion*

James Valvo
Assistant for Policy and Public Affairs

The recently passed American Recovery and Reinvestment Act included over \$7 billion to stimulate broadband infrastructure development and Internet demand. The legislation intends for the funds to help both unserved and underserved areas. Unserved areas include rural communities with no existing service provider, while underserved indicates areas with low capacity or exceedingly low enrollment rates. This bill must not be hijacked to redirect funds into markets that already contain multiple private Internet service providers.

Before billions of taxpayer dollars are spent on municipal broadband projects under the guise of economic stimulus, we should consider the results of recent projects that have already been undertaken. The results, almost without exception, have been overwhelmingly negative.

The complexity of public-private structures that are employed in municipal broadband projects introduces a bureaucracy and an inertia that makes these systems poor competitors with commercial services, leading to taxpayer dollars being squandered on subsidized systems. On the whole, such hybrid relationships have not

performed as advertised.

Conversely, the private sector continues to rapidly develop new broadband services that offer higher quality and innovative services at competitive prices. Since 1996, more than \$146 billion has been reinvested by the cable industry to expand broadband services. Rapid technological advances by wireless providers has improved the speed and coverage of wireless data services, reducing the demand for WiFi services overall and even further with municipal providers in particular.

The stated goal of "free" or low-cost municipal service is to bridge the digital divide and provide poor citizens with access to the online world. However, the private sector, including charity and non-profit organizations, has proven far more adept at solving these types of issues in other areas and Internet service will certainly be no exception; see the Philadelphia example below.

Easily the biggest problem with municipal projects is that they commit taxpayer money to projects that nearly always run over budget for construction, are not financially sustainable once they are built and rely on future subsidies to provide so-called "free

Private "investors will finish building the network ... and plan to work with nonprofit organizations ... to offer services to people who don't have Internet access."

IDG News Service, 06/17/2008

service." As is always the case when governments enter the free market, distortions in price, customer service and availability hinder competition and ruin what could otherwise be a profitable venture.

This paper will examine the recent history of local governments attempting to subsidize broadband access in the face of private sector competition. This document is a compilation of available public information regarding the most significant municipal broadband projects. We examine large and small markets domestically as well as international examples in Asia and Australia.

The result of our investigation is that taxpayer-subsidized municipal broadband projects are nothing more than a record of failure.

Domestic Case Studies

Philadelphia, Pennsylvania

The Wireless Philadelphia project is a good example of how technological innovation outstrips the languid pace of bureaucracy. In 2005, the project was initially hailed as the nation's most ambitious municipal effort to provide free citywide coverage. Philadelphia planned to use "refurbished gear [that] could build the entire project with 'non-city' resources."¹ While the city struggled to get the system in place, the private sector forged ahead with innovation; in three short years the entire project was out of date and the private partner EarthLink withdrew saying, "making significant further investments in this business could be inconsistent with our objective of maximizing shareholder value."² Additional complications with the project include:

- By 2007, the project had already run 30% over budget, while corporate partner EarthLink massively scaled back its scope.³

- As many critics had warned, EarthLink had to deploy 42 Wi-Fi access points per square mile, twice what city planners had predicted.⁴
- The New York Times reported on the unrealistic ambitions and technological glitches that are endemic when inexperienced bureaucrats venture into the technological marketplace.⁵
- In June 2008, Philadelphia Mayor Michael Nutter announced that a group of private investors were saving the project, and would complete the city network in coordination with non-profit organizations to deliver free services to those who cannot afford them, focusing on fostering adoption and getting hardware, support and training to people who need it.⁶

The Philadelphia experience should provide a clarion example to those who insist on putting government planning ahead of private sector development. In this case, the citizens of Philadelphia were lucky because the private sector ultimately rode to the rescue and saved the project.

Chicago, Illinois

In contrast to the Philadelphia project, Chicago's foray into the municipal broadband arena was not plagued by technological inefficacy but instead fell prey to market cost structures. The city government launched an initiative to bring in private companies to compete for the citywide project. However, by the time the bidding process had ended the private Internet service providers in the area were already effectively serving the demand. The Chicago Tribune profiled the collapse of the project this way, "technology is advancing and the cost of online access for consumers is declining so dramatically that Chicago has other avenues to promote more use of the Internet."⁷

With EarthLink rethinking their

Houston provides "another case where the resulting municipal system turns out to be nothing like what was promised." - Reason Foundation, 11/12/2008

"... 24 new customers per month, far short of the number that the city needs to make the wireless Internet utility service financially viable." - Lompoc Record, 4/9/2007

municipal broadband activity and other bids evaporating due to price point constraints, AT&T and Sprint Nextel are both developing private projects to serve the Chicago market now that it is free of government distortion.

Houston, Texas

As EarthLink's business model fell apart due to untenable municipal cost structures, the company was forced to pay penalties for the contracts it was unable to service, once such community was Houston. An August 2007 article in the Houston Chronicle profiled the delays that the city was experiencing due to lack of interested customers. The piece quoted Craig Settles, a municipal Wi-Fi consultant, who said, "All of the numbers are pointing toward the consumer being a weak part of the financial foundation." Even with a \$2.5 million commitment from the city to serve as an anchor tenant to offset the expected low customer demand, the project was deemed unviable.

The company instead decided it was better fiscally to pay a multi-million dollar fine to walk away from the unsound investment. The city is now using the \$3.5 million received from EarthLink upon cancellation of the project to fund hotspots in low-income areas, which will be used exclusively for publicly-funded computers in classrooms, community centers, and other public programs.⁸ These city networks will be password protected and will not be available to the general public. This is clearly not in line with the original intent.

Lompoc, California

Large cities are not the only ones who have tried unsuccessfully to manage municipal broadband as though it were a utility. Even on a small scale, like the one implemented in Lompoc, California, cities are running into

service issues. The private sector thrives because it has a vested interest in providing a high-quality, customer driven product. Municipalities fail to this effect because they are exercising a near-monopoly funded through taxes that are wrested from its citizens.

Lompoc ran into this harsh reality when it spent nearly \$3 million on a citywide municipal wireless network and only signed up 281 customers in the network's first seven months of operation.⁹ The city has reported that it needs more than 4,000 paying customers to break even, with Lompoc Utilities Director Ron Stassi admitting that that figure may be too low because the city slashed rates trying to attract more customers. It is unknown if they will ever reach the needed penetration, in the mean time taxpayers are subsidizing the venture. Stassi continued by saying "With WiFi we're in a competitive environment ... it forces us to have a high concentration on customer satisfaction to keep customers from going to a competitor." A fight the city is currently losing.

Lompoc has also been plagued by poor reception on the wireless network—a problem that is indicative of the inexperience that municipalities are grappling with when trying to enter the market. The city's Wireless Services Administrator Richard Gracyk said "he hadn't realized how important the back-end elements were to the whole picture."¹⁰ The city has spent \$10,676 per subscriber to provide service, using currently available connection figures to get the poor performance that is making attracting and retaining customer difficult. In July 2008, Lompoc switched to a new gateway server built by Aptilo Networks. The new server provides back-end upgrades that improve customer service and network troubleshooting.¹¹ This transition has added cost to the project and further pushed back the breakeven point.

The odds of Portland meeting its targeted 90% coverage are "one in a billion." – Willamette Week Online, 3/29/2007

Portland, Oregon

Lompoc is not the only city to have poor quality connections doom their municipal Wi-Fi dreams. According to a report by Portland's Personal Telco Project, a nonprofit committed to building a community-supported wireless network, the city's system has failed to meet the benchmark of 90% coverage within 500 feet of a Wi-Fi access point. Instead the plan reaches just 50%.¹² The study's authors estimated the odds of meeting the 90% threshold at "one in a billion." The spotty coverage has put service out of reach for many would be users, dampening advertising revenue on the ad-supported free-of-charge system, forcing Portland's corporate partner to shut down the service.

The Willamette Week Online reported that "Metro-Fi began establishing the network in December of [2006] and is responsible for its complete roll-out. The network is an ad-supported, free-of-charge system and is not subsidized by tax or levy." However, this light-duty network, which is that only type that can be supported without tax dollars, is the cause of the problems with establishing service.

In April 2008, MetroFi, contracted to develop the network, stated that only fifteen to twenty percent of the system was operational, and that it did not have the necessary funds to complete the project.¹³ The company returned to the city seeking more funds but was turned away, marking an end to the saga. Officials have given the company that developed the city's failed municipal WiFi until the end of the year to remove the equipment it installed on city utility poles.¹⁴

MetroFi was also forced to discontinue service in Foster City, California effective June 20, 2008 for similar reasons.¹⁵

Ashland, Oregon

When private companies have business models that do not perform, they go out of business as we have seen in the aforementioned examples. However, when cities engage in incursions into the marketplace that go sour, they turn to taxpayers to bail them out. Ashland, Oregon is once such example. In early 2007, when the city folded its cable TV business, which was financed by taxpayer bonds, it incurred a \$15.5 million deficit. With interest on the debt mounting, the city plans to subsidize the payments using revenues from other city departments. Some city officials are worried that these cross subsidies will result in electric and other utility rate hikes, while others are considering property tax hikes to make up the difference.¹⁶

St. Cloud, Florida

Even when municipalities do get networks up and running, the service they provide is often so far below the industry standard that citizens would rather pay the higher price than suffer through government mismanagement. In St. Cloud, Florida, many educators and residents in the 28,000-person Orlando suburb are still paying to use their own internet service providers, as dead spots and weak signals keep them offline and force engineers to retool the free system.¹⁷

An Associated Press story profiled a disappointed St. Cloud resident Joe Lusardi who is frustrated with the city's administration of the system. Lusardi said he was told that he had to pay \$170 for a special wireless bridge to access the "free" network.

From the AP article:

At first, a desktop computer in Lusardi's house could use the Wi-Fi network with no problem, but his laptop would only work outdoors.

"It'll probably be a major challenge for some time until the technology is such that it works properly."
- St. Cloud Mayor Donna Hart, eSchool News 6/15/2006

"The experience is that large-scale Wi-Fi projects have proved ineffective at meeting the needs of local businesses and the community. Most schemes sponsored by overseas governments have collapsed and require further funding to the tune of tens of millions of dollars ... I cannot expose taxpayers to that sort of risk."
- Eric Roozendaal, Member New South Wales Legislative Council, The Sydney Morning Herald, 5/1/2008

Even then it was too slow and unreliable, so he kept his \$20 per month Sprint DSL service. Now the desktop doesn't even work, and he's completely abandoned the idea of dropping his pay service and using the network. "

It's just total frustration," Lussardi said. "I'm going to stay with the DSL and just forget it, because I don't think it's going to work. Very few people are going to use it, and they're going to say it's underutilized and they're going to shut it down.

Additionally, after spending \$2.6 million to establish its poorly functioning public WiFi network, \$236,920 more taxpayer dollars were requested from the city in order to bring service to 14 neighborhoods that "slipped through a hole in the project."¹⁸

International Trends

Sydney, Australia

Despite a concerted effort by the local government to blanket Sydney, Australia and the surrounding areas in high-speed Internet coverage, the plan never got off the ground. In May of 2008, the Minister of Commerce announced that plans for free wireless broadband for Sydney and other major population centers had been canceled, based upon the impracticatilty of fifteen proposals to build the network.¹⁹

Taipei, Taiwan

The East Asian powerhouse has fallen victim to the same forces that have plagued American projects. Un-dependable coverage, poor customer service and inability to compete on price have all put Taipei in the same untenable position as the American cities profiled above. Competition from private companies has put the government-sponsored enterprise in jeopardy.²⁰

A 2007 report from the Taiwan Review said, about 60,000 people signed up for free subscriptions to the Wi-Fi service during the beta testing phase. But in 2006, when people started to be charged for the service, \$12 per month or \$127 per year, only a few thousand subscribers remained. Interest has grown to over 200,000, but it is still far from a break-even point in the business model, which is estimated at 500,000.²¹

Conclusion

This list of examples should serve as a cautionary tale for those designing the implementation of the broadband section of the stimulus program. Ideally, broadband services would be provided by the free market without government interference or subsidy. However, given that massive subsidies are now a reality, they should be primarily structured to encourage private Internet service in unserved rural communities. These areas are in need of service but do not have a private sector provider who will suffer from taxpayer subsidized municipal service.

A secondary priority should be underserved areas. Grants should be awarded to companies to encourage increased viability on the demand side of the equation, which has the potential to make these projects financially sustainable. However, this should not occur through the same style of so-called public-private partnerships that has produced disastrous results over the past decade.

An active government role in the broadband marketplace has produced nothing but wasted tax dollars and a record of failure.

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Renee Weaver (Rep. Howard)

From: Matt Price <admyank@gmail.com>
Sent: Tuesday, March 22, 2011 10:55 AM
To: Renee Weaver (Rep. Howard)
Subject: HB 129 Comments

Good morning Renee,

I have just completed reading through the bill, and I noticed that the cities will be required to pay the state taxes on the product.

The Cities will then tax the public for a service that is generally used for those who have technology. I want to add to this that the cities, if they decide to accept this as a method of providing services, should not be permitted to use property taxes as a method of paying for this service, however, it should be permitted that any fees (on building permits, land transfers or sales) should be used to absorb the costs.

Additionally, since information technology in respect to the costs are low compared to other aspects of the function of cities and towns, that any revenue plans going forward should be capped in a manner in which over a 5 year period, the persons who are paying for such service should pay no more than the cheapest internet access available through a provider.

Matt Price

Renee Weaver (Rep. Howard)

From: George at WEZU <ezgeorge@aol.com>
Sent: Tuesday, March 22, 2011 1:17 PM
To: Renee Weaver (Rep. Howard)
Subject: Internet

Importance: High

Hello,

My wife and I live in Roanoke Rapids. She is a teacher for Halifax Community College and I volunteer for several local community improvement groups. At A meeting last night the topic of broadband internet and it's value to rural communities was discussed. One member brought up the fact that a bill was being considered that would not allow local municipalities to own and operate a locally controlled internet service. We all agreed this would be a very bad idea and would allow large corporations to make decisions about the quality and price of internet provided to rural areas. I urge you to oppose this nonopolistic move. It is the idea that "Big is Better" that has helped get our nation in the mess it is in.

Thank you

**George and Shirley Campbell
308 Riverside Trail
Roanoke Rapids, NC 27870
252 519 4647**

Ernie Parker (Rep. Julia Howard)

From: Foscoe Medical Clinic <foscoemedical@me.com>
Sent: Tuesday, March 22, 2011 1:35 PM
To: Ernie Parker (Rep. Julia Howard); Rep. Jonathan Jordan
Subject: H129

Please vote NO on H129 --

Municipalities with their own broadband brings visitors and money for the city's economy and education and opportunity for residents that is FAR too precious to constrain.

I visit Lenoir twice a week, tagging along with my husband for his extra-time job at a church, and I use Lenoir's free wifi downtown while he is occupied.

I've spent countless hours over the last year learning my new computer record system for my medical office (the help documentation is only visible if I'm on-line), keeping in touch with family and friends and patients (my work voicemail gives notification by email to my smartphone), and preparing for Boy Scout trainings and events. I could not afford the time travelling and sitting idle, but I can get alot done on a secure system. Available free and accountable/safe wifi is the biggest reason I accompany him to Lenoir. We spend money at restaurants every time we are there, often other businesses also.

There are too many free wifi signals that are hackers waiting to steal identities and information, particularly in downtown areas, shopping areas and airports. If an official municipal network provides reassurance (as much as can be reasonably offered) that using the network is safe, many more visitors will come and stay. It is like marketing that goes viral. I fly through certain airports just to have WiFi.

Municipal broadband more generally (not just wireless) makes sense for the citizens, too. Competition would not be unfair, since municipalities have more constraints and financial stressors in many ways that industry; I would thing the competition would make services more available to the very financially stressed citizens for whom internet access can mean training and job skills and economic productivity and advancement.

I hope you will vote against constraints on municipal broadband.

Susan Murphey, MD
Foscoe Medical Clinic, PLLC
foscoemedical@me.com
828-963-8060
fax 963-8020

MEMORANDUM

Poyner Spruill[™]

TO: James Rose

FROM: Michael S. Colo and Keith H. Johnson

DATE: March 14, 2011

RE: Comments on House Bill 129, Short Title: Level Playing Field/Local Gov't Competition

Per your request, we are providing our comments about the above-referenced Bill. In sum, the Bill would:

- severely restrict a city's options in financing construction of a communications network to be used for providing services to the public;
- otherwise create new barriers to entry for cities (e.g., Local Government Commission ["LGC"] issuance of written findings on the reasonableness of a city's revenue projections, after private service providers have opportunity to comment);
- require a city, in setting prices for services, to include the costs for: (i) not its own costs of capital but that of a private company, and (ii) all taxes and fees the city would have to pay to any federal, State or local agency on the communications enterprise if the city were a private company, a provision ripe for litigation given the uncertainty of determining those costs;
- apply in any area in the State where at least 10% of households have access to high-speed internet access, which is a very low bar, and puts the burden on the city to prove an area is "unserved" before the NC Utilities Commission, a new task for that commission; and
- place new regulatory burdens on three different State commissions or departments (the LCG, the Utilities Commission and Dept. of Revenue).

I. The Bill Eliminates a Finance Option Private Companies Have to Use the Assets Constructed as Collateral.

The Bill significantly restricts a city's options in financing the considerable investment required to build a communications network, eliminating an option available to private companies.

First, under the Bill, a city must set up one or more separate enterprise funds for the provision of communication services, and may not subsidize "the provision of communications services" with funds from other noncommunications services or any other revenue source, including other enterprise funds. *See* proposed 160A-340.1(a)(2), and (a)(7). Presumably, this prohibition applies to costs of construction. This eliminates the ability of a city that has any surplus from any other source to use those funds to help finance the initial communications infrastructure; or any expansion of it. This arguably is unfair since, unlike private companies, cities cannot issue stock to raise capital for a new enterprise, and diversified private companies have no such restrictions on them.

Under current law, a local government unit can finance the purchase of real or personal property by installment contracts that involve pledging a security interest on the property as collateral. G.S. 160A-20. You indicated that the City of Wilson used bank-financing to construct its network. If so, Wilson almost certainly gave the bank a security interest in the network assets as collateral. The Bill would take away this option. *See* proposed 160A-340.4.

This prohibition tilts "the playing field" against cities, since private companies can certainly pledge their assets as collateral for financing of construction costs.

Under the Bill, the only remaining, practical option we can identify that a city would have for financing the construction of a communications network would be through issuance of revenue bonds, by which the financing is secured by the anticipated revenue the enterprise will generate. Revenue bond financing is more expensive compared to the option of installment contract financing that the Bill would eliminate.¹

II. New Barriers to Entry for Cities.

Under the Bill, private service providers would have two opportunities to comment on and potentially kill new competition from a city.²

¹ A city could also issue General Obligations bonds for such financing, if approved by the voters, which would be secured by the full faith and credit of the city. However, we do not view this as a practical alternative for financing the construction of a communications network.

² As discussed in Section IV below, they actually have a third venue to argue against a city if the city is attempting to offer service in an "unserved area."

A. New Local Public Hearings.

The first opportunity would be in the court of public opinion. The Bill requires a city contemplating entry into the market to hold at least two public hearings, not less than 30 days apart. *See* proposed 160A-340.3. We do not have any problem with the concept of requiring a public hearing, but requiring two is excessive. Any feasibility or similar study that has been done must be made public in advance, which is fine.

The Bill refers to the private service providers' rights to present "testimony and documentation," which is language typically used to describe a quasi-judicial hearing. Requiring such formality at the hearing(s) would be unnecessary, and that should be clarified.

B. Approval of Finance Plan by LGC.

The Bill adds additional requirements to any application from a city to the LGC for approval to finance the construction, operation, expansion or repair of a communication system for purpose of providing communications services to the public in competition with a private service provider. *See* Section 3 of Bill, proposed G.S. 159-175.10.

The city must serve a copy of the application to the LGC upon each person who provides a communication service in the city. (The scope of such parties could be very confusing.)

No earlier than 60 days later (an excessive amount of time), the LGC must hold a hearing. Again, the type of hearing is not well-defined, and it is not clear if it must be quasi-judicial in nature. Anyone providing competitive service can submit written or oral comments.

The LGC then must make written findings on the reasonableness of the city's revenue projections in light of the current and future market conditions, which again makes it sound like a quasi-judicial hearing. This is unusual. We are not aware of any comparable, existing requirement that the LGC make written findings upon review of any submission from a local government.

Also, these new requirements for LGC approval are overly broad, applying to any expansion or repair of the system once it is built, regardless of the costs involved in an expansion or repair.

III. The Pricing Provision is Likely to Lead to Litigation.

The Bill would prohibit a city from pricing services below the costs of providing it, which may not be objectionable in principle, though private service providers certainly

do not face such a limitation. *See* proposed 160A-340.1(a)(8). Regardless, a lot of issues arise from how the costs are to be calculated, which is likely to spur significant litigation.

First, it is not entirely clear how the costs-based floor would apply in cases where multiple services are provided to a customer. Must the costs of the services be separately considered in that instance? The private companies often provide discounts to customers who order multiple services.

The costs considered for pricing must include any direct or indirect subsidies received by the city-owned provider. Since the enterprise cannot be funded from any other source, it is not clear how there could be any such "subsidy." One of the Bill's obvious objectives is to eliminate any such "subsidy."

The costs considered for pricing must also include an allocation of costs associated with any shared buildings or personnel with other city departments. While it is good that the Bill recognizes the enterprise may utilize the services of other city departments, any such allocation will inherently be subjective and subject to challenge.

Then comes the most troubling aspect of this pricing provision. It states that, in calculating the costs of providing the service, the city must "impute":

- (a) not its own costs of capital, but the costs of capital available to private companies in the same locale; and
- (b) an amount equal to all taxes, including property taxes, licenses, fees and other assessments that would apply to a private communications service provider, including federal, State and local taxes; rights-of-way, franchise, and other fees; and pole attachments.

These are also ripe subjects for disputes. How is a city supposed to determine the costs of capital for private companies to apply? Would that not depend upon the size and credit-worthiness of the company?

Further, cities do not pay federal income taxes. How is a computation of such taxes it would pay if it was a private company supposed to be done? Would a "shadow" federal tax return have to be prepared, and could it?

The Bill allows a city to use a network for its own communications needs. Is a city allowed to attribute some amount of the costs of the network to itself? If so, how much?

Also, any advantage to owning telephone poles is eliminated by including the costs of pole attachments in the costs calculation.

These requirements that a city treat itself like a private company for purposes of computing the costs of any communications service it provides the public illustrate the bias against cities inherent in this Bill. Not only does that pose an accounting nightmare, it eliminates any advantage a city has in providing services to the public. If the Bills' authors' objective is to essentially prohibit cities from entering the communications market as providers, which appears to be the case, it would be a lot simpler for all concerned if they just introduced a bill that would impose an outright ban against cities doing so.

IV. The Bill's Restrictions Apply in Any Area Where at Least 10% of the Population Has Access to High-Speed Internet Access.

The definition of what constitutes an "unserved area," in which the Bill's restrictions on municipal entry into the market do not apply, is simply anti-competitive and inconsistent with the goal of the federal Telecommunications Act to promote consumer choice. The exemption to the Bill's application should apply to "*underserved* areas," not "*unserved* areas."

An "unserved area" is defined as any area in which at least 90% of households do not access to high-speed Internet access service, or only have such access via a satellite provider. *See* proposed 160A340.2(b). Thus, as long as there is access to high-speed Internet access via any non-satellite source for at least 10% of households, the Bill applies in the area. This is regardless of the costs of such access charged by what may be a single, incumbent service provider. That is not a very high bar for a private service provider, who may be the sole provider, to benefit from the Bill's restrictions on municipal entry into the marketplace.

By comparison, the federal Cable Act immunizes a cable provider from local rate regulation if they face "effective competition." Effective competition exists if less than 30% of households in the area actually subscribe to cable service, or the area is served by two different cable providers, each of which offers comparable service to 50% of the households in the area, and the market share of the smaller provider is at least 15%. This type of gauge would be much more appropriate for defining an "unserved" or "underserved" area.

The Bill would also require a city to prove before the NC Utilities Commission that an area is "unserved." This is particularly interesting since that commission has no jurisdiction over cities (except for renewable energy matters), and substantively does not regulate internet access or cable tv service no matter who is the service provider. Any private provider could object to the designation of an area as "unserved," *or argue that the city is otherwise not eligible to provide the service.* Here is yet another commission the private service providers can ask to prevent a city from entering into the marketplace. It is not clear what standards the Utilities Commission is supposed to use in evaluating a city's "eligibility" to provide service in an "unserved" area.

V. Issues Regarding the Payments in Lieu of Taxes Provisions.

The Bill would require a city to make a payment to the county equivalent to what it would owe for ad valorem taxes if the communications enterprise assets were privately owned. *See* proposed 160A-340.5(a). It is not clear the city would be entitled to get back its portion of such payment in lieu of taxes, but it should get that.

The Bill would also require a city to make a payment in lieu of taxes to the State, the amount of which would be set each year by the Dept. of Revenue, and should “approximate” the State income taxes a private company would pay. *See* proposed 160A-340.5(b). This may essentially require that some type of State tax return be completed for the operation, if that is possible.

There is no reference to any payment to the U.S. in lieu of taxes. However, elsewhere the Bill broadly requires a city providing a communication service to comply with all local, State and federal laws that would apply to the provider if they were a private entity. *See* proposed 160A-340.1(a)(1). Is that meant to include payment of federal income taxes?³

VI. The Territorial Restriction in the Bill is Confusing and Should be Amended.

The Bill’s provision limiting the area a city could serve is incomprehensible, and needs to be revised. *See* proposed 160A-340.1(a)(3). It needs to be clear that a city can add customers in a permissible service area after the Bill becomes law.

The following requirement likewise is incomprehensible:

Service to customers outside the service area of the city shall comply with the open bidding procedures of Article 8 of Chapter 143 upon the expiration or termination of the existing service contract

Article 8 of Chapter 143 regards public contracts. It is not apparent how that would be, or could be made applicable.

VII. The Accounting Aspects of the Bill.

As noted, the Bill would require a city to establish one or more enterprise funds for the provision of communications service. *See* proposed 160A-340.1(a)(2). Presumably, one enterprise fund could be used, even if multiple services are provided over a network. Assuming that is the case, we do not have any trouble with this requirement.

Since the communication service cannot be subsidized with funds from any other source, transfers into the enterprise fund would be prohibited. *See* proposed 160A-340.1(a)(2).

³ As previously noted, the Bill requires a city to, in pricing its services, include as a cost all taxes it would pay if it were a private company, including federal taxes. *See* proposed 160A-340.1(a)(8).

The Bill says the enterprise fund(s) must be audited according to GAAP (generally accepted accounting procedures). That too does not make sense. It may require a financial statement or similar document prepared in accordance with GAAP, but the audit would be done pursuant to "generally accepted audit procedures." In any event, it should be made clear that a separate audit of this enterprise fund is not required, provided it is included in the annual audit of the city's financial records that is already required by law.

11



3/23 Rep collins moved to reconsider 17/10 passes

NORTH CAROLINA GENERAL ASSEMBLY - new vote 10/16
AMENDMENT
House Bill 129*

Amend. Failed

AMENDMENT NO. X 5
(to be filled in by
Principal Clerk)

Page 1 of 1

H129-ATD-8 [v.2]
Comm. Sub. [YES]
Amends Title [NO]
First Edition

Date 3.17 .2011

3.23

Representative Faison

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moves to amend the bill on page 2, lines 6 through 8, by rewriting those lines to read:
"(4) High-speed Internet access service. - Internet access service with transmission speeds that are consistent with requirements for the national broadband availability target as defined by the Federal Communications Commission on July 16, 2010, and as may be modified by the Federal Communications Commission from time to time.";

and on page 4, line 25, by deleting the term "ninety percent (90%)" and substituting the term "fifty percent (50%)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

14/12





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 6
(to be filled in by
Principal Clerk)

H129-ATD-12 [v.2]

Page 1 of 3

Comm. Sub. [YES]
Amends Title [YES]
First Edition

Date 3.23, 2011

Representative Luebke

1 moves to amend the bill on page 1, line, 2 through page 8, line 13, by rewriting those lines to
2 read:

3 "AN ACT TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO CONTINUE ITS
4 REVIEW OF LOCAL GOVERNMENT OWNED AND OPERATED
5 COMMUNICATION SYSTEMS AND TO TEMPORARILY LIMIT THE FINANCING
6 OPTIONS FOR THESE SYSTEMS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1. Communication system.** – As used in this act, the term
9 "communication system" means a system that provides high-speed broadband Internet access
10 service or other Internet access service, cable service, telecommunications service, video
11 programming service, or a combination of these services at retail. The terms "cable service,"
12 "telecommunications service," and "video programming service" have the same meanings as in
13 G.S. 105-164.3.

14 **SECTION 2.(a) Study.** – The Revenue Laws Study Committee is directed to
15 continue its study begun in 2009 of local government owned and operated communication
16 systems and to report its findings and any recommended legislation on this subject to the 2012
17 General Assembly by May 1, 2012. As part of its study, the Committee shall determine the
18 following:

- 19 (1) The extent to which current law authorizes units of local government to offer
20 communication services not traditionally thought of as cable television
21 services.
- 22 (2) The requirements and standards that should apply to a unit of local
23 government and to a private provider when the local unit offers a
24 communication service that is offered by a private provider.
- 25 (3) Whether varying or different provisions are needed to accommodate
26 communication systems placed in service or financed under G.S. 160A-20
27 by cities before the effective date of this act.
- 28 (4) Policies and incentives that can be established to facilitate the offering and
29 expansion of communication service by both public and private service
30 providers, including public-private ventures and other opportunities.

31 **SECTION 2.(b) Membership.** – In conducting the study described in subsection
32 (a) of this section, the Revenue Laws Study Committee cochairs are authorized to appoint an
33 advisory subcommittee and to ask the Local Government Commission to designate an



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

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

H129-ATD-12 [v.2]

Page 2 of 3

1 individual to participate in the subcommittee's deliberations in an ex officio, nonvoting capacity.
2 The subcommittee may consist of no more than 12 members and may include individuals who
3 are not members of the Committee or of the General Assembly, eight of whom represent the
4 following interests:

- 5 (1) A cable service provider.
- 6 (2) A wireless telecommunications service provider.
- 7 (3) A local exchange provider that is not a wireless telecommunications service
8 provider.
- 9 (4) A local exchange provider that is a wireless telecommunications service
10 provider.
- 11 (5) A city that operates a cable system and an electric power system as a public
12 enterprise.
- 13 (6) A city that operates a cable system as a public enterprise and does not
14 operate an electric power system as a public enterprise.
- 15 (7) A city that is a member of a joint agency established under G.S. 160A-462
16 for the operation of a cable system as a public enterprise.
- 17 (8) The North Carolina League of Municipalities.

18 **SECTION 3.(a) Interim Financing Provisions.** – The Local Government
19 Commission may not approve an application for financing under G.S. 160A-19, G.S. 160A-20,
20 or G.S. 160A-466 by a unit of local government or a joint agency for a communication system
21 until the date a bill recommended to the 2012 Session of the 2011 General Assembly by the
22 Revenue Laws Study Committee as a result of the study directed by Section 2 of this act
23 becomes law or, if a bill is not recommended by that Committee or is not enacted, until the
24 2012 Session of the General Assembly adjourns sine die. A communication system does not
25 include systems and services provided by a unit of local government only for its own use or,
26 pursuant to an interlocal or service agreement, for use by other units or agencies of
27 government.

28 The prohibition in this section does not apply to an application submitted by any of
29 the following:

- 30 (1) A unit of local government or a joint agency that, as of June 1, 2011, had
31 previously entered into a contract under G.S. 160A-20 or G.S. 160A-466 to
32 finance a communication system.
- 33 (2) A unit of local government that meets all of the following requirements:
 - 34 a. As of June 1, 2011, has contracted with an outside party for a high-speed
35 broadband Internet feasibility study. A high-speed broadband Internet
36 feasibility study is a study that addresses the potential market for a
37 publicly owned communication system, explores a system design and
38 deployment strategy for various models and levels of service, or
39 identifies the investments in property and equipment necessary to
40 develop a system under various models and levels of service.
 - 41 b. On or before December 1, 2011, has taken formal action, as reflected in
42 the minutes of the city council's meetings, to instruct city staff to file an

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

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

H129-ATD-12 [v.2]

Page 3 of 3

1 application with the Local Government Commission to approve a
2 contract by the city to finance a communication system.

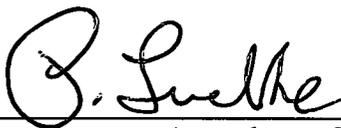
3 (3) The recipient of a federal broadband stimulus grant, if the financing is
4 needed to provide any matching funds required as a condition of receiving
5 the grant.

6 (4) A unit of local government chosen by Google for its Fiber Project, if the
7 financing is needed to qualify as the Fiber Project.

8 **SECTION 3.(b) Interim Notice Requirements.** – A unit of local government that
9 plans to submit an application to the Local Government Commission during the period the
10 prohibition in subsection (a) of this section is in effect and whose application is eligible for
11 approval during this period because of the exclusion in subdivision (2) of that subsection must
12 hold a public hearing on the proposed application and must send written notice to each person
13 that provides communication service within the unit of its intent to submit an application. The
14 notice must be sent at least 15 days before the date of a public hearing held on the proposal. If
15 the unit submits an application to the Local Government Commission after the public hearing,
16 the Local Government Commission must accept written and oral comments from the providers
17 the unit is required to notify under this subsection.

18 **SECTION 3.(c) New Requirements Apply.** – A unit of local government whose
19 application to the Local Government Commission is approved under subdivision (a)(2) of this
20 section will be fully subject to the requirements of any bill enacted by the 2012 Session of the
21 2011 General Assembly upon the recommendation of the Revenue Laws Study Committee as a
22 result of the study directed by Section 2 of this act.

23 **SECTION 4.** This act is effective when it becomes law."
24
25
26

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____

9/18

#13



3/23 Rep. moves
to reconsider
Amend 3 from
3/17
Failed 11/17

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 37
(to be filled in by
Principal Clerk)

H129-ATD-10 [v.1]

Page 1 of 1

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

Date 3.17, 2011
3.23

Representative H. Warren

- 1. moves to amend the bill on page 4, lines 27 through 30, by rewriting those lines to read:
- 2. "(c) The provisions of G.S. 160A-340.3, G.S. 160A-340.4, G.S. 160A-340.5, and
- 3. G.S. 160A-340.6 do not apply to a city or joint agency providing communications service as of
- 4. January 1, 2011.";
- 5.
- 6. and on page 8, lines 1 through 3, by rewriting those lines to read:
- 7. "SECTION 5. Sections 2, 3, and 4 of this act do not apply to a city or joint agency
- 8. providing communications service as of January 1, 2011."
- 9.
- 10.
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- 12.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

15/13





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 8
(to be filled in by
Principal Clerk)

H129-ATD-21 [v.2]

Page 1 of 2

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

Date 3.23, 2011

Representative Warren

1 moves to amend the bill, on page 2, lines 31 through 42, by rewriting the lines to read:

2 "(3) Limit the provision of communications service to within the corporate limits
3 of the city providing the communications service.";

4
5 and on page 3, line 41, through page 4, line 6, by deleting those lines;

6
7 and on page 4, lines 27 through 30, by rewriting those lines to read:

8 "(c) The provisions of G.S. 160A-340.1, G.S. 160A-340.3, G.S. 160A-340.4,
9 G.S. 160A-340.5, and G.S. 160A-340.6 do not apply to a city or joint agency providing
10 communications service as of January 1, 2011, provided the city or joint agency limits the
11 provision of communications service to the following service area boundaries:

12 (1) For the joint agency operated by the cities of Davidson and Mooresville, the
13 service area is the service area designated in the initial notice of franchise
14 filed with the Secretary of State, and the contiguous area where the agency is
15 offering service as of the effective date of this act connecting the cities of
16 Davidson and Mooresville with areas set forth in the initial areas of
17 franchise.

18 (2) For the city of Salisbury, the service area is the corporate limits of the cities
19 of Salisbury, Spencer, East Spencer, Rockwell, Granite Quarry, and the
20 corridors between Salisbury and those cities only to the extent necessary to
21 provide service to those cities.

22 (3) For all other cities or joint agency offering communications service, the
23 service area is the area designated in the map filed as part of the initial notice
24 of franchise with the Secretary of State as of January 1, 2011.";

25
26



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. _____

(to be filled in by
Principal Clerk)

H129-ATD-21 [v.2]

Page 2 of 2

1 and on page 8, lines 1 through 3, by rewriting those lines to read:
2 "SECTION 5. Sections 2, 3, and 4 of this act do not apply to a city or joint agency
3 providing communications service as of January 1, 2011 provided the city limits the provision
4 of communications service to the service area boundaries in G.S. 160A-340.2(c)".
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SIGNED _____


Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED _____

TABLED _____

2011

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 129

DATE 3/23/11

S. B. No. _____

Amendment No. 9

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

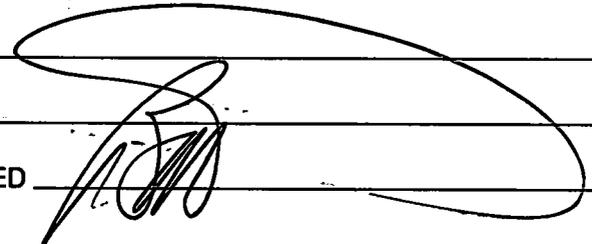
Rep. Faison
Sen.)

1 moves to amend the bill on page 4, line ~~25~~ 25

2 () WHICH CHANGES THE TITLE

3 by deleting the term "ninety percent (90%)" and substituting
4 the term "fifty percent (50%)"

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SIGNED 

ADOPTED FAILED _____ TABLED _____

21/6



#16

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 10
(to be filled in by
Principal Clerk)

H129-ATD-20 [v.1]

Page 1 of 1

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

Date 3.23.11, 2011

Representative Faison

1 moves to amend the bill on page 4, lines 30 and 31, by inserting between the lines:
2 "(d) The provisions of G.S.160A-340.1, G.S.160A-340.3, G.S.160A-340.4,
3 G.S.160A-340.5, G.S.160A-340.6, and G.S.159-175.10 do not apply to the provision of
4 communications service in an area that would be eligible for a loan, loan guarantee, grant, or
5 other subsidy as eligibility for such a loan, guarantee, grant, or subsidy may be established by
6 the U.S. Department of Agriculture from time to time pursuant to the Rural Broadband Access
7 Loan and Loan Guarantee Program established by the Food Conservation and Energy Act of
8 2008 (2008 Farm Bill (P.L.110-246)) as such program or law may be modified from time to
9 time."

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED



TABLED

by call of ayes/neys



* H 1 2 9 - A T D - 2 0 - V - 1 *



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 11
(to be filled in by
Principal Clerk)

H129-ATD-13 [v.1]

Page 1 of 1

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

Date 3.23, 2011

Representative Faison

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moves to amend the bill on page 3, lines 9 through 13, by rewriting those lines to read:
"the channel. The city shall not directly or indirectly, require city employees, officers, or contractors to purchase city services.";

and on page 3, lines 14 through 29, by deleting those lines and renumbering the remaining subdivision;

and on page 3, line 41, by rewriting the line to read:
"(c) Subdivision (7) of subsection (a) of this section, shall not apply to a".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____

10/18

10/18





#18

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

AMENDMENT NO. 12
(to be filled in by
Principal Clerk)

H129-ATD-16 [v.3]

Page 1 of 2

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

Date 3.23.11 .2011

Representative Faison

- 1 moves to amend the bill on page 3, lines 30 through 37, by deleting those lines;
- 2
- 3 and on page 3, lines 41 through 42, by rewriting those lines to read:
- 4 "(c) Subdivisions (7) and (8) of subsection (a) of this section, shall not apply to a city or
- 5 joint agency providing communications service as of January 1, 2011.";
- 6
- 7 and on page 4, line 8, by rewriting the line to read:
- 8 "(a) The provisions of G.S. 160A-340.1, G.S. 160A-340.4, and G.S. 160A-340.5";
- 9
- 10 and on page 4, line 15, by rewriting the line to read:
- 11 "(b) The provisions of G.S. 160A-340.1 and G.S. 160A-340.4 do not apply";
- 12
- 13 and on page 4, lines 27 through 28, by rewriting those lines to read:
- 14 "(c) The provisions of G.S. 160A-340.3, G.S. 160A-340.4, and G.S. 160A-340.5 do not apply
- 15 to a city or joint agency providing communications service as of";
- 16
- 17 and on page 5, lines 14 through 38, by deleting those lines.
- 18
- 19 and on page 5, line 39, by deleting the term "G.S. 160A-340.6" and substituting "G.S.160A-
- 20 340.5";
- 21
- 22 and on page 6, lines 46 through 51, by deleting those lines.
- 23
- 24

Faison 7/9/10



* H 1 2 9 - A T D - 1 6 - V - 3 *

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 129*

H129-ATD-16 [v.3]

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

Page 2 of 2

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____

10/18



North Carolina General Assembly
House Committee on Finance

Minutes

March 24, 2011

The House Committee on Finance met on Thursday, March 24, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Ross, Samuelson, Stam, Stone, Warren, and Weiss . Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson Starnes called the meeting to order at 8:30 am and recognized the four (4) pages present: (1) Samantha Enochs of Iredell County sponsored by Representative Mills; (2) Greg Reaves of Moore County sponsored by Representative Tillis; (3) Carter Phillips of Wake County sponsored by Representative Stam; and (4) Elise Karsten of Wake County sponsored by Representative Martin.

The first bill considered by the Committee was **SB 51 Charitable Solicitations/Clarify Exemption** (see **attachment 3**). Chairperson Starnes recognized Senator Bingham to explain the bill. The Chair then recognized Representative Howard who moved that SB 51 be given a favorable report. The motion carried.

The next bill considered by the Committee was **HB 56 Rocky Mount Annexations Repealed** (see **attachment 4**). The Chair recognized Representative Collins to explain the bill. Representative Collins explained bill and provided copies of a map of the area concerned (see **attachment 5**). Chairperson Starnes recognized Representative Setzer who moved that HB 56 be given a favorable report. Chairperson Starnes asked if there was anyone wishing to speak in opposition to the bill. There was none. Chairperson Starnes then asked if there was anyone wishing to speak in support of the bill. The Chair recognized Tony Tetterton of the Fair Annexation Coalition who expressed his support of

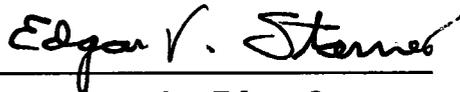
the bill. There being no further discussion, Chairperson Starnes again recognized Representative Setzer who restated his motion; the motion carried.

The next bill considered before the Committee was **HB 180 Wilmington Annexation Suspension** (see **attachment 6**). The Chair recognized Representative McComas to explain the bill. After the bill explanation and questions from the members, the Chair asked if there was anyone wishing to speak in opposition of the bill. The Chair recognized Council Members Laura Padgett and Kevin O'Grady with the City of Wilmington. They both spoke against the bill. There was no one present wishing to speak in favor of bill. Chairperson Starnes recognized Representative Howard who moved that HB 180 be given a favorable report. The motion was held for further discussion. Being no further discussion, the Chair recognized Representative Howard who restated her motion; the motion carried.

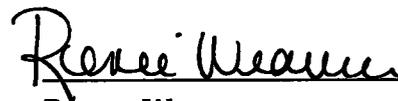
The final bill before the Committee was **HB 236 Biltmore Lake Annexation Repealed** (see **attachment 7**). The Chair recognized Representative Moffitt who explained the bill. Representative Moffitt answered questions from the members and then the Chair recognized Representative Setzer who moved that HB 236 be given a favorable report, the motion carried.

Chairperson Starnes adjourned the meeting at 9:13 am.

Respectfully submitted,



Representative Edgar Starnes
Presiding Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 56 A BILL TO BE ENTITLED AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY WITHDRAWING THE DELEGATION OF AUTHORITY TO THE CITY OF ROCKY MOUNT TO MAKE CERTAIN ANNEXATIONS.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 180 A BILL TO BE ENTITLED AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE, BY SUSPENDING THE DELEGATION OF AUTHORITY TO THE CITY OF WILMINGTON TO MAKE A CERTAIN ANNEXATION.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 236 A BILL TO BE ENTITLED AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY WITHDRAWING THE DELEGATION OF AUTHORITY TO THE CITY OF ASHEVILLE TO MAKE A CERTAIN ANNEXATION.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 51 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT CERTAIN ORGANIZATIONS OF EDUCATIONAL INSTITUTIONS ARE COVERED BY THE EDUCATIONAL INSTITUTION EXEMPTION FROM CHARITABLE SOLICITATION LICENSING REQUIREMENTS.

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 _____.

AGENDA
House Finance Committee

Thursday, March 24, 2011

8:30 am.

Room 544 LOB

Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 56 Rocky Mount Annexations Repealed

Representative Collins

HB 180 Wilmington Annexation Suspension

Representatives McComas, Justice

HB 236 Biltmore Lake Annexation Repealed

Representative Moffitt

SB 51 Charitable Solicitations/Clarify Exemption

Senator Bingham

Adjournment

VISITOR REGISTRATION SHEET

House Finance

March 24, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Tim McDaniel</i>	<i>NCCU</i>
<i>Tony Tetterton</i>	<i>Fair Amneration Coalition</i>
<i>Kathy Hartkopf</i>	<i>Freedom Works</i>
<i>Charlene Moore</i>	<i>OLCAFA</i>
<i>Wm. G. Hamby, Jr.</i>	<i>Cabarrus Co. resident</i>
<i>ZEB ALLEY</i>	<i>NMRS</i>
<i>Paul Sherman</i>	<i>NCFB</i>
<i>Will Culpepper</i>	<i>MVA</i>
<i>Brandon Smith</i>	<i>Rep. Melomax office</i>
<i>Kevin Leonard</i>	<i>NCACC</i>
<i>Paul Meyer</i>	<i>NCUR</i>

VISITOR REGISTRATION SHEET

House Finance

March 24, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Fred Buggett	Smith Moore &
Lawless Pagan	CITY OF WILMINGTON
Laura Padgett	City of Wilmington
Hope Vinson, Jr.	OLCAFA, Nash County
Bill Edmondson	OLCAFA NASH COUNTY
Ronnie Wheeler	OLCAFA NASH COUNTY
Royce May	OLCAFA NASH COUNTY
David E Parker	OLCAFA Nash County
Libby A Parker	OLCAFA Nash County
Donald Hole	OLCAFA Nash County
Kevin O'Grady	City Council, Wilmington

VISITOR REGISTRATION SHEET

House Finance

March 24, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Les Mullins	OLCAFA Rocky Mount
Lawrence Alford	OLCAFA - Nash County
DAVID WINSTEAD	OLCAFA Nash County
LAVERNE WINSTEAD	OLCAFA NASH County
Shirley Whitaker	OLCAFA - Nash County
Sylvia S. Gardner	OLCAFA - Nash Co.
Herbert Moore	OLCAFA Nash Co
Michael Davis	OLCAFA Nash County
Betty Dunther	OLCAFA Nash County
J.L. Pete Whitley	Nash County OLCAFA
Gloria Whitley	OLCAFA Nash County

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 51

Short Title: Charitable Solicitations/Clarify Exemption. (Public)

Sponsors: Senator Bingham.

Referred to: Finance.

February 10, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT CERTAIN ORGANIZATIONS OF EDUCATIONAL INSTITUTIONS ARE COVERED BY THE EDUCATIONAL INSTITUTION EXEMPTION FROM CHARITABLE SOLICITATION LICENSING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131F-3 reads as rewritten:

"§ 131F-3. Exemptions.

The following are exempt from the provisions of this Chapter:

- (1) Any person who solicits charitable contributions for a religious institution.
- (2) Solicitation of charitable contributions by the federal, State, or local government, or any of their agencies.
- (3) Any person who receives less than twenty-five thousand dollars (\$25,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser, or solicitor.
- (4) Any educational institution, the curriculum of which, in whole or in part, is registered, approved, or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body, ~~and any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes, and any foundation or department having an established identity with any of these educational institutions.~~ and any organization with a membership that is composed solely of 20 or more educational institutions as defined under this Chapter.
- (5) Any hospital licensed pursuant to Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes and any foundation or department having an established identity with that hospital if the governing board of the hospital, authorizes the solicitation and receives an accounting of the funds collected and expended.
- (6) Any noncommercial radio or television station.
- (7) A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10) through (e)(14).
- (8) A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor.
- (9) An attorney, investment counselor, or banker who advises a person to make a charitable contribution.
- (10) A volunteer fire department, REACT (Radio Emergency Associated Communications Teams), rescue squad, or emergency medical service.



- 1 (11) A Young Men's Christian Association or a Young Women's Christian
- 2 Association.
- 3 (12) A nonprofit continuing care facility licensed under Article 64 of Chapter 58
- 4 of the General Statutes.
- 5 (13) Any tax exempt nonprofit fire or emergency medical service organization
- 6 involved in the sale of goods or services that does not ask for a donation."
- 7 **SECTION 2.** This act becomes effective July 1, 2011.



SENATE BILL 51: Charitable Solicitations/Clarify Exemption

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Bingham
Analysis of: First Edition

Date: March 23, 2011
Prepared by: Cindy Avrette
Committee Counsel

SUMMARY: *Senate Bill 51 would exempt from the charitable solicitation licensure requirements any organization with a membership that is composed solely of 20 or more educational institutions.*

CURRENT LAW AND BILL ANALYSIS: A charitable organization that solicits contributions in this State must be licensed to do so by the Secretary of State. The license must be renewed annually. The cost of the license varies depending upon the amount of contributions received in the last fiscal year. For an organization that receives contributions of \$200,000 or more, the license fee is \$200. The organization must also file an annual report.

Among the list of nonprofits¹ exempt from the licensure and reporting requirements are educational institutions accredited by the Southern Association of Colleges and Schools and any foundation having an established identity with any of these schools. The North Carolina Independent Colleges and Universities is an organization comprised of 36 North Carolina private, non-profit colleges and universities accredited by the Southern Association of Colleges and Schools. In addition to services the organization provides to its member schools, it solicits contributions for its Independent College Fund of NC. The money in the Fund is used to provide student scholarship aid. In the past, this organization has been considered a foundation having an established identity with an educational institution. Recently, a question has arisen about the clarity of the law on this issue.² This bill would provide that clarity by specifying that an organization with a membership composed solely of 20 or more educational institutions is exempt.

EFFECTIVE DATE: The bill would become effective July 1, 2011.

S51-SMRB-25(e1) v1

¹ Other nonprofit entities exempt from the licensure requirements include religious institutions, volunteer fire departments, and nonprofit continuing care retirement homes.

² Last year the organization received a certified letter from the Office of the Secretary of State noting the organization was not licensed by the Office and had not filed an annual report. The organization complied with the request and sought clarity on the issue.

North Carolina
INDEPENDENT
 Colleges & Universities

A. Hope Williams
President

North Carolina Independent Colleges and Universities

Barton College
Wilson
 Belmont Abbey College
Belmont
 Bennett College for Women
Greensboro
 Brevard College
Brevard
 Cabarrus College of Health Sciences
Concord
 Campbell University
Buies Creek
 Catawba College
Salisbury
 Chowan University
Murfreesboro
 Davidson College
Davidson
 Duke University
Durham
 Elon University
Elon
 Gardner-Webb University
Boiling Springs
 Greensboro College
Greensboro
 Guilford College
Greensboro
 High Point University
High Point
 Johnson C. Smith University
Charlotte
 Lees-McRae College
Banner Elk
 Lenoir-Rhyne University
Hickory
 Livingstone College
Salisbury
 Louisburg College
Louisburg
 Mars Hill College
Mars Hill
 Meredith College
Raleigh
 Methodist University
Fayetteville
 Montreat College
Montreat
 Mount Olive College
Mount Olive
 N.C. Wesleyan College
Rocky Mount
 Peace College
Raleigh
 Pfeiffer University
Misenheimer
 Queens University of Charlotte
Charlotte
 St. Andrews Presbyterian College
Laurinburg
 Saint Augustine's College
Raleigh
 Salem College
Winston-Salem
 Shaw University
Raleigh
 Wake Forest University
Winston-Salem
 Warren Wilson College
Asheville
 Wingate University
Wingate

List of Institutions

<p>Barton College <i>Wilson, NC</i></p> <p>Belmont Abbey College <i>Belmont, NC</i></p> <p>Bennett College for Women <i>Greensboro, NC</i></p> <p>Brevard College <i>Brevard, NC</i></p> <p>Cabarrus College of Health Sciences <i>Concord, NC</i></p> <p>Campbell University <i>Buies Creek, NC</i></p> <p>Catawba College <i>Salisbury, NC</i></p> <p>Chowan University <i>Murfreesboro, NC</i></p> <p>Davidson College <i>Davidson, NC</i></p> <p>Duke University <i>Durham, NC</i></p> <p>Elon University <i>Elon, NC</i></p> <p>Gardner-Webb University <i>Boiling Springs, NC</i></p> <p>Greensboro College <i>Greensboro, NC</i></p> <p>Guilford College <i>Greensboro, NC</i></p> <p>High Point University <i>High Point, NC</i></p> <p>Johnson C. Smith University <i>Charlotte, NC</i></p> <p>Lees-McRae College <i>Banner Elk, NC</i></p> <p>Lenoir-Rhyne University <i>Hickory, NC</i></p> <p>Livingstone College <i>Salisbury, NC</i></p> <p>Louisburg College <i>Louisburg, NC</i></p> <p>Mars Hill College <i>Mars Hill, NC</i></p> <p>Meredith College <i>Raleigh, NC</i></p> <p>Methodist University <i>Fayetteville, NC</i></p> <p>Montreat College <i>Montreat, NC</i></p> <p>Mount Olive College <i>Mount Olive, NC</i></p> <p>N.C. Wesleyan College <i>Rocky Mount, NC</i></p> <p>Peace College <i>Raleigh, NC</i></p> <p>Pfeiffer University <i>Misenheimer, NC</i></p> <p>Queens University of Charlotte <i>Charlotte, NC</i></p> <p>St. Andrews Presbyterian College <i>Laurinburg, NC</i></p> <p>Saint Augustine's College <i>Raleigh, NC</i></p> <p>Salem College <i>Winston-Salem, NC</i></p> <p>Shaw University <i>Raleigh, NC</i></p> <p>Wake Forest University <i>Winston-Salem, NC</i></p> <p>Warren Wilson College <i>Asheville, NC</i></p> <p>Wingate University <i>Wingate, NC</i></p>	<p>Greensboro College <i>Greensboro, NC</i></p> <p>Guilford College <i>Greensboro, NC</i></p> <p>High Point University <i>High Point, NC</i></p> <p>Johnson C. Smith University <i>Charlotte, NC</i></p> <p>Lees-McRae College <i>Banner Elk, NC</i></p> <p>Lenoir-Rhyne University <i>Hickory, NC</i></p> <p>Livingstone College <i>Salisbury, NC</i></p> <p>Louisburg College <i>Louisburg, NC</i></p> <p>Mars Hill College <i>Mars Hill, NC</i></p> <p>Meredith College <i>Raleigh, NC</i></p> <p>Methodist University <i>Fayetteville, NC</i></p> <p>Montreat College <i>Montreat, NC</i></p> <p>Mount Olive College <i>Mount Olive, NC</i></p>	<p>N.C. Wesleyan College <i>Rocky Mount, NC</i></p> <p>Peace College <i>Raleigh, NC</i></p> <p>Pfeiffer University <i>Misenheimer, NC</i></p> <p>Queens University of Charlotte <i>Charlotte, NC</i></p> <p>St. Andrews Presbyterian College <i>Laurinburg, NC</i></p> <p>Saint Augustine's College <i>Raleigh, NC</i></p> <p>Salem College <i>Winston-Salem, NC</i></p> <p>Shaw University <i>Raleigh, NC</i></p> <p>Wake Forest University <i>Winston-Salem, NC</i></p> <p>Warren Wilson College <i>Asheville, NC</i></p> <p>Wingate University <i>Wingate, NC</i></p>
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 56

Short Title: Rocky Mount Annexations Repealed. (Local)

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

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

February 9, 2011

A BILL TO BE ENTITLED

AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY WITHDRAWING THE DELEGATION OF AUTHORITY TO THE CITY OF ROCKY MOUNT TO MAKE CERTAIN ANNEXATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Ordinance No. O-2010-1 adopted by the City Council of the City of Rocky Mount on January 11, 2010, entitled "ORDINANCE AMENDING ORDINANCE ADOPTED DECEMBER 18, 2008 EXTENDING THE CORPORATE LIMITS OF THE CITY OF ROCKY MOUNT UNDER THE AUTHORITY GRANTED BY PART 3, ARTICLE 4A, CHAPTER 160A OF THE GENERAL STATUTES OF NORTH CAROLINA - ANNEXATION NO. 287-AREA 1," and Ordinance No. O-2008-136 adopted by the City Council of the City of Rocky Mount on December 18, 2008, entitled "AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ROCKY MOUNT UNDER THE AUTHORITY GRANTED BY PART 3, ARTICLE 4A, CHAPTER 160A OF THE GENERAL STATUTES OF NORTH CAROLINA - ANNEXATION NO. 287 - AREA 1," are repealed.

SECTION 2. This act is effective from and after June 30, 2009.





HOUSE BILL 56: Rocky Mount Annexations Repealed

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Collins
Analysis of: First Edition

Date: March 24, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 56 would repeal two involuntary annexation ordinances adopted by the City of Rocky Mount.*

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." Pursuant to this Section, the General Assembly enacted Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to involuntarily add territory to their municipal limits, if the area meets the statutory requirements for involuntary annexation. Generally speaking, a municipality may involuntarily annex property if:

1. It is adjacent or contiguous to the city.
2. 1/8 of the external boundary area coincides with the city boundary.
3. It is not part of another city.
4. It is developed for urban purposes.

BILL ANALYSIS: House Bill 56 repeals the following involuntary annexation ordinances enacted by the City of Rocky Mount:

- Ordinance No. O-2008-136 adopted by the City Council of the City of Rocky Mount on December 18, 2008, annexing approximately 1343.26 acres in the Oak Level area; and
- Ordinance No. O-2010-1 adopted by the City Council of the City of Rocky Mount on January 11, 2010, annexing approximately 1343.26 acres in the Oak Level area.

EFFECTIVE DATE: House Bill 56 is effective from and after June 30, 2009.

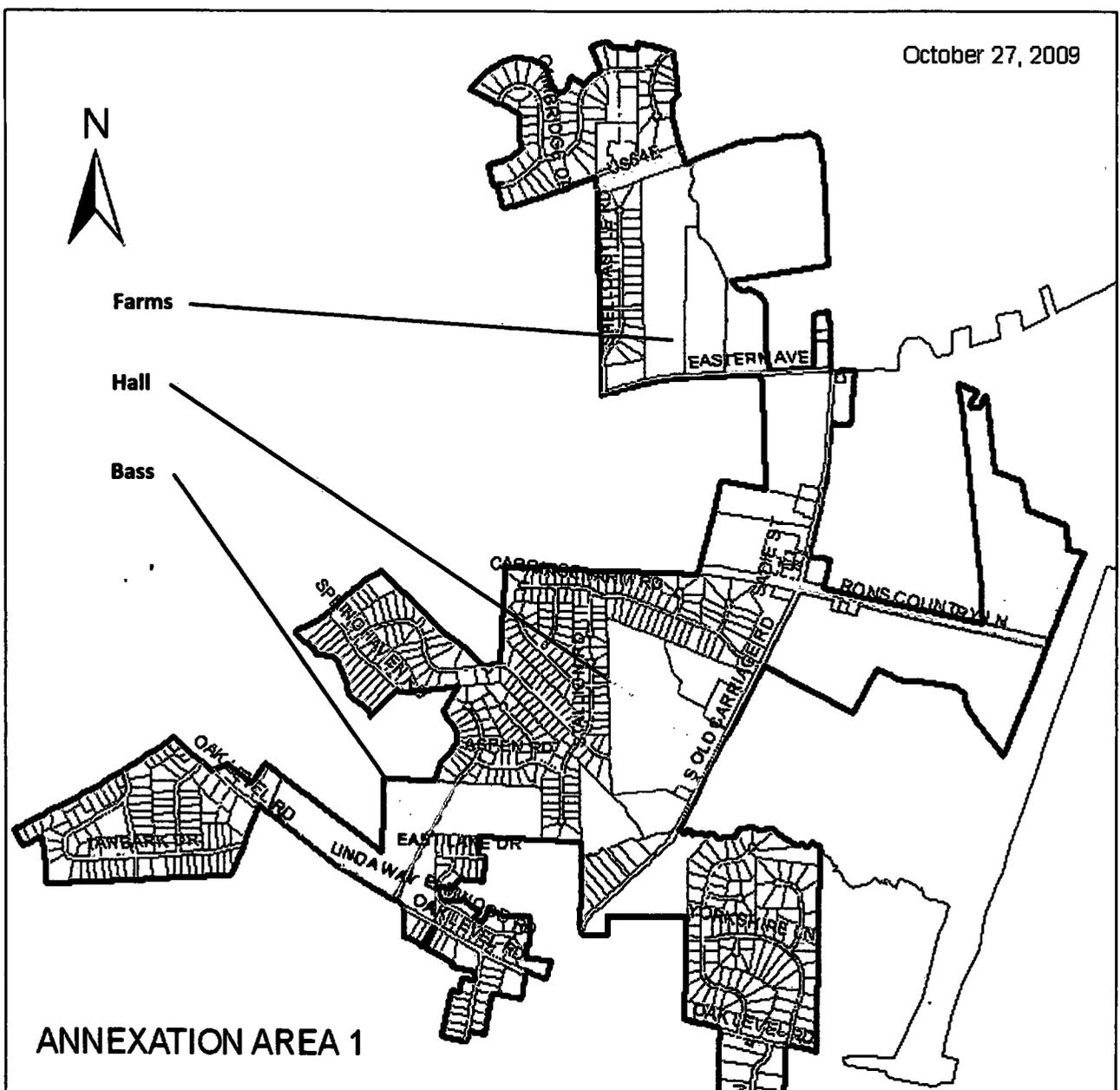
BACKGROUND: The bill repeals two ordinances affecting the same area. Ordinance O-2008-136 was adopted on Dec. 18, 2008, but was remanded by the Superior Court for changes and a public hearing. The City of Rocky Mount undertook to comply with the court order, and adopted Ordinance No. O-2010-1, affecting the same area, on January 11, 2010. The ordinance is subject to litigation, which has been appealed to and heard by the Court of Appeals. A final decision has not yet been rendered.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H56-SMSV-14(e1) v2

Remand Map

October 27, 2009



ANNEXATION AREA 1

Legend

AREA 1 BOUNDARY

LANDUSE

- COMMERCIAL
- GOVERNMENTAL
- INSTITUTIONAL
- NECESSARY LAND CONNECTION
- CURRENT CITY LIMITS

INDUSTRIAL - NO INDUSTRIAL PARCELS

Acreage:

- Commercial - 135.15 acres
- Governmental - 89.31 acres
- Institutional - 6.09 acres
- Residential / Vacant - 851.90 acres
- Industrial - 0.00 acres
- Total - 1082.46 acres
- Necessary land connection - 153.40 acres
- Residential and Agricultural lots 3 acres or less - 625.04 acres

Farms

Nash County Community College

Nash County-Farm

Nash County-Farm

Annexed-Farm

Annexed-Farm

Nash County-Farm



Image © 2011 GeoEye
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35°58'14.56" N 77°53'58.92" W elev 209 ft

1994

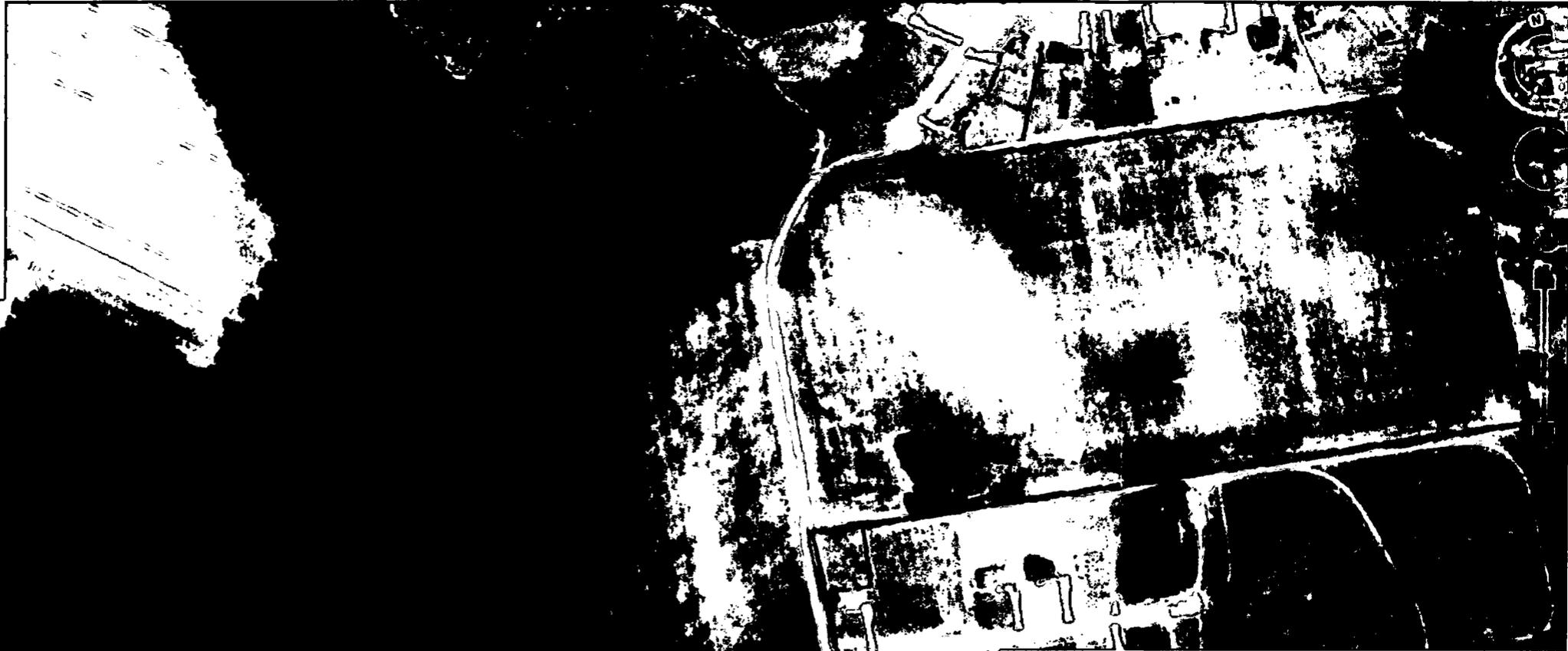
Eye all 1552 ft

Hall

Annexed-Farm

Nash-RM
Maintenance Shed

Bass





file: 630/2009 2 199

Image USDA Farm Service Agency
Image © 2011 Google
© 2011 Google
35° 57' 33.85" N 77° 54' 3" W elev 200ft

© 2010
Eye Ball 2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 180

Short Title: Wilmington Annexation Suspension. (Local)

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

Referred to: Government, if favorable, Finance.

February 28, 2011

A BILL TO BE ENTITLED

1 AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER
2 SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX
3 THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT
4 DEEMS ADVISABLE, BY SUSPENDING THE DELEGATION OF AUTHORITY TO
5 THE CITY OF WILMINGTON TO MAKE A CERTAIN ANNEXATION.
6

7 Whereas, there is concern about the current annexation policy of North Carolina;
8 and

9 Whereas, the 2011 General Assembly will be considering comprehensive
10 annexation reform; and

11 Whereas, it is good policy to preserve the status quo in pending annexations under
12 appeal until the General Assembly has the opportunity to address this issue and decide the
13 extent to which reform should apply to current annexation ordinances; Now, therefore,
14 The General Assembly of North Carolina enacts:

15 SECTION 1. The operation of Ordinance O-2009-29, adopted by the City Council
16 of the City of Wilmington on May 5, 2009, entitled "ORDINANCE TO EXTEND THE
17 CORPORATE LIMITS OF THE CITY OF WILMINGTON UNDER THE AUTHORITY
18 GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 3 OF THE GENERAL STATUTES
19 OF NORTH CAROLINA," is suspended until December 31, 2012. Nothing in this section
20 validates any action of the City of Wilmington in adopting the ordinance.

21 SECTION 2. This act is effective from and after May 5, 2009.





HOUSE BILL 180: Wilmington Annexation Suspension

2011-2012 General Assembly

Committee: House Finance	Date: March 24, 2011
Introduced by: Reps. McComas, Justice	Prepared by: Trina Griffin
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 180 would suspend until December 31, 2012 an involuntary annexation ordinance adopted by the City of Wilmington.*

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." Pursuant to this Section, the General Assembly enacted Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to involuntarily add territory to their municipal limits, if the area meets the statutory requirements for involuntary annexation. Generally speaking, a municipality may involuntarily annex property if:

1. It is adjacent or contiguous to the city.
2. 1/8 of the external boundary area coincides with the city boundary.
3. It is not part of another city.
4. It is developed for urban purposes.

BILL ANALYSIS: House Bill 180 would suspend until December 31, 2012 Ordinance O-2009-29, adopted by the City Council of the City of Wilmington on May 5, 2009, involuntarily annexing approximately 950 acres in the Monkey Junction area.

The bill also provides that nothing in this section validates any action of the City of Wilmington in adopting the ordinance.

EFFECTIVE DATE: House Bill 180 is effective from and after May 5, 2009.

BACKGROUND: This annexation ordinance has been challenged and is pending before the Court of Appeals.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H180-SMSV-15(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 236

Short Title: Biltmore Lake Annexation Repealed. (Local)

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

Referred to: Government, if favorable, Finance.

March 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER
3 SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX
4 THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT
5 DEEMS ADVISABLE BY WITHDRAWING THE DELEGATION OF AUTHORITY TO
6 THE CITY OF ASHEVILLE TO MAKE A CERTAIN ANNEXATION.
7 The General Assembly of North Carolina enacts:
8 SECTION 1. Ordinance No. 3524, adopted by the City Council of the City of
9 Asheville on August 21, 2007, entitled "AN ORDINANCE TO EXTEND THE CORPORATE
10 LIMITS OF THE CITY OF ASHEVILLE UNDER THE AUTHORITY GRANTED BY PART
11 3, ARTICLE 4A, CHAPTER 160A OF THE GENERAL STATUTES OF NORTH
12 CAROLINA, BY ANNEXING A CONTIGUOUS AREA KNOWN AS THE BILTMORE
13 LAKE AREA," is repealed.
14 SECTION 2. This act is effective from and after August 21, 2007.





HOUSE BILL 236: Biltmore Lake Annexation Repealed

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Moffitt
Analysis of: First Edition

Date: March 24, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 236 repeals an involuntary annexation ordinance adopted by the City of Asheville on August 21, 2007, affecting the area known as "Biltmore Lake."*

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." Pursuant to this Section, the General Assembly enacted Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to involuntarily add territory to their municipal limits, if the area meets the statutory requirements. Generally speaking, a municipality may involuntarily annex property if:

1. It is adjacent or contiguous to the city.
2. 1/8 of the external boundary area coincides with the city boundary.
3. It is not part of another city.
4. It is developed for urban purposes.

BILL ANALYSIS: The bill repeals involuntary annexation Ordinance No. 3524, adopted by the City Council of the City of Asheville on August 21, 2007, with an effective date of December 31, 2007, affecting approximately 440 acres in the Biltmore Lake area.

BACKGROUND: This annexation ordinance is subject to litigation pending before the North Carolina Court of Appeals.

Erika Churchill, counsel to House Government, substantially contributed to this summary.

H236-SMSV-16(e1) v1

Cancelled Notice

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

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

DAY & DATE: Wednesday, March 30, 2011

TIME: 8:30 am

LOCATION: 544 LOB

COMMENTS: THE FINANCE COMMITTEE SCHEDULED FOR WEDNESDAY, MARCH 30, 2011 HAS BEEN CANCELLED

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 29	Tax Certification - Alamance County.	Senator Gunn
SB 107	Tax of Improved Prop. in Roadway Corridors.	Senator Brunstetter Senator Garrou

Respectfully,
Representative Howard, Chair
Representative Folwell, Chair
Representative Setzer, Chair
Representative Starnes, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **5:35 PM** o'clock on **March 29, 2011**.

- Principal Clerk
 Reading Clerk – House Chamber

Renee Weaver (Committee Assistant)

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

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

DAY & DATE: Wednesday, March 30, 2011
TIME: 8:30 am
LOCATION: 544 LOB

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 160	Check-Off Donation: Breast Cancer Screening.	Representative Dollar Representative Justice Representative Howard Representative Stevens
SB 29	Tax Certification - Alamance County.	Senator Gunn
SB 107	Tax of Improved Prop. in Roadway Corridors.	Senator Brunstetter Senator Garrou

Respectfully,
Representative Howard, Chair
Representative Folwell, Chair
Representative Setzer, Chair
Representative Starnes, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **10:15 AM** o'clock on **March 29, 2011**.

- Principal Clerk
 Reading Clerk – House Chamber

Renee Weaver (Committee Assistant)

Corrected Notice

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

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

DAY & DATE: Wednesday, March 30, 2011
TIME: 8:30 am
LOCATION: 544 LOB
COMMENTS: HB 160 HAS BEEN REMOVED

The following bills will be considered:

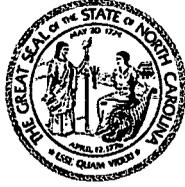
BILL NO.	SHORT TITLE	SPONSOR
SB 29	Tax Certification - Alamance County.	Senator Gunn
SB 107	Tax of Improved Prop. in Roadway Corridors.	Senator Brunstetter Senator Garrou

Respectfully,
Representative Howard, Chair
Representative Folwell, Chair
Representative Setzer, Chair
Representative Starnes, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at
4:30 PM o'clock on **March 29, 2011**.

- Principal Clerk
 Reading Clerk – House Chamber

Renee Weaver (Committee Assistant)



North Carolina General Assembly
House Committee on Finance

Minutes

March 31, 2011

The House Committee on Finance met on Thursday, March 31, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble . Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairperson Starnes called the meeting to order at 8:30 am and recognized the four (4) pages present: (1) Joanne-Margaret Kelly of Moore County sponsored by Representative Hamilton; (2) John Bellon of Surry County sponsored by Representative Stevens; (3) Benjamin Fersgren of Pender County sponsored by Representative Justice; and (4) Kimberly Bryan of Wake County sponsored by Representative Howard.

The first bill considered by the Committee was **SB 107 Tax of Improved Prop. In Roadway Corridors** (see **attachment 3**). Chairperson Starnes recognized Representative Folwell to explain the bill. The Chair then recognized Representative Womble who moved that SB 107 be given a favorable report. The motion carried.

The next bill considered by the Committee was **HB 358 Apex/Cary Annexation Into Chatham Restricted** (see **attachment 4**). The Chair recognized Representative Hackney to explain the bill. Chairperson Starnes recognized Representative Weiss who moved that HB 358 be given a favorable report. The motion carried.

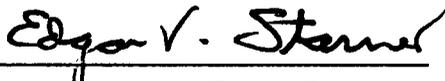
Chairperson Starnes then stated that the next bill, **HB 248 Establish Tax Modernization Commission** (see **attachment 5**) was before the committee only for discussion purposes

only and that there would be no vote on the bill. Representative Rhyne was called upon to explain the bill. Representative Rhyne answered questions from members. Chairperson Starnes brought the discussion to an end with the reminder that no vote was to be taken on the bill.

Chairperson Starnes re-referred **HB 204 Edgecombe County Tourism Development Authority** to the subcommittee on Occupancy Tax.

Chairperson Starnes adjourned the meeting at 9:24 am.

Respectfully submitted,



Representative Edgar Starnes
Presiding Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 358 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE APPROVAL OF THE BOARD OF COMMISSIONERS OF CHATHAM COUNTY BEFORE THE TOWNS OF APEX OR CARY MAY MAKE AN INVOLUNTARY ANNEXATION INTO CHATHAM COUNTY.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 107 A BILL TO BE ENTITLED AN ACT TO REDUCE THE PROPERTY TAX OWED FOR IMPROVED PROPERTY INSIDE CERTAIN ROADWAY CORRIDORS.

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 _____.

AGENDA
House Finance Committee

Thursday, March 31, 2011

8:30 am

Room 544 LOB

Chaired by: Representative ~~Julia C. Howard~~ *Edgar Starnes*

Call to Order

Introduction of Pages

Bills:

HB 248 Establish Tax Modernization Commission

Representative Rhyne, Jr.

HB 358 Apex/Cary Annexation Into Chatham Restricted

Representatives Hackney, Stam

SB 107 Tax of Improved Prop. In Roadway Corridors

Senators Brunstetter, Garrou

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAR. 31, 2011

Room: 544

*Name: Joanna-Margaret Kelly

County: Moore

Sponsor: Suzi Hamilton

*Name: John Bellon

County: Surry

Sponsor: Stevens

*Name: Benjamin Forsgren

County: Pender

Sponsor: Rep Justice

*Name: Kimberly Bryan

County: Wake

Sponsor: Howard

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: KEN KIRBY

2. Name: JOHN BRANDON

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

March 31, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Edwin McLenaghan	NC Justice Center
Shaw Dunraw	Henderson Co. - NC Assn of Assessors & Tax Collectors
David Baker	NC DOR
Bill Wilkes	NC DOR
Paul Saxe	NC RLA
Bob Powell	NC Justice Center
David Hannon	NC Center for Nonprofits
Paul Meyer	NCLM
[Signature]	Misc
M. Person	Misc
Jan Taylor	NCBIO

VISITOR REGISTRATION SHEET

HOUSE FINANCE

MARCH 31, 2011

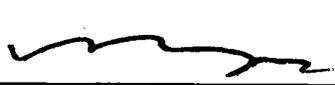
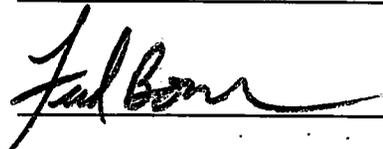
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BRENT LANE	UNC RENAN INSTITUTE
Lana Hygh	Town of Cary
Will Culpepper	MVA
Patricia Buffi	NCAEC
Jim Hobbs	HANC
	
Annun Hardy	Electric Co. of NC
Tim Keort	NC Beer & Wine Wholesalers
TOM PETERSON	NCEM
	Bon's Asso.
JOE LANIER	WELDON MULLINS

VISITOR REGISTRATION SHEET

House Finance

March 31, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Chuck [unclear]	SEANC
Rick Fedrini	Progress Energy
ZEB ALLEY	NMRS
David Mc Gowan	NC Realtors
Candy Pambell	INTER N
Cody Thomas	NCAR

[Handwritten signature]

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 107
Finance Committee Substitute Adopted 3/22/11

Short Title: Tax of Improved Prop. in Roadway Corridors.

(Public)

Sponsors:

Referred to:

February 23, 2011

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE PROPERTY TAX OWED FOR IMPROVED PROPERTY
INSIDE CERTAIN ROADWAY CORRIDORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.9 reads as rewritten:

"§ 105-277.9. Taxation of property inside certain roadway corridors.

Real property that lies within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the ~~general tax rate levied on real property by the taxing unit in which~~ appraised value of the property ~~is situated if~~ if each of the following requirements is met:

- (1) As of January 1, no building or other structure is located on the ~~property;~~ ~~and~~ property.
- (2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor."

SECTION 2. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-277.9A. Taxation of improved property inside certain roadway corridors.

(a) Reduced Assessment. – Real property on which a building or other structure is located and that lies within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and is taxable at fifty percent (50%) of the appraised value of the property if the property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor.

(b) Sunset. – This section is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2021."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.



GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 107 (Second Edition)

SHORT TITLE: Tax of Improved Prop. in Roadway Corridors.

SPONSOR(S): Senators Brunstetter and Garrou

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
General Fund	*No General Fund Impact*				
Local Governments	*Approximate Annual Revenue Loss of \$550,000*				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; NC Local Governments					
EFFECTIVE DATE: Taxable Years on or after July 1, 2011.					

BILL SUMMARY:

Under current law, vacant property within a roadway corridor is taxable at 20 percent of its appraised value. Improved property is taxable at the appraised value. SB 107 would provide a 50 percent reduction in the taxable value of improved property in a transportation corridor.

ASSUMPTIONS AND METHODOLOGY:

The NC Department of Transportation identified the roadway corridors that are not scheduled for near-term right-of-way acquisition. The corridors included six projects located in five counties. Fiscal Research contacted the tax assessors for those counties to determine the potential revenue loss associated with SB 107. The table below provides the revenue loss by county.

SB 107 Revenue Loss by County	
Currituck	\$0 (no improved property in corridor)
Wake	\$44,588
Johnston	\$18,581
Pitt	\$99,826
Forsyth	\$385,714
Total	\$548,709

SOURCES OF DATA: Currituck County Tax Assessor; Wake County Tax Assessor; Johnston County Tax Assessor; Forsyth County Tax Assessor; Pitt County Tax Assessor

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 23, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 107: Tax of Improved Prop. in Roadway Corridors

2011-2012 General Assembly

Committee: House Finance	Date: March 29, 2011
Introduced by: Sens. Brunstetter, Garrou	Prepared by: Cindy Avrette
Analysis of: Second Edition	Committee Counsel

SUMMARY: *Senate Bill 107 would reduce the property tax owed on improved property inside a roadway corridor by providing that it is taxable at 50% of its appraised value. The provision would sunset for taxes imposed for taxable years beginning on or after July 1, 2021.*

CURRENT LAW: Article V, Sec. 2(2) of the North Carolina Constitution grants the General Assembly the power to classify property for taxation. That power must be exercised on a State-wide basis, by uniform rule, in a general law uniformly applicable in every unit of local government. In 1987, the General Assembly classified *unimproved* property in a transportation corridor marked on an official map as a special class of property and provided that it would be taxable at 20% of its appraised value.

A transportation corridor map may be adopted by the governing body of a local government as part of a comprehensive plan for streets and highways or by the Department of Transportation for part of the State highway system. Once a transportation corridor official map is filed with the register of deed, no building permit may be issued for any building or structure on the property for up to three years.¹ If a building or structure exists on the property at the time the map is recorded, a permit may be issued provided the size of the building or structure is not increased.

There is no limit on how long the filer of a transportation corridor map may keep a proposed route on a map without purchasing the property. Although a proposed route does not prevent the sale of the property, it does affect its salability because lenders and purchasers may not want to purchase property that may eventually be part of a highway corridor. A property owner may petition the filer of the map for acquisition of the property due to an undue hardship on the affected property owner.²

BILL ANALYSIS: Senate Bill 107 would classify improved property within a transportation corridor marked on an official map as a special class of property and provide that it would be taxable at 50% of its appraised value.

The Department of Transportation's ability to purchase property in recent years has been hampered by fiscal constraints. This constraint has placed a hardship on some property owners located in a transportation corridor. The reduction in the property tax assessment is one way to ease the financial burden on the property owners. However, the reduction in the property's tax value reduces the property tax revenue available to the counties in which these corridors lie. The counties most affected are the larger ones and some of the smaller counties adjacent to them.

The 10-year sunset provided in the bill recognizes that the bill addresses a State issue with a property tax expenditure that reduces local tax revenues. The sunset would give the General Assembly an opportunity to review the policy in the future.

EFFECTIVE DATE: The bill would become effective for taxes imposed for taxable years beginning on or after July 1, 2011.

¹ G.S. 136-44.51.

² G.S. 136-44.53. In the last nine years, 684 hardship advance acquisition requests in protected corridors have been received with approximately 500 receiving approval. Most hardship requests are related to financial or medical difficulties.

Senate Bill 107

Page 2

BACKGROUND: The Department of Transportation has used the corridor protection review program since 1989. The purpose of the program is to promote greater public knowledge of a project, to help prevent uninformed buying of property within the corridor, and to prevent development in a corridor thus reducing the cost of purchasing possible rights-of-ways. Twenty-four corridors are currently recorded. Acquisitions are complete in five corridors and the process has begun in 12 others. Seven corridors have map protection only. Of those seven, it is my understanding that two are under consideration for the acquisition process to begin.³

In the fall of 2010, the Department implemented some changes to its current corridor protection review program:

- Proposed evaluation of each protected corridor every 10 years to ensure the protected corridor remains valid.
- Established criteria to be used in determining whether a corridor official map should be filed.
- Established a Department Roadway Corridor Official Map Committee to oversee the corridor official map process.
- Made corridor protection less restrictive for property owners by setting a timeline to respond to requests for hardship acquisitions and by allowing more flexibility with permits for variance.

Giles Perry, counsel to the Transportation Committee, contributed to this summary. Information also obtained from the Department of Transportation.

S107-SMRB-28(e2) v1

³ US 1 Rockingham/Hamlet and Asheboro Bypass.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 358
Committee Substitute Favorable 3/24/11

Short Title: Apex/Cary Annexation Into Chatham Restricted. (Local)

Sponsors:

Referred to:

March 16, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE APPROVAL OF THE BOARD OF COMMISSIONERS OF
3 CHATHAM COUNTY BEFORE THE TOWNS OF APEX OR CARY MAY MAKE AN
4 INVOLUNTARY ANNEXATION INTO CHATHAM COUNTY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Neither the Towns of Apex nor Cary may adopt an annexation
7 ordinance under Part 3 of Article 4A of Chapter 160A of the General Statutes that applies to
8 any territory located within Chatham County unless the Board of Commissioners of Chatham
9 County has, prior to the adoption of the annexation ordinance, approved a resolution or
10 ordinance consenting to that annexation.

11 SECTION 2. This act is effective when it becomes law and applies with respect to
12 any annexation ordinance adopted after the date this act becomes law.





HOUSE BILL 358: Apex/Cary Annexation Into Chatham Restricted

2011-2012 General Assembly

Committee: House Finance	Date: March 31, 2011
Introduced by: Reps. Hackney, Stam	Prepared by: Greg Roney
Analysis of: Second Edition	Committee Counsel

SUMMARY: *House Bill 358 requires the Towns of Apex and Cary to obtain approval from the Chatham County Board of Commissioners before any involuntary annexation into Chatham County.*

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

Pursuant to this Section, the General Assembly enacted Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to involuntarily add territory to their municipal limits, if the area meets the statutory requirements for involuntary annexation. Generally, a municipality may involuntarily annex property if: (1) it is adjacent or contiguous to the city; (2) 1/8 of the external boundary area coincides with the city boundary; (3) it is not part of another city; and (4) it is developed for urban purposes.

BILL ANALYSIS: House Bill 358 would require the Towns of Apex and Cary to obtain approval from the Chatham County Board of Commissioners before adoption of any annexation ordinance under Part 3 of Article 4A of the Chapter 160A of the General Statutes, which governs involuntary annexation by cities of 5,000 or more, that applies to any territory in Chatham County.

EFFECTIVE DATE: This act is effective when it becomes law and applies to any annexation ordinance adopted after the date this act becomes law.

Giles S. Perry, counsel to House Government, substantially contributed to this summary.

H358-SMTM-3(e2) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 248

Short Title: Establish Tax Modernization Commission. (Public)

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

Referred to: Finance.

March 9, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE TAX MODERNIZATION COMMISSION AND TO ENSURE THAT RECOMMENDATIONS ADOPTED BY THE COMMISSION ARE INTRODUCED AND PLACED ON THE CALENDAR TO BE HEARD IN AN EXPEDITIOUS AND TIMELY MANNER.

Whereas, the General Assembly has established a number of commissions to examine the tax structure of the State of North Carolina; and

Whereas, these previous committees have made recommendations to simplify the tax code, to make the revenues resulting from the tax code less volatile, and to reduce tax rates to attract businesses to our State; and

Whereas, the recommendations by these previous committees submitted over time increasingly indicate a developing consensus as to the need for change in the State's tax code; and

Whereas, these previous recommendations reflect that the world's economy is evolving such that the State's tax structure increasingly fails to capture revenue streams that are becoming more common in today's economy in order to support the services that are required to be provided by the government; and

Whereas, these previous recommendations have allowed for a more stable, less volatile, fairer system of generating taxes in a way that is revenue neutral; and

Whereas, despite the developing consensus reflected in the numerous previous committees, no modernizing change to the State's tax structure has yet occurred; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Establishment. – The Tax Modernization Study Commission is established.

SECTION 2. Membership. – The Commission shall be composed of 30 members, as follows:

- (1) Ten members appointed by the Governor as follows:
 - a. Four persons with substantial business experience.
 - b. Two persons who hold county or municipal elected office or are county or city managers.
 - c. One person with experience in economic analysis.
 - d. Three members of the public at large.
- (2) Ten members appointed by the Speaker of the House of Representatives as follows:



- 1 a. Three persons with substantial business experience.
- 2 b. Four persons who are members of the House of Representatives at
- 3 the time of appointment.
- 4 c. One person who holds county or municipal elected office or is a
- 5 county or city manager.
- 6 d. One person with experience in economic analysis.
- 7 e. One member of the public at large.
- 8 (3) Ten members appointed by the President Pro Tempore of the Senate as
- 9 follows:
- 10 a. Three persons with substantial business experience.
- 11 b. Four persons who are members of the Senate at the time of
- 12 appointment.
- 13 c. One person who holds county or municipal elected office or is a
- 14 county or city manager.
- 15 d. One person with experience in economic analysis.
- 16 e. One member of the public at large.

17 The Commission shall have three cochairs, one designated by the Governor, one
18 designated by the President Pro Tempore of the Senate, and one designated by the Speaker of
19 the House of Representatives from among their appointees. The Commission shall meet upon
20 the call of the cochairs. Vacancies shall be filled by the appointing authority. Public members
21 shall be residents of the State. A quorum of the Commission shall be a majority of the
22 members.

23 **SECTION 3. Duties.** – The Commission shall do the following:

- 24 (1) Review the existing State tax code to determine whether the existing tax
- 25 system will be sufficient to keep pace with the operating and infrastructure
- 26 needs of an effective and efficient public sector.
- 27 (2) Examine current income tax rates to determine whether the rate is negatively
- 28 impacting our competitive position.
- 29 (3) Examine the tax bases to determine whether these bases should be
- 30 broadened, allowing for a revenue-neutral modernization that produces more
- 31 stable revenues during times of economic hardship.
- 32 (4) Evaluate the State's current system of economic incentives to ensure that
- 33 each economic incentive in the State's current portfolio is providing a good
- 34 return on investment and is effectively recruiting high-value jobs to the
- 35 State.
- 36 (5) Study and recommend a permanent financing strategy considering the
- 37 foregoing goals and the realities of the present-day economy.

38 **SECTION 4. Compensation; Administration.** – Members of the Commission shall
39 receive subsistence and travel allowances at the rates set forth in G.S. 120-3.1, 138-5, or 138-6,
40 as appropriate. With the prior approval of the Legislative Services Commission, the Legislative
41 Services Officer shall assign professional and clerical staff to assist in the work of the
42 Commission. The University of North Carolina shall provide advice and staffing to the
43 Commission. Provision of such advice and staffing shall be coordinated through the President
44 of The University of North Carolina, utilizing appropriate resources of the various constituent
45 institutions. With the prior approval of the Legislative Services Commission, the Commission
46 may hold its meetings in the State Legislative Building or the Legislative Office Building. The
47 Commission may also meet at various locations around the State in order to promote greater
48 public participation in its deliberations. The Commission, while in the discharge of its official
49 duties, may exercise all the powers provided under the provisions of G.S. 120-19 and
50 G.S. 120-19.1 through G.S. 120-19.4, including the power to request that all officers, agents,
51 agencies, and departments of the State provide any information, data, or documents within their

1 possession, ascertainable from their records, or otherwise available to them and the power to
2 subpoena witnesses. The Commission may meet during a regular or extra session of the
3 General Assembly.

4 **SECTION 5. Limitations.** – Taken collectively, the recommendations adopted by
5 the Commission shall be revenue neutral when compared to the revenue projections for the
6 taxes used in the appropriations bill passed by the General Assembly for the 2011-2012 fiscal
7 year.

8 If recommendations are adopted by the Commission by a vote of at least two-thirds
9 of the members, the following shall apply:

- 10 (1) A bill containing the recommendations shall be introduced and placed on the
11 calendar for second reading in the house in which it is introduced on the
12 third legislative day after it is introduced.
- 13 (2) If the bill passes second reading, that house shall vote on third reading of the
14 bill on the following legislative day.
- 15 (3) If the bill passes third reading, then the bill shall be placed on the calendar in
16 the other house for second reading no later than the third legislative day after
17 it is received and shall be voted on that day.
- 18 (4) If the bill passes second reading, that house shall vote on third reading of the
19 bill on the next legislative day.
- 20 (5) No amendments to the bill or proposed committee substitutes for the bill
21 shall be in order.

22 **SECTION 6. Report.** – The Commission shall report its findings and
23 recommendations to the 2012 Regular Session of the 2011 General Assembly no later than May
24 1, 2012. The Commission shall terminate upon the filing of its final report.

25 **SECTION 7.** Of the funds appropriated to the General Assembly, the Legislative
26 Services Commission shall allocate funds for the expenses of the Commission established by
27 this act. Such allocation may be accomplished by transfer of funds to The University of North
28 Carolina. Funds appropriated to The University of North Carolina may also be used to provide
29 professional and clerical assistance as provided by this act.

30 **SECTION 8.** This act is effective when it becomes law.



HOUSE BILL 248: Establish Tax Modernization Commission

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Rhyne
Analysis of: First Edition

Date: March 31, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 248 would establish the Tax Modernization Study Commission to study and evaluate the existing tax structure and make recommendations to the 2012 Regular Session of the 2011 General Assembly. The bill would require that the recommendations be revenue neutral and, if they are adopted by a vote of at least two-thirds of the Commission members, that a bill containing the recommendations be calendared within a certain time frame and that no amendments or proposed committee substitutes would be in order.*

BACKGROUND: North Carolina has spent a considerable amount of time over the last four years studying comprehensive tax reform.¹ Several recurring themes have emerged from these studies, such as broadening the base and lowering rates, having less dependency on volatile revenue sources, promoting economic competitiveness, and modernizing the tax structure to reflect the 21st century economy.

Almost every other state has engaged in similar efforts over the last decade with similar results. The recommendations are typically consistent, but few states have adopted the proposals as they continue to grapple with the best way to implement them. Consequently, some states are starting to shift their focus away from the substantive proposals and toward the political process by creating special procedural rules for tax reform.

One state that has recently taken this approach is Georgia. Last year, Georgia created the *Special Council on Tax Reform and Fairness for Georgians*, composed almost entirely of business representatives, economists, and academicians. The authorizing legislation also created a standing legislative committee charged with introducing one or more bills during the 2011 Session that would incorporate without significant changes the recommendations of the Council. Under the 2010 law, the tax reform legislation may only be referred to this Special Joint Committee. If the Committee gives a favorable report to the legislation, or to a committee substitute for the legislation, then the legislation goes before the House of Representatives for an up or down vote as reported from the Committee without amendments. If the legislation passes the House, it moves to the Senate for a similar up or down vote, without any amendments. On March 29, 2011, a scaled-down version of Georgia's tax reform proposal passed the Special Joint Committee and was scheduled to be considered by the full House on March 30 for an up or down vote.

BILL ANALYSIS: House Bill 248 would establish the Tax Modernization Study Commission with special procedural rules for the consideration of its recommendations by the 2012 Regular Session of the General Assembly.

Membership. – The Commission would be composed of 30 members according to the chart below. The Commission would have three cochairs, one designated by the Governor, one by the House, and one by the Senate. A quorum would be a majority of the members.

¹ A comprehensive list of North Carolina's tax-related study committees is included at the end of this summary.

House Bill 248

Page 2

By Governor (10)	By Speaker of the House (10)	By President Pro Tempore (10)
4 persons with substantial business experience	3 persons with substantial business experience	3 persons with substantial business experience
2 persons who hold county or municipal elected office or are county or city managers	4 persons who are members of the House of Representatives at the time of appointment	4 persons who are members of the Senate at the time of appointment
1 person with experience in economic analysis	1 person who holds county or municipal elected office or is a county or city manager	1 person who holds county or municipal elected office or is a county or city manager
3 members of the public at large	1 person with experience in economic analysis	1 person with experience in economic analysis
	1 member of the public at large	1 member of the public at large

Duties. – The Commission would be charged with evaluating the existing tax code, including economic incentives, with regard to revenue sufficiency, competitiveness, stability, and "return on investment" in light of the present-day economy.

Administration. – In addition to legislative staff, The University of North Carolina would provide advice and staffing to the Commission. In addition to meeting in the legislative complex, the Commission would be authorized to meet in various locations around the State to promote greater public participation. It could also meet during a regular or extra session of the General Assembly.

Limitations. – The recommendations adopted by the Commission would be subject to the following limitations:

- They must be revenue neutral when compared to the revenue projections for the taxes used in the appropriations bill passed by the General Assembly for the 2011-2012 fiscal year.
- If they are adopted by a vote of at least two-thirds of the members, then:
 - A bill containing the recommendations shall be introduced and placed on the calendar for second reading in the house in which it is introduced on the third legislative day after it is introduced.
 - If the bill passes second reading, that house shall vote on third reading of the bill on the following legislative day.
 - If the bill passes third reading, then the bill shall be placed on the calendar in the other house for second reading no later than the third legislative day after it is received and shall be voted on that day.
 - If the bill passes second reading, that house shall vote on third reading of the bill on the next legislative day.
 - No amendments to the bill or proposed committee substitutes for the bill shall be in order.

Report. – The Commission must report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly no later than May 1, 2012. The Commission would terminate upon the filing of its final report.

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

House Bill 248

Page 3

FORMER NC TAX-RELATED STUDY COMMITTEES: The following is a list of North Carolina study committees that have considered tax reform in some manner over the last 60 years:

1. *Report from the Commissioner of Revenue to the Governor, the Advisory Budget Commission, and the Budget Bureau (1951)*
2. *Tax Study Commission (1967-68)*
3. *Select Legislative Committee on Tax Fairness (1987)*
4. *Economic Future Study Commission (1991)*
5. *Tax Policy Study Commission (1999)*
6. *Governor's Commission on Tax Loopholes and Government Efficiencies (2001)*
7. *Governor's Commission to Modernize State Finances (2002)*
8. *State and Local Fiscal Modernization Study Commission (2008)*
9. *Institute of Emerging Issues (IEI) Business Committee on Financing the Future (2009)*
10. *Joint House and Senate Finance Committees (2009-2010)*

H248-SMSV-20(e1) v1



North Carolina General Assembly
House Committee on Finance

Minutes

April 6, 2011

The House Committee on Finance met on Wednesday, April 6, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:31 am and recognized the six (6) pages present: (1) Maggie Lee of Wake County sponsored by Representative Stam; (2) Sarah Cook of Johnston County sponsored by Representative Daughtry; (3) Erin Armstead of Gaston County sponsored by Representative Current; (4) Sydney Swain of Mecklenburg County sponsored by Representative Samuelson; (5) Sonia Gantt of Gaston County sponsored by Representative Hastings; and (6) Alex Moffitt of Buncombe County sponsored by Representative Hager.

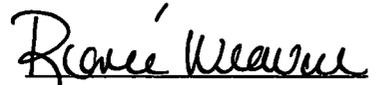
The first bill considered by the Committee was **SB 8 No Cap on Number of Charter Schools** (see **attachment 3**). The Chair recognized Representative Stam who moved to adopt the proposed committee substitute for purpose of discussion. Representative Stam explained the proposed committee substitute. Following Representative Stam's explanation, he provided a handout entitled "**Charter Schools/Diversification of Resources from Public Schools??**" to members (see **attachment 4**). Representative Stam also provided a copy of an amendment that was presented during a House Committee on Education meeting (see **attachment 5**). Following a lengthy discussion, Representative Stam moved that SB 8 be given a favorable report to the House committee substitute, unfavorable report to the original bill. The motion was held for discussion on the bill. The Chair recognized Representative Moore who sent forth amendment 1 that moved to amend the bill on page 13, lines 33-34, by rewriting those lines to read (see **attachment 6**). Representative Moore explained his amendment and answered questions from members. Representative Moore withdrew his amendment. The Chair then

recognized Representative Moore who sent forth amendment 2 that moved to amend the bill on page 15, lines 36-39, by rewriting those lines (see **attachment 7**). Representative Moore explained the amendment. Being no further discussion or debate, the Chair called for a show of hands for amendment 2. The vote being 18 affirmative and 9 against, the amendment passed. The Chair then recognized Representative Starnes who sent forth amendment 3 that moved to amend the bill on page 21, line 35, by deleting "July 1, 2011," and substituting "January 1, 2010." (see **attachment 8**). Representative Starnes explained the amendment. The Chair recognized Representative Starnes who moved to adopt amendment 3. Being no further discussion or debate, the Chair called for a show of hands for amendment 3. The vote being 16 affirmative and 13 against. The amendment passed. The Chair then recognized Representative Moore who sent forth amendment 4 that moved to amend the bill on page 13, lines 30-34, by rewriting those lines to read (see **attachment 9**). Representative Moore explained the amendment. Being no further discussion or debate, the Chair called for a show of hands for amendment 4. The vote being 27 affirmative and 2 against, the amendment passed. The Chair recognized Representative Starnes who moved that SB 8 be given a favorable report to the House committee substitute, unfavorable report to the original bill. The motion was held for further discussion. Chairwoman Howard brought the discussion to an end with the announcement that SB 8 along with the remaining bills on the calendar be rescheduled to be heard on Thursday, April 7, 2011.

Chairwoman Howard adjourned the meeting at 9:51 am.

Respectfully submitted,


Representative Julia Howard
Presiding Senior Chair


Renee Weaver
Clerk, House Committee on
Finance

AGENDA
House Finance Committee

Wednesday, April 6, 2011

8:30 am

Room 544 LOB

Chaired by: Representative Julia C. Howard

Call to Order

Introduction of Pages

Bills:

HB 168 Farms Exempt from City Annexation/ETJ/Zoning
Representatives Sanderson, Cleveland, Hill

HB 313 Repeal Savings Bond Payroll Savings Program - AB
Representatives Hastings, T. Moore

SB 8 No Cap on Number of Charter Schools
Senator Stevens

SB 29 Tax Certification - Alamance County
Senator Gunn

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: APR. 6, 2011 Room: 544

*Name: Maggie Lee G. Alex Moffitt
County: Wake Buncombe
Sponsor: Stam Hagar

*Name: Sarah Cook
County: Johnston
Sponsor: Daughtry

*Name: Erin Armstead
County: Gaston
Sponsor: Current

*Name: Sydney Swain
County: Mecklenburg
Sponsor: Samuelson

*Name: Sonia Gantt
County: Gaston
Sponsor: Hastings

House Sgt-At Arms:

- | | |
|------------------------------|---------------------------|
| 1. Name: <u>FRED HINES</u> | 4. Name: <u>KEN COKER</u> |
| 2. Name: <u>JOHN BRANDON</u> | 5. Name: _____ |
| 3. Name: <u>EARL COKER</u> | 6. Name: _____ |

VISITOR REGISTRATION SHEET

House Finance

April 6, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Cathy Wright	self
Joy Hixler	NZDA
Sara Riggins	NCFPC
Allison Fowler	NC Grange
Terry Stoops	John Locke Foundation
Ken Reardon	NCACC
Rebecca Troutman	NCACC
David Starling	NC DST
Kellie Sloppy	JLF
Beeki Grey	JLF
Eddie Goddard	NC Alliance

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April 6, 2011

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Date

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NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Broughton	Womble Carlyle
Annaliese Polpan	DRNC
Becki Gray	J&J
Jason - Sheffield	DST
Hinda Duster	NCAE
John Morant	Play Group
Edgar Miller	CTNC
Lachelle Pulliam	Rep. Wainwright's office
B-L EVERKE	CURTAS last.
Andy Gilk	WWR
Doc Mc Cle	Mc Clellan 24

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House Finance
Name of Committee

April 6, 2011
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Meredith Howland	Policy Group
John Bowditch	AstraZeneca
Barbara Constan	BKCC
Doug Lassiter	NCSBA
Josee Hays	NEHBA
W. D. Dinsor	NCTW
Andrew Bell	NCGA
Michael T. James	NCGA
Tim KENT	NC Beer & Wine
Erin Robinson	NORMA
ZEB ALLEY	NM.R.S
Jim Habel	J. Warner + Assoc

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House Finance
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April 6, 2011
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NAME	FIRM OR AGENCY AND ADDRESS
Justin Burdick	Prop. Stinson
Paul Tolson	Tolson Inc.
Harry Reid	MWC
Mace Foreman	NCAE
Bill Holmes	Min Leader Office
Carl Dean	DSP
Robert Seibsen	NCMS
Itamar Itur	Itur Furman
LC Ferguson	Caroline State Strategies
JP Perry	RCH
Jim	Calif. HHS
JOHN PETERSON	ACEEA

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Date

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NAME

FIRM OR AGENCY AND ADDRESS

Mark Bibbs

Bibbs Law Office

W. L. BUZZ CRYTON

TEA PARTY

Delma Blinson

||

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House Finance

April 6, 2011

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Date

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NAME

FIRM OR AGENCY AND ADDRESS

<i>Matt Randall</i>	<i>NC SRA</i> E
<i>Andrew Joyce</i>	<i>NCASA</i>
<i>Cheryl Posner-Cabell</i>	<i>NC School Psych Assoc</i>
<i>DPF</i>	<i>NCFB</i>
<i>Kelci Weber</i>	<i>NCLM</i>
<i>Paul Meyer</i>	<i>NCLM</i>
<i>Paul Sherman</i>	<i>NCFB</i>
<i>Donald Bryson</i>	<i>PEFNC</i>
<i>Roger Holley</i>	<i>PEFNC / LORAMIE GROUP</i>
<i>Drappell Allison</i>	<i>PEFNC</i>
<i>Dawn Shephard Pope</i>	<i>Office of the Governor</i>

VISITOR REGISTRATION SHEET

House Finance

April 6, 2011

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Date

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FIRM OR AGENCY AND ADDRESS

Hein McPlees	McPlees Consulting
Gene Casby	NCSCA
John Ayn	Ed Consultant
Ben Lewis	NCAE
Jason Deans	DCS
Sam Vahr	NCEG Intern
Durwood Laughlin	WS
Lisa Martin	NE Home Builders
Beth Doster	UNC Chapter
JL	UNC
Ann Hurr	StatL

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House Finance

April 6, 2011

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Date

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FIRM OR AGENCY AND ADDRESS

Celeste Runtz	
Jamie Fitzgerald	MLG
C. Philip Byers	TSLEF
Preston Howard	MCIC
Doug Heron	WM
Do Heath	McGuire Wood
MET, V	NCSLA
GREG EDWARDS	STATE FARM
Joy Whitlatch	State Farm
DILL SCOBGIN	TSJ
Am Miller	SBE

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 8
Education/Higher Education Committee Substitute Adopted 2/16/11
Third Edition Engrossed 2/22/11
Fourth Edition Engrossed 2/24/11
House Committee Substitute Favorable 3/16/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S8-PCS55209-RQ-8

Short Title: No Cap on Number of Charter Schools. (Public)

Sponsors:

Referred to:

January 31, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE EDUCATIONAL OPPORTUNITIES FOR THE CHILDREN OF NORTH CAROLINA BY REMOVING THE CAP ON CHARTER SCHOOLS, BY CREATING A NEW PUBLIC CHARTER SCHOOLS COMMISSION TO OVERSEE CHARTER SCHOOLS, BY STRENGTHENING THE STANDARDS FOR GRANTING AND RETAINING A CHARTER FOR A CHARTER SCHOOL, BY AUTHORIZING LOCAL BOARDS OF EDUCATION TO CONVERT SCHOOLS TO CHARTER SCHOOLS WITHOUT FORMING A NONPROFIT CORPORATION, BY CLARIFYING THE FUNDING FORMULA FOR CHARTER SCHOOLS, AND BY PROVIDING THAT COUNTIES MAY PROVIDE FUNDING FOR CHARTER SCHOOLS IN THEIR JURISDICTIONS; AND TO MAKE OTHER CHANGES TO THE GENERAL STATUTES GOVERNING CHARTER SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Charter Schools Act of 2011."

SECTION 2. Part 6A of Article 16 of Chapter 115C of the General Statutes reads as rewritten:

"Part 6A. Charter Schools.

"§ 115C-238.29A. Purpose.

The purpose of this Part is to authorize a system of charter schools to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently of existing schools, as a method to ~~accomplish all of~~ accomplish, in the aggregate, the following:

- (1) Improve student ~~learning;~~ learning.
- (2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically ~~gifted;~~ gifted.
- (3) Encourage the use of different and innovative teaching ~~methods;~~ methods.



- 1 (4) Create new professional opportunities for ~~teachers,~~ teachers and
2 administrators, including the opportunities to be responsible for the learning
3 program at the school ~~site;~~ site.
- 4 (5) Provide parents and students with expanded choices in the types of
5 educational opportunities that are available within the public school
6 ~~system;~~ system.
- 7 (6) Hold the schools established under this Part accountable for meeting
8 measurable student achievement results, and provide the schools with a
9 method to change from rule-based to performance-based accountability
10 systems.
- 11 (7) Encourage the replication of successful charter schools.

12 **"§ 115C-238.29A1. North Carolina Public Charter Schools Commission established.**

13 (a) Creation. – There is created the North Carolina Public Charter Schools Commission,
14 hereinafter referred to as the Commission. The Commission shall be located administratively
15 under the State Board of Education and shall exercise its powers and functions as provided in
16 this section.

17 (b) Purpose. – The purpose of the Commission is to oversee high-quality public charter
18 schools throughout the State, consistent with the purposes of this Part, and to recommend
19 approval of charter applicants to the State Board of Education.

20 (c) Membership. – The Commission shall consist of the following 13 members:

21 (1) Four members appointed by the Governor.

22 (2) Four members, one of whom shall be a teacher, administrator, or board
23 member of a charter school or a parent of a child attending a charter school,
24 appointed by the General Assembly upon the recommendation of the
25 President Pro Tempore of the Senate in accordance with G.S. 120-121.

26 (3) Four members, one of whom shall be a teacher, administrator, or board
27 member of a charter school or a parent of a child attending a charter school,
28 appointed by the General Assembly upon the recommendation of the
29 Speaker of the House of Representatives in accordance with G.S. 120-121.

30 (4) The Superintendent of Public Instruction or the Superintendent's designee.

31 (d) Qualifications of Members. – Members appointed to the Commission shall
32 collectively possess strong experience and expertise in public and nonprofit governance,
33 management and finance, public school leadership, assessment, curriculum and instruction,
34 public charter schools, and public education law. All appointed members of the Commission
35 shall have demonstrated an understanding of and a commitment to charter schools as a strategy
36 for strengthening public education.

37 (e) Terms of Office. – No appointed member shall serve more than seven consecutive
38 years. The terms of office are as follows:

39 (1) The initial term of office for members appointed by the Governor shall be
40 two years until June 30, 2013, and thereafter shall be three years.

41 (2) The initial term of office for the members appointed by the General
42 Assembly upon the recommendation of the Speaker of the House of
43 Representatives shall be three years until June 30, 2014, and thereafter shall
44 be three years.

45 (3) The initial term of office for the members appointed by the General
46 Assembly upon the recommendation of the President Pro Tempore of the
47 Senate shall be four years until June 30, 2015, and thereafter shall be three
48 years.

49 (f) Officers. – The Commission shall elect a chair and a vice-chair from among its
50 membership. In the absence of the chair, the vice-chair shall preside over the Commission's

1 meetings. All members are voting members, and a majority of the Commission constitutes a
2 quorum. The Commission shall adopt rules to govern its proceedings.

3 (g) Meetings. – Meetings of the Commission shall be held upon the call of the chair or
4 the vice-chair with the approval of the chair.

5 (h) Expenses. – Members of the Commission shall be reimbursed for travel and
6 subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

7 (i) The Commission is subject to the provisions of Chapter 132 ("Public Records") and
8 Article 33C of Chapter 143 ("Meetings of Public Bodies") of the General Statutes.

9 (j) Removal. – Any member of the Commission, other than the Superintendent of
10 Public Instruction, may be removed by a vote of at least two-thirds of members at any duly held
11 meeting for any cause that renders the member incapable or unfit to discharge the duties of the
12 office. Whenever a vacancy on the Commission exists, the original appointing authority shall
13 appoint or elect a member for the remaining portion of the term.

14 (k) Staff. – The State Board of Education shall assign the Office of Charter Schools as
15 staff to the Commission.

16 (l) Powers and Duties. – The Commission shall have the following duties:

17 (1) To provide technical assistance, through the Office of Charter Schools and
18 the Department of Public Instruction, to charter school applicants and to
19 charter schools that are approved under this Part.

20 (2) To recommend policies to the State Board regarding all aspects of charter
21 school operation, including time lines, standards, and criteria for acceptance
22 and approval of applications, monitoring of charter schools, and grounds for
23 revocation of charters.

24 (3) To oversee the process for accepting and approving applications for charters
25 and to make recommendations to the State Board for final approval of
26 charter applications.

27 (4) To oversee the process for monitoring the operation of charter schools, with
28 the assistance and counsel of staff from the Department of Public
29 Instruction.

30 (5) To make recommendations to the State Board regarding any actions
31 involving a charter school, including renewals of charters, nonrenewals of
32 charters, and revocation of charters.

33 (6) To undertake any duties and responsibilities consistent with the above
34 powers and duties and incident thereto.

35 (m) The Commission shall submit recommendations as designated proposals to the State
36 Board. The State Board shall adopt or reject a designated proposal within 95 days. If the State
37 Board takes no action on a designated proposal within 95 days, the proposal shall be deemed
38 adopted. The State Board shall not make any substantive changes to any designated proposal of
39 the Commission that the State Board adopts. If the State Board rejects a designated proposal, it
40 shall state with specificity its reasons for rejection; the Commission then may amend that
41 designated proposal and resubmit it to the State Board. The State Board shall not act in an
42 arbitrary and capricious manner in withholding approval of a designated proposal resubmitted
43 by the Commission. The State Board's rejection of a resubmitted designated proposal is subject
44 to judicial review.

45 **"§ 115C-238.29B. Eligible applicants; contents of applications; submission of applications**
46 **for approval.**

47 (a) Any person, group of persons, or nonprofit corporation seeking to establish a charter
48 school may apply to establish a charter school. If ~~the~~ any applicant other than a local board of
49 education seeks to convert a public school to a charter school, the application shall include a
50 statement signed by a majority of the teachers and instructional support personnel currently

1 employed at the school indicating that they favor the conversion and evidence that a significant
2 number of parents of children enrolled in the school favor conversion.

3 (b) The application shall include an executive summary and shall contain at least the
4 following information:

5 (1) A description of a program that aligns with State standards and implements
6 one or more of the purposes in G.S. 115C-238.29A.

7 (1a) The targeted student population and the community the school intends to
8 serve, as well as evidence of need and community support for the proposed
9 charter school.

10 (2) A description of student achievement goals for the school's educational
11 program and the method of demonstrating that students have attained the
12 skills and knowledge specified for those student achievement goals.

13 (2a) A description of the school's instructional design, including the type of
14 learning environment, such as classroom-based or independent study, class
15 size and structure, curriculum overview, and teaching methods.

16 (2b) The school's plans for identifying and successfully serving students with
17 disabilities, students who are English language learners, academically at-risk
18 students, and academically gifted students, including, but not limited to,
19 compliance with applicable laws and regulations.

20 (3) The governance structure of the school—school, including proposed
21 governing bylaws and the names and biographical information of the
22 proposed initial members of the board of directors of the nonprofit,
23 tax-exempt corporation—corporation, and the process to be followed by the
24 school to ensure parental involvement. A local board of education seeking to
25 convert a school to a charter school shall not be required to form a nonprofit,
26 tax-exempt corporation if the local board of education serves as the board of
27 directors of the charter school.

28 (3a) The local school administrative unit in which the school will be located.

29 (4) Admission policies and procedures.

30 (5) A proposed budget for the school for at least the first five years of operation
31 and evidence that the financial plan for the school is economically sound.

32 (6) Requirements and procedures for program and financial audits.

33 (7) A description of how the school will comply with G.S. 115C-238.29F.

34 (8) Types and amounts of insurance coverage, including bonding insurance for
35 the principal officers of the school, to be obtained by the charter school.

36 (9) The term of the charter.

37 (10) The qualifications required for individuals employed by the school.

38 (11) The procedures by which students can be excluded from the charter school
39 and returned to a public school. Notwithstanding any law to the contrary,
40 any local board may refuse to admit any student who is suspended or
41 expelled from a charter school due to actions that would lead to suspension
42 or expulsion from a public school under G.S. 115C-391 until the period of
43 suspension or expulsion has expired.

44 (12) The number of students to be served, which number shall be at least 65, The
45 number of students to be served, including the grades to be served each year
46 for the full term of the charter, and the minimum, planned, and maximum
47 enrollment per grade per year for the term of the charter. The number of
48 students to be served shall be at least 50, however, the charter school may
49 serve fewer than 50 students if the application contains a compelling reason,
50 such as the school would serve a geographically remote and small student
51 population and the minimum number of teachers to be employed at the

1 ~~school, which number shall be at least three. However, the charter school~~
 2 ~~may serve fewer than 65 students or employ fewer than three teachers if the~~
 3 ~~application contains a compelling reason, such as the school would serve a~~
 4 ~~geographically remote and small student population.~~

5 (12a) The minimum number of teachers to be employed at the school.

6 (12b) An organization chart that clearly presents the school's organizational
 7 structure, including lines of authority and reporting between the governing
 8 board, staff, any related bodies, such as advisory bodies or parent and
 9 teacher councils, and any external organizations that will play a role in
 10 managing the school.

11 (13) Information regarding the facilities to be used by the school and the manner
 12 in which administrative services of the school are to be provided.

13 (14) Repealed by Session Laws 1997-430, s. 1.

14 (15) The process to be followed by the school to ensure parental involvement.

15 (16) The school's plans for providing transportation. The school shall develop a
 16 plan for transportation for any student enrolled in the charter school who
 17 resides within three miles of the charter school in a household with an
 18 income below one hundred eighty-five percent (185%) of the poverty level
 19 as defined by the federal government.

20 (17) The school's plans for providing food services. The school shall develop a
 21 plan for food services for any student enrolled in the charter school who
 22 resides in a household with an income below one hundred eighty-five
 23 percent (185%) of the poverty level as defined by the federal government.

24 (18) Explanations of any partnerships or contractual relationships central to the
 25 school's operations or mission.

26 (19) A detailed school start-up plan, identifying tasks, time lines, and responsible
 27 individuals.

28 (20) For an applicant seeking a charter to operate a virtual charter school,
 29 information showing that the school has a physical facility in the State, that
 30 the chief administrator of the school is located in the State, and that the
 31 teachers serving the virtual charter school are responsible for improving
 32 learning by planned instruction, diagnosing learning needs, prescribing
 33 content delivery through instructional activities, assessing learning, reporting
 34 outcomes to administrators and parents and guardians, and evaluating the
 35 effects of instruction.

36 (c) An applicant shall submit the application to the Commission, which shall have the
 37 authority to recommend the approval of a charter school to the State Board in accordance with
 38 the standards and criteria set forth in this Part. ~~a chartering entity for preliminary approval. A~~
 39 chartering entity may be:

40 (1) ~~The local board of education of the local school administrative unit in which~~
 41 ~~the charter school will be located;~~

42 (2) ~~The board of trustees of a constituent institution of The University of North~~
 43 ~~Carolina, so long as the constituent institution is involved in the planning,~~
 44 ~~operation, or evaluation of the charter school; or~~

45 (3) ~~The State Board of Education.~~

46 ~~Regardless of which chartering entity receives the application for preliminary approval, the~~
 47 ~~State Board of Education shall have final approval of the charter school.~~

48 ~~Notwithstanding the provisions of this subsection, if the State Board of Education finds that~~
 49 ~~an applicant (i) submitted an application to a local board of education and received final~~
 50 ~~approval from the State Board of Education, but (ii) is unable to find a suitable location within~~
 51 ~~that local school administrative unit to operate, the State Board of Education may authorize the~~

1 charter school to operate within an adjacent local school administrative unit for one year only.
2 The charter school cannot operate for more than one year unless it reapplies, in accordance with
3 subdivision (1), (2), or (3) of this subsection, and receives final approval from the State Board
4 of Education.

5 (d) ~~Unless an applicant submits its application under subsection (c) of this section to the~~
6 ~~local board of education of the local school administrative unit in which the charter school will~~
7 ~~be located, the~~The applicant shall submit a copy of its application to that local boardthe local
8 board of education of the local school administrative unit in which the charter school will be
9 located within seven days of its submission under subsection (c) of this section. The local board
10 may offer any information or comment concerning the application it considers appropriate to
11 the ~~chartering entity~~Commission within a time period imposed uniformly for all applications.
12 ~~The local board shall deliver this information to the chartering entity no later than January 1 of~~
13 ~~the next calendar year.~~The applicant shall not be required to obtain or deliver this information
14 to the ~~chartering entity~~Commission on behalf of the local board. The ~~State Board~~Commission
15 shall consider any information or comment it receives from a local board and shall consider the
16 impact on the local school administrative unit's ability to provide a sound basic education to its
17 students when determining whether to recommend grant preliminary and final approval of the
18 charter school.

19 "**§ 115C-238.29C. Preliminary approval of Completeness determination for applications**
20 **for charter schools.**

21 (a) ~~The chartering entity that receives a request for preliminary approval of a charter~~
22 ~~school shall act on each request received prior to November 1 of a calendar year by February 1~~
23 ~~of the next calendar year.~~Commission, subject to the approval of the State Board, shall
24 determine the schedule and deadlines for the submission of charter school applications.

25 (b) ~~The chartering entity~~Commission shall ~~give preliminary approval to the application~~
26 issue a determination that the application is complete if the ~~chartering entity~~Commission
27 determines that ~~(i) the information contained in the application meets the requirements set out in~~
28 ~~this Part or adopted by the State Board of Education,~~Education. ~~(ii) the applicant has the ability~~
29 ~~to operate the school and would be likely to operate the school in an educationally and~~
30 ~~economically sound manner, and (iii) granting the application would improve student learning~~
31 ~~and would achieve one of the other purposes set out in G.S. 115C-238.29A. In reviewing~~
32 ~~applications for the establishment of charter schools within a local school administrative unit,~~
33 ~~the chartering entity is encouraged to give preference to applications that demonstrate the~~
34 ~~capability to provide comprehensive learning experiences to students identified by the~~
35 ~~applicants as at risk of academic failure. If the chartering entity approves more than one~~
36 ~~application for charter schools located in a local school administrative unit, the chartering entity~~
37 ~~may state its order of preference among the applications that it approves.~~

38 (c) ~~If a chartering entity other than the State Board disapproves an application, the~~
39 ~~applicant may appeal to the State Board of Education prior to February 15. The State Board~~
40 ~~shall consider the appeal at the same time it is considering final approval in accordance with~~
41 ~~G.S. 115C-238.29D. The State Board shall give preliminary approval of the application if it~~
42 ~~finds that the chartering entity acted in an arbitrary or capricious manner in disapproving the~~
43 ~~application, failed to consider appropriately the application, or failed to act within the time set~~
44 ~~out in G.S. 115C-238.29C.~~

45 ~~If the chartering entity, the State Board of Education, or both, disapprove an application, the~~
46 ~~applicant may modify the application and reapply subject to the application deadline contained~~
47 ~~in subsection (a) of this section.~~

48 "**§ 115C-238.29D. Final approval of applications for charter schools.**

49 (a) ~~The~~Upon recommendation of the Commission, the State Board shall ~~may~~ grant
50 final approval of an application if it ~~finds that~~ determines that the application meets the

1 requirements set out in this Part or adopted by the State Board of Education and that granting
2 the application would achieve one or more of the purposes set out in G.S. 115C-238.29A.

3 ~~The Commission State Board shall act by March 15 of a calendar year on all applications~~
4 ~~and appeals it receives prior to February 15 of that calendar year.~~ establish a time line approved
5 by the State Board to take final action on applications declared complete under
6 G.S. 115C-238.29C and shall make this information available to applicants. The decision shall
7 be based on the evidence contained in the application or collected following a procedure for
8 application review that is uniform across all applicants and provides opportunities for
9 applicants to respond to questions and requests for further information.

10 (b) ~~The State Board shall authorize no more than five charter schools per year in one~~
11 ~~local school administrative unit.~~ The State Board shall authorize no more than 100-50
12 additional charter schools statewide in each calendar year, not including renewals of existing
13 charters. If more than five charter schools in one local school administrative unit or more than
14 100 schools statewide meet the standards for final approval, the State Board shall give priority
15 to applications that are most likely to further State education policies and to strengthen the
16 educational program offered in the local school administrative units in which they are located.

17 (b1) If the State Board or Commission disapproves an application, it shall provide the
18 applicant with the opportunity to request reconsideration of the decision. However, neither the
19 State Board nor the Commission shall be required to consider any request for reconsideration
20 from an applicant that fails to include additional information not previously presented by the
21 applicant.

22 (b2) A decision to disapprove an application is exempt from review pursuant to Chapter
23 150B of the General Statutes.

24 (c) The State Board of Education may authorize a school before the applicant has
25 secured its space, equipment, facilities, and personnel if the applicant indicates the authority is
26 necessary for it to raise working capital. The State Board shall not allocate any funds to the
27 school until the school has obtained space.

28 (d) The State Board of Education may grant the initial charter for a period not to exceed
29 10 years and may renew the charter upon the request of the chartering entity for subsequent
30 periods not to exceed 10 years each. The State Board, upon recommendation of the
31 Commission, may include in the charter any standards or requirements it determines are
32 necessary to fulfill the purposes of this Part as well as any other objectives set forth by the
33 charter school applicant. The charter shall set forth clear, measurable, and attainable academic
34 and operational performance standards the chartering entity must meet to earn charter renewal
35 and the type of objective and verifiable data which will be reviewed to evaluate performance.
36 Those standards shall include:

- 37 (1) Measures of student academic achievement status or proficiency.
- 38 (2) Student academic growth, including adequacy of growth toward State
39 standards.
- 40 (3) Achievement gaps among student subgroups identified by the Department of
41 Public Instruction for all public schools.
- 42 (4) Postsecondary readiness and success for high schools.
- 43 (5) Attendance and recurrent enrollment from year to year.
- 44 (6) Financial performance and sustainability.
- 45 (7) Compliance with all applicable laws, regulations, and terms of the charter
46 contract.

47 ~~The State Board of Education-Commission~~ shall review the operations of each charter
48 school at least once every five years to ensure that the school is meeting the expected academic,
49 financial, and governance standards.

50 A material revision of the provisions of a charter application shall be made only upon the
51 approval of the State Board of ~~Education-Commission~~ Education upon recommendation of the Commission.

1 It shall not be considered a material revision of a charter application and shall not require
2 the prior approval of the State Board for a charter school to increase its enrollment during the
3 charter school's second year of operation and annually thereafter (i) by up to ~~ten~~twenty percent
4 ~~(10%)~~(20%) of the school's previous year's enrollment or (ii) in accordance with planned
5 growth as authorized in the charter. Other enrollment growth shall be considered a material
6 revision of the charter application, and upon recommendation of the Commission, the State
7 Board may approve such additional enrollment growth of greater than ~~ten~~twenty percent ~~(10%)~~
8 (20%) only if the ~~State Board~~Commission finds that:

- 9 (1) The actual enrollment of the charter school is within ten percent (10%) of its
10 maximum authorized enrollment;
- 11 (2) The charter school has commitments for ninety percent (90%) of the
12 requested maximum growth;
- 13 (3) The board of education of the local school administrative unit in which the
14 charter school is located has had an opportunity to be heard by the ~~State~~
15 ~~Board of Education~~Commission on any adverse impact the proposed growth
16 would have on the unit's ability to provide a sound basic education to its
17 students;
- 18 (4) The charter school is not currently identified as low-performing;
- 19 (5) The charter school meets generally accepted standards of fiscal
20 management; and
- 21 (6) It is otherwise appropriate to approve the enrollment growth.

22 **"§ 115C-238.29E. Charter school operation.**

23 (a) A charter school that is approved by the State shall be a public school within the
24 local school administrative unit in which it is located. ~~It shall be accountable to the local board~~
25 ~~of education if it applied for and received preliminary approval from that local board for~~
26 ~~purposes of ensuring compliance with applicable laws and the provisions of its charter. All~~
27 ~~other charter schools located, and~~ shall be accountable to the State Board for ensuring
28 compliance with applicable laws and the provisions of their charters, ~~except that any of these~~
29 ~~charter schools may agree to be accountable to the local board of the school administrative unit~~
30 ~~in which the charter school is located rather than to the State Board charters.~~

31 (b) A charter school shall be operated by a private nonprofit corporation that shall have
32 received federal tax-exempt status no later than 24 months following final approval of the
33 application. A local board of education approved to convert a school to a charter school shall
34 not be required to form a nonprofit, tax-exempt corporation if the local board of education
35 serves as the board of directors of the charter school.

36 (c) A charter school shall operate under the written charter signed by the State Board
37 ~~entity to which it is accountable under subsection (a) of this section~~ and the applicant. A charter
38 school is not required to enter into any other contract. The charter shall incorporate the
39 information provided in the application, as modified during the charter approval process, and
40 any terms and conditions imposed on the charter school by the State Board of ~~Education.~~
41 Education, as recommended by the Commission. No other terms may be imposed on the charter
42 school as a condition for receipt of local funds.

43 (d) The board of directors of the charter school shall decide matters related to the
44 operation of the school, including budgeting, curriculum, and operating procedures.

45 (e) A charter school's specific location shall not be prescribed or limited by a local
46 board or other authority except a zoning authority. The school may lease space from a local
47 board of education or as is otherwise lawful in the local school administrative unit in which the
48 charter school is located. If a charter school leases space from a sectarian organization, the
49 charter school classes and students shall be physically separated from any parochial students,
50 and there shall be no religious artifacts, symbols, iconography, or materials on display in the
51 charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space

1 from a sectarian organization, the charter school shall not use the name of that organization in
2 the name of the charter school.

3 At the request of the charter school, the local board of education of the local school
4 administrative unit in which the charter school will be located shall lease any available building
5 or land to the charter school unless the board demonstrates that the lease is not economically or
6 practically feasible or that the local board does not have adequate classroom space to meet its
7 enrollment needs. Notwithstanding any other law, a local board of education may provide a
8 school facility to a charter school free of charge; however, the charter school is responsible for
9 the maintenance of and insurance for the school facility.

10 (f) Except as provided in this Part and pursuant to the provisions of its charter, a charter
11 school is exempt from statutes and rules applicable to a local board of education or local school
12 administrative unit.

13 **"§ 115C-238.29F. General requirements.**

14 (a) Health and Safety Standards. – A charter school shall meet the same health and
15 safety requirements required of a local school administrative unit. The Department of Public
16 Instruction shall ensure that charter schools provide parents and guardians with information
17 about meningococcal meningitis and influenza and their vaccines at the beginning of every
18 school year. This information shall include the causes, symptoms, and how meningococcal
19 meningitis and influenza are spread and the places where parents and guardians may obtain
20 additional information and vaccinations for their children.

21 The Department of Public Instruction shall also ensure that charter schools provide parents
22 and guardians with information about cervical cancer, cervical dysplasia, human
23 papillomavirus, and the vaccines available to prevent these diseases. This information shall be
24 provided at the beginning of the school year to parents of children entering grades five ~~though~~
25 through 12. This information shall include the causes and symptoms of these diseases, how
26 they are transmitted, how they may be prevented by vaccination, including the benefits and
27 possible side effects of vaccination, and the places where parents and guardians may obtain
28 additional information and vaccinations for their children.

29 The Department of Public Instruction shall also ensure that charter schools provide students
30 in grades nine through 12 with information annually on the manner in which a parent may
31 lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500.

32 The Department of Public Instruction shall also ensure that the guidelines for individual
33 diabetes care plans adopted by the State Board of Education under G.S. 115C-12(31) are
34 implemented in charter schools in which students with diabetes are enrolled and that charter
35 schools otherwise comply with the provisions of G.S. 115C-375.3.

36 (b) School Nonsectarian. – A charter school shall be nonsectarian in its programs,
37 admission policies, employment practices, and all other operations and shall not charge tuition
38 or fees. ~~fees, except that a charter school may charge any fees that are charged by the local~~
39 school administrative unit in which the charter school is located. A charter school shall not be
40 affiliated with a nonpublic sectarian school or a religious institution.

41 (c) Civil Liability and Insurance. –

42 (1) The board of directors of a charter school may sue and be sued. The State
43 Board of Education shall adopt rules as recommended by the Commission to
44 establish reasonable amounts and types of liability insurance that the board
45 of directors shall be required by the charter to obtain. The board of directors
46 shall obtain at least the amount of and types of insurance required by these
47 rules to be included in the charter. Any sovereign immunity of the charter
48 school, of the organization that operates the charter school, or its members,
49 officers, or directors, or of the employees of the charter school or the
50 organization that operates the charter school, is waived to the extent of
51 indemnification by insurance.

- 1 (2) No civil liability shall attach to any chartering entity, to the State Board of
2 Education, the Commission, or to any of their members or employees,
3 individually or collectively, for any acts or omissions of the charter school.
- 4 (d) Instructional Program. –
- 5 (1) The school shall provide instruction each year for at least 180 days.
- 6 (2) The school shall design its programs to at least meet the student performance
7 standards adopted by the State Board of Education and the student
8 performance standards contained in the charter.
- 9 (3) A charter school shall conduct the student assessments required for charter
10 schools by the State Board of Education.
- 11 (4) The school shall comply with policies adopted by the State Board of
12 Education for charter schools relating to the education of children with
13 disabilities.
- 14 (5) The school is subject to and shall comply with Article 27 of Chapter 115C of
15 the General Statutes, except that a charter school may also exclude a student
16 from the charter school and return that student to another school in the local
17 school administrative unit in accordance with the terms of its charter.
- 18 (e) Employees. –
- 19 (1) An employee of a charter school is not an employee of the local school
20 administrative unit in which the charter school is ~~located~~ located, except for
21 employees of charter schools converted by a local board of education where
22 a nonprofit, tax-exempt corporation was not required to be formed because
23 the local board of education serves as the board of directors of the charter
24 school. The charter school's board of directors shall employ and contract
25 with necessary teachers to perform the particular service for which they are
26 employed in the school; at least seventy-five percent (75%) of these teachers
27 in grades kindergarten through five, at least fifty percent (50%) of these
28 teachers in grades six through eight, and at least fifty percent (50%) of these
29 teachers in grades nine through 12 shall hold teacher certificates. All
30 teachers in grades six through 12 who are teaching in the core subject areas
31 of mathematics, science, social studies, and language arts shall be college
32 graduates. No charter school shall employ as a teacher any person whose
33 certification has been revoked by the State Board of Education.
- 34 The board also may employ necessary employees who are not required to
35 hold teacher certificates to perform duties other than teaching and may
36 contract for other services. The board may discharge teachers and
37 noncertificated employees.
- 38 (2) No local board of education shall require any employee of the local school
39 administrative unit to be employed in a charter school.
- 40 (3) If a teacher employed by a local school administrative unit makes a written
41 request for a leave of absence to teach at a charter school, the local school
42 administrative unit shall grant the leave for one year. For the initial year of a
43 charter school's operation, the local school administrative unit may require
44 that the request for a leave of absence be made up to 45 days before the
45 teacher would otherwise have to report for duty. After the initial year of a
46 charter school's operation, the local school administrative unit may require
47 that the request for a leave of absence be made up to 90 days before the
48 teacher would otherwise have to report for duty. A local board of education
49 is not required to grant a request for a leave of absence or a request to extend
50 or renew a leave of absence for a teacher who previously has received a
51 leave of absence from that school board under this subdivision. A teacher

1 who has career status under G.S. 115C-325 prior to receiving a leave of
 2 absence to teach at a charter school may return to a public school in the local
 3 school administrative unit with career status at the end of the leave of
 4 absence or upon the end of employment at the charter school if an
 5 appropriate position is available. If an appropriate position is unavailable,
 6 the teacher's name shall be placed on a list of available teachers and that
 7 teacher shall have priority on all positions for which that teacher is qualified
 8 in accordance with G.S. 115C-325(e)(2).

9 (3a) A teacher employed by a charter school who returns to employment with a
 10 local school administrative unit without a break in service shall have unused
 11 sick leave from previous employment with a local school administrative unit
 12 reinstated. A teacher employed by a charter school who returns to
 13 employment with a local school administrative unit without a break in
 14 service shall be credited for the years of service at the charter school for the
 15 purposes of the salary schedule, longevity pay, and rate of earned leave.

16 (4) The employees of the charter school shall be deemed employees of the local
 17 school administrative unit for purposes of providing certain State-funded
 18 employee benefits, including membership in the Teachers' and State
 19 Employees' Retirement System and the State Health Plan for Teachers and
 20 State Employees. The State Board of Education provides funds to charter
 21 schools, approves the original members of the boards of directors of the
 22 charter schools, has the authority to grant, supervise, and revoke charters,
 23 and demands full accountability from charter schools for school finances and
 24 student performance. Accordingly, it is the determination of the General
 25 Assembly that charter schools are public schools and that the employees of
 26 charter schools are public school employees. Employees of a charter school
 27 whose board of directors elects to become a participating employer under
 28 G.S. 135-5.3 are "teachers" for the purpose of membership in the North
 29 Carolina Teachers' and State Employees' Retirement System. In no event
 30 shall anything contained in this Part require the North Carolina Teachers'
 31 and State Employees' Retirement System to accept employees of a private
 32 employer as members or participants of the System.

33 (f) Accountability. –

34 (1) The school is subject to the financial audits, the audit procedures, and the
 35 audit requirements adopted by the State Board of Education for charter
 36 schools. These audit requirements may include the requirements of the
 37 School Budget and Fiscal Control Act.

38 (2) The school shall comply with the reporting requirements established by the
 39 State Board of Education in the Uniform Education Reporting System.

40 (3) The school shall report at least annually to the ~~chartering entity~~ and the
 41 Commission and the State Board of Education the information required by
 42 ~~the chartering entity~~ Commission or the State Board.

43 (g) Admission Requirements. –

44 (1) Any child who is qualified under the laws of this State for admission to a
 45 public school is qualified for admission to a charter school. Any charter
 46 school that is unable to fill its current enrollment with students qualified
 47 under the laws of this State for admission to a public school may enroll
 48 persons of school age who are not domiciliaries of the State and charge those
 49 students a tuition amount equal to the per pupil allocation of the local
 50 appropriation for the county in which the charter school is located and the
 51 per pupil State appropriation for that school year. The number of persons of

1 school age who are not domiciliaries of the State who are enrolled in a
2 charter school may not exceed ten percent (10%) of the total number of
3 students enrolled in the charter school.

4 (2) No local board of education shall require any student enrolled in the local
5 school administrative unit to attend a charter school.

6 (3) Admission to a charter school shall not be determined according to the
7 school attendance area in which a student resides, except that any ~~local~~
8 ~~school administrative unit in which a public school converts to a charter~~
9 ~~school shall give admission preference to students who reside within the~~
10 ~~former attendance area of that school.~~ public school converting to a charter
11 school shall adopt a policy giving enrollment preference to students who
12 reside within the former attendance area of that public school for at least the
13 first two years of operation of the charter school.

14 (4) Admission to a charter school shall not be determined according to the local
15 school administrative unit in which a student resides.

16 (5) A charter school shall not discriminate against any student on the basis of
17 ethnicity, national origin, gender, or disability. Except as otherwise provided
18 by law or the mission of the school as set out in the charter, the school shall
19 not limit admission to students on the basis of intellectual ability, measures
20 of achievement or aptitude, athletic ability, disability, race, creed, gender,
21 national origin, religion, or ancestry. The charter school may give enrollment
22 priority to siblings of currently enrolled students who were admitted to the
23 charter school in a previous year and to children of the school's principal,
24 teachers, ~~and teacher assistants.~~ teacher assistants, and other full-time
25 employees of the charter school. In addition, and only for its first year of
26 operation, the charter school may give enrollment priority to children of the
27 initial members of the charter school's board of directors, so long as (i) these
28 children are limited to no more than ten percent (10%) of the school's total
29 enrollment or to 20 students, whichever is less, and (ii) the charter school is
30 not a former public or private school. If multiple birth siblings apply for
31 admission to a charter school and a lottery is needed under
32 G.S. 115C-238.29F(g)(6), the charter school shall enter one surname into the
33 lottery to represent all of the multiple birth siblings. If that surname of the
34 multiple birth siblings is selected, then all of the multiple birth siblings shall
35 be admitted. Within one year after the charter school begins operation, the
36 population of the school shall reasonably reflect the racial and ethnic
37 composition of the general population residing within the local school
38 administrative unit in which the school is located or the racial and ethnic
39 composition of the special population that the school seeks to serve residing
40 within the local school administrative unit in which the school is located.
41 The school shall be subject to any court-ordered desegregation plan in effect
42 for the local school administrative unit.

43 (6) During each period of enrollment, the charter school shall enroll an eligible
44 student who submits a timely application, unless the number of applications
45 exceeds the capacity of a program, class, grade level, or building. In this
46 case, students shall be accepted by lot. Once enrolled, students are not
47 required to reapply in subsequent enrollment periods.

48 (7) Notwithstanding any law to the contrary, a charter school may refuse
49 admission to any student who has been expelled or suspended from a public
50 school under G.S. 115C-391 until the period of suspension or expulsion has
51 expired.

1 (8) Nothing in this subsection shall be interpreted to preclude the formation of a
2 charter school whose mission is focused on serving students with
3 disabilities, students of the same gender, students who pose such severe
4 disciplinary problems that they warrant a specific educational program,
5 academically at-risk students, or academically gifted students.

6 (h) Transportation. – The charter school may provide transportation for students
7 enrolled at the school. ~~The For charter schools approved after July 1, 2011, the charter school~~
8 ~~shall develop a transportation plan so that transportation is not a barrier to provide~~
9 ~~transportation for any student enrolled in the charter school who resides in the local school~~
10 ~~administrative unit in which the school is located within three miles of the charter school in a~~
11 ~~household with an income below one hundred eighty-five percent (185%) of the poverty level~~
12 ~~as defined by the federal government. The charter school is not required to provide~~
13 ~~transportation to any student who lives within one and one-half miles of the school. At the~~
14 request of the charter school and if the local board of the local school administrative unit in
15 which the charter school is located operates a school bus system, then that local board may
16 contract with the charter school to provide transportation in accordance with the charter
17 school's transportation plan to students who reside in the local school administrative unit and
18 who reside at least one and one-half miles ~~of from~~ the charter school. A local board may charge
19 the charter school a reasonable charge that is sufficient to cover the cost of providing this
20 transportation. Furthermore, a local board may refuse to provide transportation under this
21 subsection if it demonstrates there is no available space on buses it intends to operate during the
22 term of the contract or it would not be practically feasible to provide this transportation.

23 (h1) Food Services. – For charter schools approved after July 1, 2011, the charter school
24 shall provide food services for any student enrolled in the charter school who resides in a
25 household with an income below one hundred eighty-five percent (185%) of the poverty level
26 as defined by the federal government.

27 (i) Assets. – Upon dissolution of the charter school or upon the nonrenewal of the
28 charter, all net assets of the charter ~~school~~school, other than real property, purchased with
29 public funds shall be deemed the property of the local school administrative unit in which the
30 charter school is located. Upon dissolution of the charter school or upon the nonrenewal of the
31 charter, State funds used to purchase real property shall be remitted back to the State after all
32 liens on the property are satisfied. Upon dissolution of the charter school or upon the
33 nonrenewal of the charter, county funds used to purchase real property shall be remitted back to
34 the county after all liens on the property are satisfied.

35 (j) Driving Eligibility Certificates. – In accordance with rules adopted by the State
36 Board of Education, the designee of the school's board of directors shall do all of the following:

- 37 (1) Sign driving eligibility certificates that meet the conditions established in
38 G.S. 20-11.
- 39 (2) Obtain the necessary written, irrevocable consent from parents, guardians, or
40 emancipated juveniles, as appropriate, in order to disclose information to the
41 Division of Motor Vehicles.
- 42 (3) Notify the Division of Motor Vehicles when a student who holds a driving
43 eligibility certificate no longer meets its conditions.

44 (k) The Display of the United States and North Carolina Flags and the Recitation of the
45 Pledge of Allegiance. – A charter school shall (i) display the United States and North Carolina
46 flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on
47 a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins
48 of the flag and the Pledge of Allegiance. A charter school shall not compel any person to stand,
49 salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise
50 available, flags shall be displayed in each classroom.

51 **"§ 115C-238.29G. Causes for nonrenewal or termination; disputes.**

1 (a) ~~The~~ Upon recommendation of the Commission, the State Board of Education
2 ~~Education, or a chartering entity subject to the approval of the State Board of Education,~~ may
3 terminate or not renew a charter upon any of the following grounds:

- 4 (1) Failure to meet the requirements for student performance contained in the
5 charter;
- 6 (2) Failure to meet generally accepted standards of fiscal management;
- 7 (3) Violations of law;
- 8 (4) Material violation of any of the conditions, standards, or procedures set forth
9 in the charter;
- 10 (5) Two-thirds of the faculty and instructional support personnel at the school
11 request that the charter be terminated or not renewed; or
- 12 (6) Other good cause identified.

13 (a1) Upon recommendation of the Commission, the State Board shall adopt criteria for
14 adequate performance by a charter school and shall identify charter schools with inadequate
15 performance. The criteria shall include a requirement that a charter school which demonstrates
16 no growth in student performance and has annual performance composites below sixty percent
17 (60%) in any three-year period shall be deemed inadequate. A charter school identified as
18 inadequate shall develop a school improvement plan to meet specific goals for student
19 performance that are consistent with State Board criteria and the mission approved in the
20 charter of the school. The school improvement plan shall be reviewed and approved by the
21 State Board upon recommendation by the Commission. Failure to demonstrate improvement
22 under the school improvement plan shall be cause for termination or nonrenewal of the charter.

23 (b) The State Board of Education shall develop and implement a process to address
24 contractual and other grievances between a charter school and ~~its chartering entity~~the
25 Commission, State Board, or the local board of education during the time of its charter.

26 (c) The State Board and the charter school are encouraged to make a good-faith attempt
27 to resolve the differences that may arise between them. They may agree to jointly select a
28 mediator. The mediator shall act as a neutral facilitator of disclosures of factual information,
29 statements of positions and contentions, and efforts to negotiate an agreement settling the
30 differences. The mediator shall, at the request of either the State Board or a charter school,
31 commence a mediation immediately or within a reasonable period of time. The mediation shall
32 be held in accordance with rules and standards of conduct adopted under Chapter 7A of the
33 General Statutes governing mediated settlement conferences but modified as appropriate and
34 suitable to the resolution of the particular issues in disagreement.

35 Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation
36 proceedings shall be conducted in private. Evidence of statements made and conduct occurring
37 in a mediation are not subject to discovery and are inadmissible in any court action. However,
38 no evidence otherwise discoverable is inadmissible merely because it is presented or discussed
39 in a mediation. The mediator shall not be compelled to testify or produce evidence concerning
40 statements made and conduct occurring in a mediation in any civil proceeding for any purpose,
41 except disciplinary hearings before the State Bar or any agency established to enforce standards
42 of conduct for mediators. The mediator may determine that an impasse exists and discontinue
43 the mediation at any time. The mediator shall not make any recommendations or public
44 statement of findings or conclusions. The State Board and the charter school shall share equally
45 the mediator's compensation and expenses. The mediator's compensation shall be determined
46 according to rules adopted under Chapter 7A of the General Statutes.

47 (d) A decision to terminate or not renew a charter is exempt from review pursuant to
48 Chapter 150B of the General Statutes.

49 **"§ 115C-238.29H. State and local funds for a charter school.**

50 (a) The State Board of Education shall allocate to each charter school:

- 1 (1) An amount equal to the average per pupil allocation for average daily
2 membership from the local school administrative unit allotments in which
3 the charter school is located for each child attending the charter school
4 except for the allocation for children with disabilities and for the allocation
5 for children with limited English proficiency;
- 6 (2) An additional amount for each child attending the charter school who is a
7 child with disabilities; and
- 8 (3) An additional amount for children with limited English proficiency attending
9 the charter school, based on a formula adopted by the State Board.

10 In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual
11 adjustments to the amount allocated to a charter school based on its enrollment growth in
12 school years subsequent to the initial year of operation.

13 In the event a child with disabilities leaves the charter school and enrolls in a public school
14 during the first 60 school days in the school year, the charter school shall return a pro rata
15 amount of funds allocated for that child to the State Board, and the State Board shall reallocate
16 those funds to the local school administrative unit in which the public school is located. In the
17 event a child with disabilities enrolls in a charter school during the first 60 school days in the
18 school year, the State Board shall allocate to the charter school the pro rata amount of
19 additional funds for children with disabilities.

20 (a) Funds allocated by the State Board of Education may be used to enter into
21 operational and financing leases for real property or mobile classroom units for use as school
22 facilities for charter schools and may be used for payments on loans made to charter schools for
23 facilities or equipment. Funds allocated by the State Board of Education may also be used to
24 acquire equipment, real property, buildings, and mobile classroom units for use as school
25 facilities for charter schools, to enter into operational and financing leases for equipment, and
26 for any other purpose identified in G.S. 115C-426(f). However, State funds shall not be used to
27 obtain any other interest in real property or mobile classroom units. No indebtedness of any
28 kind incurred or created by the charter school shall constitute an indebtedness of the State or its
29 political subdivisions, and no indebtedness of the charter school shall involve or be secured by
30 the faith, credit, or taxing power of the State or its political subdivisions. Every contract or
31 lease into which a charter school enters shall include the previous sentence. The school also
32 may own land and buildings it obtains through non-State sources.

33 (b) If a student attends a charter school, the local school administrative unit in which
34 the child resides shall transfer to the charter school an amount equal to the per pupil share of
35 the local current expense fund, as defined by G.S. 115C-426, of local current expense
36 appropriation to the local school administrative unit for the fiscal year. The amount transferred
37 under this subsection that consists of revenue derived from supplemental taxes shall be
38 transferred only to a charter school for students residing within located in the tax district for
39 which these taxes are levied and in which the student resides, levied. The amount transferred
40 under this subsection shall not include special funds of individual schools established pursuant
41 to G.S. 115C-448. The local school administrative unit shall provide a detailed accounting of
42 the funds to be transferred and transfer these funds based on a preliminary projection of charter
43 school enrollment provided to the local school administrative unit by the charter school no later
44 than 15 days after the local school administrative unit receives its local current expense
45 appropriation. Adjustments to this amount shall be made within 30 days of the State Board of
46 Education determining and certifying to the charter school its average daily membership for the
47 school year. If the local school administrative unit fails to comply with the deadlines set forth
48 in this subsection, it shall pay a penalty of one percent (1%) of the amount transferred to the
49 charter school.

50 (c) Counties may provide funds to the nonprofit tax-exempt corporation that holds the
51 charter of a charter school by direct appropriation as set forth in G.S. 153A-457. These funds

1 shall be used only for purposes identified in G.S. 115C-426(f). If a county decides to provide
2 funds, the funds shall be distributed equitably and apportioned according to the average daily
3 membership of each charter school that has requested funds. These funds shall be used only for
4 purposes identified in G.S. 115C-426(f).

5 ~~"§ 115C-238.29I. Notice of the charter school process; review of charter schools; Charter~~
6 ~~School Advisory Committee.~~

7 (a) ~~The State Board of Education shall distribute information announcing the~~
8 ~~availability of the charter school process described in this Part to each local school~~
9 ~~administrative unit and public postsecondary educational institution and, through press releases,~~
10 ~~to each major newspaper in the State.~~

11 (b) ~~Repealed by Session Laws 1997-18, s. 15(i).~~

12 (e) ~~The State Board of Education shall review and evaluate the educational~~
13 ~~effectiveness of the charter school approach authorized under this Part and the effect of charter~~
14 ~~schools on the public schools in the local school administrative unit in which the charter~~
15 ~~schools are located. The Board shall report no later than January 1, 2002, to the Joint~~
16 ~~Legislative Education Oversight Committee with recommendations to modify, expand, or~~
17 ~~terminate that approach. The Board shall base its recommendations predominantly on the~~
18 ~~following information:~~

19 (1) ~~The current and projected impact of charter schools on the delivery of~~
20 ~~services by the public schools.~~

21 (2) ~~Student academic progress in the charter schools as measured, where~~
22 ~~available, against the academic year immediately preceding the first~~
23 ~~academic year of the charter schools' operation.~~

24 (3) ~~Best practices resulting from charter school operations.~~

25 (4) ~~Other information the State Board considers appropriate.~~

26 (d) ~~The State Board of Education may establish a Charter School Advisory Committee~~
27 ~~to assist with the implementation of this Part. The Charter School Advisory Committee may (i)~~
28 ~~provide technical assistance to chartering entities or to potential applicants, (ii) review~~
29 ~~applications for preliminary approval, (iii) make recommendations as to whether the State~~
30 ~~Board should approve applications for charter schools, (iv) make recommendations as to~~
31 ~~whether the State Board should terminate or not renew a charter, (v) make recommendations~~
32 ~~concerning grievances between a charter school and its chartering entity, the State Board, or a~~
33 ~~local board, (vi) assist with the review under subsection (e) of this section, and (vii) provide~~
34 ~~any other assistance as may be required by the State Board.~~

35 (e) ~~Notwithstanding the dates set forth in this Part, the State Board of Education may~~
36 ~~establish an alternative time line for the submission of applications, preliminary approvals,~~
37 ~~criminal record checks, appeals, and final approvals so long as the Board grants final approval~~
38 ~~by March 15 of each calendar year.~~

39 **"§ 115C-238.29J. Public and private assistance to charter schools.**

40 (a) Local boards of education are authorized and encouraged to provide administrative
41 and evaluative support to charter schools located within their local school administrative units.

42 (b) Private persons and organizations are encouraged to provide funding and other
43 assistance to the establishment or operation of charter schools.

44 (c) The State Board of Education shall direct the Department of Public Instruction to
45 provide guidance and technical assistance, upon request, to existing charter schools as well as
46 applicants and or potential applicants for charters.

47 (d) The State Board of Education shall direct the Department of Public Instruction to
48 notify the Department of Revenue when the State Board of Education terminates, fails to
49 renew, or grants a charter for a charter school.

50 **"§ 115C-238.29K. Criminal history checks.**

51 (a) As used in this section:

1 (1) "Criminal history" means a county, state, or federal criminal history of
2 conviction of a crime, whether a misdemeanor or a felony, that indicates an
3 individual (i) poses a threat to the physical safety of students or personnel, or
4 (ii) has demonstrated that he or she does not have the integrity or honesty to
5 fulfill his or her duties as school personnel. These crimes include the
6 following North Carolina crimes contained in any of the following Articles
7 of Chapter 14 of the General Statutes: Article 5A, Endangering Executive
8 and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred
9 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article
10 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device
11 or Material; Article 14, Burglary and Other Housebreakings; Article 15,
12 Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article
13 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A,
14 Obtaining Property or Services by False or Fraudulent Use of Credit Device
15 or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses
16 Against Public Morality and Decency; Article 26A, Adult Establishments;
17 Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
18 Misconduct in Public Office; Article 35, Offenses Against the Public Peace;
19 Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and
20 Article 60, Computer-Related Crime. These crimes also include possession
21 or sale of drugs in violation of the North Carolina Controlled Substances
22 Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related
23 offenses such as sale to underage persons in violation of G.S. 18B-302 or
24 driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.
25 In addition to the North Carolina crimes listed in this subdivision, such
26 crimes also include similar crimes under federal law or under the laws of
27 other states.

28 (2) "School personnel" means any:
29 a. Member of the board of directors of a charter school,
30 b. Employee of a charter school, or
31 c. Independent contractor or employee of an independent contractor of
32 a charter school if the independent contractor carries out duties
33 customarily performed by school personnel,
34 whether paid with federal, State, local, or other funds, who has significant
35 access to students or who has responsibility for the fiscal management of a
36 charter school.

37 (b) ~~The State Board of Education~~ Education, upon recommendation of the Commission,
38 shall adopt a policy on whether and under what circumstances school personnel shall be
39 required to be checked for a criminal history. ~~The policy shall not require school personnel to~~
40 ~~be checked for a criminal history check before preliminary approval is granted under~~
41 ~~G.S. 115C-238.29B.~~ The Board shall apply its policy shall be applied uniformly in requiring
42 school personnel to be checked for a criminal history. ~~The Board~~ Commission may ~~grant~~
43 recommend conditional approval of an application while the ~~Board~~ Commission is checking a
44 person's criminal history and making a decision based on the results of the check.

45 ~~The State Board shall not require members~~ Members of boards of directors of charter
46 schools or employees of charter schools shall not be required to pay for the criminal history
47 check authorized under this section.

48 (c) ~~The Board of Education~~ Commission shall require the person to be checked by the
49 Department of Justice to (i) be fingerprinted and to provide any additional information required
50 by the Department of Justice to a person designated by the ~~State Board~~ Commission, or to the
51 local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign

1 a form consenting to the check of the criminal record and to the use of fingerprints and other
2 identifying information required by the repositories. The ~~State Board Commission~~ shall
3 consider refusal to consent when deciding whether to ~~grant recommend~~ final approval of an
4 application under G.S. 115C-238.29D and when making an employment recommendation. The
5 fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a
6 search of the State criminal history record file, and the State Bureau of Investigation shall
7 forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal
8 history record check. The Department of Justice shall provide to the ~~State Board of~~
9 ~~Education Commission~~ the criminal history from the State and National Repositories of
10 Criminal Histories of any school personnel for which the ~~Board Commission~~ requires a
11 criminal history check.

12 ~~The State Board shall not require members~~ Members of boards of directors of charter
13 schools or employees of charter schools shall not be required to pay for the fingerprints
14 authorized under this section.

15 (d) The ~~State Board Commission~~ shall review the criminal history it receives on an
16 individual. The ~~State Board Commission~~ shall determine whether the results of the review
17 indicate that the individual (i) poses a threat to the physical safety of students or personnel, or
18 (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her
19 duties as school personnel and shall use the information when deciding whether to ~~grant~~
20 ~~recommend~~ final approval of an application for a charter school under G.S. 115C-238.29D and
21 for making an employment recommendation to the board of directors of a charter school. The
22 ~~State Board Commission~~ shall make written findings to the State Board of Education with
23 regard to how it used the information when deciding whether to ~~grant recommend~~ final
24 approval under G.S. 115C-238.29D and when making an employment recommendation.

25 (e) The ~~State Board Commission~~ shall notify in writing the board of directors of the
26 charter school of the determination by the ~~State Board Commission~~ as to whether the school
27 personnel is qualified to operate or be employed by a charter school based on the school
28 personnel's criminal history. At the same time, the ~~State Board Commission~~ shall provide to the
29 charter school's board of directors the written findings the ~~Board Commission~~ makes in
30 subsection (d) of this section and its employment recommendation. If the ~~State~~
31 ~~Board Commission~~ recommends dismissal or nonemployment of any person, the board of
32 directors of the charter school shall dismiss or refuse to employ that person. In accordance with
33 the law regulating the dissemination of the contents of the criminal history file furnished by the
34 Federal Bureau of Investigation, the ~~State Board Commission~~ shall not release nor disclose any
35 portion of the school personnel's criminal history to the charter school's board of directors or
36 employees. The ~~State Board Commission~~ also shall notify the school personnel of the procedure
37 for completing or challenging the accuracy of the criminal history and the personnel's right to
38 contest the ~~State Board's Commission's~~ determination in court.

39 (f) All the information received by the State Board of ~~Education~~ Education, the
40 Commission, or the charter school in accordance with subsection (e) of this section through the
41 checking of the criminal history is privileged information and is not a public record but is for
42 the exclusive use of the State Board of ~~Education~~ Education, the Commission, or the board of
43 directors of the charter school. The State Board of ~~Education~~ Education, the Commission, or
44 the board of directors of the charter school may destroy the information after it is used for the
45 purposes authorized by this section after one calendar year.

46 (g) There shall be no liability for negligence on the part of the State Board of ~~Education~~
47 Education, the Commission, or the board of directors of the charter school, or their employees,
48 arising from any act taken or omission by any of them in carrying out the provisions of this
49 section. The immunity established by this subsection shall not extend to gross negligence,
50 wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity
51 established by this subsection shall be deemed to have been waived to the extent of

1 indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of
2 the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims
3 Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

4 **SECTION 3.** G.S. 114-19.2 reads as rewritten:

5 "**§ 114-19.2. Criminal record checks of school personnel.**

6 (a) The Department of Justice may provide a criminal record check to the local board of
7 education of a person who is employed in a public school in that local school district or of a
8 person who has applied for employment in a public school in that local school district, if the
9 employee or applicant consents to the record check. The Department may also provide a
10 criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to
11 the local board of education from National Repositories of Criminal Histories, in accordance
12 with G.S. 115C-332. The information shall be kept confidential by the local board of education
13 as provided in Article 21A of Chapter 115C of the General Statutes.

14 (a1) The Department of Justice may provide a criminal history record check to the North
15 Carolina Public Charter Schools Commission of a person who is employed at a charter school
16 or of a person who has applied for employment at a charter school, if the employee or applicant
17 consents to the record check. The Department may also provide a criminal history record check
18 of school personnel as defined in G.S. 115C-238.29K by fingerprint card to the North Carolina
19 Public Charter Schools Commission from National Repositories of Criminal Histories, in
20 accordance with G.S. 115C-238.29K. The information shall be kept confidential by the North
21 Carolina Public Charter Schools Commission as provided in G.S. 115C-238.29K.

22 (b) The Department of Justice may provide a criminal record check to the employer of a
23 person who is employed in a nonpublic school or of a person who has applied for employment
24 in a nonpublic school, if the employee or applicant consents to the record check. For purposes
25 of this subsection, the term nonpublic school is one that is subject to the provisions of Article
26 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in
27 that Article.

28 (c) The Department of Justice shall charge a reasonable fee for conducting a criminal
29 record check under this section. The fee shall not exceed the actual cost of locating, editing,
30 researching, and retrieving the information.

31 (c1) The Department of Justice may provide a criminal record check to the schools
32 within the Department of Health and Human Services of a person who is employed, applies for
33 employment, or applies to be selected as a volunteer, if the employee or applicant consents to
34 the record check. The Department of Health and Human Services shall keep all information
35 pursuant to this subsection confidential, as provided in Article 7 of Chapter 126 of the General
36 Statutes.

37 (d) The Department of Justice shall adopt rules to implement this section."

38 **SECTION 4.** G.S. 115C-105.37B(a)(2) reads as rewritten:

39 "(a) Notwithstanding any other provision of this Article, the State Board of Education is
40 authorized to approve a local board of education's request to reform any school in its
41 administrative unit which the State Board of Education has identified as one of the continually
42 low-performing schools in North Carolina.

43 If the State Board of Education approves a local board of education's request to reform a
44 school, the State Board of Education may authorize the local board of education to adopt one of
45 the following models in accordance with State Board of Education requirements:

46 ...

47 (2) Restart model, in which the State Board of Education would authorize the
48 local board of education to operate the school with the same exemptions
49 from statutes and rules as a charter school authorized under Part 6A of
50 Article 16 of this Chapter, or under the management of an educational
51 management organization that has been selected through a rigorous review

1 process. A school operated under this subdivision remains under the control
 2 of the local board of education, and employees assigned to the school are
 3 employees of the local school administrative unit with the protections
 4 provided by G.S. 115C-325. ~~This subdivision shall not be interpreted to~~
 5 ~~increase the maximum number of charter schools provided in~~
 6 ~~G.S. 115C-238.29D(b). No school authorized under this subsection shall~~
 7 ~~count against the limit provided for charter schools in~~
 8 ~~G.S. 115C-238.29D(b)."~~

9 SECTION 5. G.S. 115C-426 reads as rewritten:

10 "**§ 115C-426. Uniform budget format.**

11 ...

12 (c) The uniform budget format shall require the following funds:

13 (1) The State Public School Fund.

14 (2) The local current expense fund.

15 (3) The capital outlay fund.

16 In addition, other funds may be used to account for reimbursements, including indirect costs,
 17 fees for actual costs, tuition, ~~sales tax revenues distributed using the ad valorem method~~
 18 ~~pursuant to G.S. 105-472(b)(2), sales tax refunds,~~ gifts and grants restricted as to use, trust
 19 funds, federal appropriations made directly to local school administrative units, funds received
 20 for prekindergarten programs, and special programs. In addition, the appropriation or use of
 21 fund balance ~~or interest income~~ by a local school administrative unit shall not be construed as a
 22 local current expense appropriation.

23 Each local school administrative unit shall maintain those funds shown in the uniform
 24 budget format that are applicable to its operations."

25 SECTION 6. G.S. 115C-448 reads as rewritten:

26 "**§ 115C-448. Special funds of individual schools.**

27 (a) The board of education shall appoint a treasurer for each school within the local
 28 school administrative unit that handles special funds. The treasurer shall keep a complete
 29 record of all moneys in his charge in such form and detail as may be prescribed by the finance
 30 officer of the local school administrative unit, and shall make such reports to the superintendent
 31 and finance officer of the local school administrative unit as they or the board of education may
 32 prescribe. Special funds of individual schools shall be deposited in an official depository of the
 33 local school administrative unit in special accounts to the credit of the individual school, and
 34 shall be paid only on checks or drafts signed by the principal of the school and the treasurer.
 35 The board of education may, in its discretion, waive the requirements of this section for any
 36 school which handles less than three hundred dollars (\$300.00) in any school year.

37 (b) Nothing in this section shall prevent the board of education from requiring that all
 38 funds of individual schools be deposited with and accounted for by the school finance officer.
 39 If this is done, these moneys shall be disbursed and accounted for in the same manner as other
 40 school funds except that the check or draft shall not bear the certificate of preaudit.

41 (c) For the purposes of this section, "special funds of individual schools" includes by
 42 way of illustration and not limitation funds realized from gate receipts of interscholastic athletic
 43 competition, sale of school annuals and newspapers, and dues of student organizations.

44 (d) Special funds of individual schools shall not be included as part of the local current
 45 expense fund of a local school administrative unit for the purposes of determining the per pupil
 46 share of the local current expense fund transferred to a charter school pursuant to
 47 G.S. 115C-238.29H(b). "

48 SECTION 7. G.S. 115C-546.2 reads as rewritten:

49 "**§ 115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General**
 50 **Fund; matching requirements.**

51 ...

1 (d) Monies transferred into the Fund in accordance with Chapter 18C of the General
2 Statutes shall be allocated for capital projects for school construction projects as follows:

- 3 (1) A sum equal to sixty-five percent (65%) of those monies transferred in
4 accordance with G.S. 18C-164 shall be allocated on a per average daily
5 membership basis according to the average daily membership for the budget
6 year as determined and certified by the State Board of Education.
- 7 (2) A sum equal to thirty-five percent (35%) of those monies transferred in
8 accordance with G.S. 18C-164 shall be allocated to those local school
9 administrative units located in whole or part in counties in which the
10 effective county tax rate as a percentage of the State average effective tax
11 rate is greater than one hundred percent (100%), with the following
12 definitions applying to this subdivision:
- 13 a. "Effective county tax rate" means the actual county rate for the
14 previous fiscal year, including any countywide supplemental taxes
15 levied for the benefit of public schools, multiplied by a three-year
16 weighted average of the most recent annual sales assessment ratio
17 studies.
- 18 b. "State average effective tax rate" means the average effective county
19 tax rates for all counties.
- 20 c. "Sales assessment ratio studies" means sales assessment ratio studies
21 performed by the Department of Revenue under G.S. 105-289(h).
- 22 (3) No county shall have to provide matching funds required under subsection
23 (c) of this section.
- 24 (4) A county may use monies in this Fund to pay for school construction
25 projects in local school administrative units and to retire indebtedness
26 incurred for school construction projects incurred on or after January 1,
27 2003.
- 28 (5) A county may not use monies in this Fund to pay for school technology
29 needs.
- 30 (6) Counties receiving funds under this subsection may allocate a portion of
31 funds received each budget year under this subsection to charter schools on a
32 per average daily membership basis according to each such school's share of
33 the average daily membership of the unit. Charter schools may use the
34 monies to pay for school construction projects or to retire indebtedness
35 incurred for school construction projects incurred on or after July 1, 2011,
36 and shall not be subject to the matching fund requirement set forth in
37 subsection (c) of this section."

38 SECTION 8. G.S. 150B-1(e) is amended by adding a new subdivision to read:

39 "(18) The State Board of Education with respect to the disapproval, termination, or
40 nonrenewal of charters under Part 6A of Article 16 of Chapter 115C of the
41 General Statutes."

42 SECTION 9.(a) Article 23 of Chapter 153A of the General Statutes is amended by
43 adding a new section to read:

44 "§ 153A-457. Charter schools.

45 Each county is authorized to appropriate funds and lease real property to schools chartered
46 under Part 6A of Article 16 of Chapter 115C of the General Statutes. Counties may provide
47 funds only for the purposes set forth in G.S. 115C-238.29H(c)."

48 SECTION 9.(b) G.S. 153A-149(c) reads as rewritten:

49 "(c) Each county may levy property taxes for one or more of the purposes listed in this
50 subsection up to a combined rate of one dollar and fifty cents (\$1.50) on the one hundred

1 dollars (\$100.00) appraised value of property subject to taxation. Authorized purposes subject
2 to the rate limitation are:

3 ...
4 (8a) Charter Schools. – To provide capital funding for charter schools as
5 authorized by G.S. 153A-457.

6"

7 **SECTION 10.** If in any fiscal year a local board of education approves a budget
8 resolution that, as amended, fails to comply with G.S. 115C-426 and therefore fails to include
9 in the local current expense fund all those moneys required under G.S. 115C-426(e), that
10 budget resolution shall be deemed to have been amended to include all such moneys in the
11 local current expense fund for the purposes of compliance with G.S. 115C-238.29H(b).

12 **SECTION 11.** Section 3.2 of S.L. 2010-123 and Section 7.17(b) of S.L. 2010-31
13 are repealed.

14 **SECTION 12.** The State Board of Education shall repeal all adopted policies
15 inconsistent with this act.

16 **SECTION 13.** Beginning in 2012, the State Board of Education in conjunction
17 with the North Carolina Public Charter Schools Commission shall prepare an annual report to
18 the Joint Legislative Education Oversight Committee of the General Assembly no later than
19 October 15 of each year. The report shall include, at a minimum, the following information:

- 20 (1) The strategic vision and plan for charter schools and progress toward
21 achieving the vision and carrying out the plan.
- 22 (2) The academic and financial performance of all operating charter schools
23 according to the performance expectations for charter schools set forth in
24 this act.
- 25 (3) The status of the charter school portfolio, identifying all charter schools in
26 each of the following categories: approved to open, in operation, renewed,
27 transferred, revoked, not renewed, voluntarily closed, or never opened.
- 28 (4) Composite annual data disaggregated by charter school on the gender, race
29 and ethnicity, and disability status of students enrolled in charter schools;
30 testing data disaggregated by the purpose of the charter school, and by
31 gender, race, ethnicity, and disability; the number of students long-term
32 suspended and expelled; the number of students receiving a free or reduced
33 meal plan through a federal subsidy program; the number of students
34 receiving a free or reduced meal plan through means other than a federal
35 subsidy program; and the number of students receiving special education
36 services.

37 **SECTION 14.** Beginning in 2012, the Department of Public Instruction shall
38 prepare an annual report to the Joint Legislative Education Oversight Committee of the General
39 Assembly no later than October 15 of each year. This report shall also be distributed
40 electronically to each local board of education in the State. The report shall be based on a
41 review of charter school programs throughout North Carolina and shall identify operational,
42 educational, and administrative programs and policies implemented by charter schools that the
43 Department finds could improve the State's public schools, or some subset, based on
44 demographics, academic performance, or other criteria, of the State's public schools. The
45 North Carolina Public Charter Schools Commission shall provide the Department any
46 information needed by the Department to meet the reporting requirement set forth in this
47 section.

48 **SECTION 15.** Appointments required in Section 2 of this act shall be made no
49 later than August 1, 2011. Sections 5, 10, and 11 of this act are effective when they become
50 law. The remainder of this act becomes effective July 1, 2011.



SENATE BILL 8: No Cap on Number of Charter Schools

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Stevens
Analysis of: PCS to Fifth Edition
S8-PCS55209-RQ-8

Date: April 6, 2011
Prepared by: Drupti Chauhan and
Kara McCraw

SUMMARY: *Senate Bill 8 would make the following changes to laws related to charter schools, including:*

- *Remove the cap on charter schools and allow up to 50 new charters annually.*
- *Create a new Public Charter Schools Commission (Commission) to oversee charter schools..*
- *Add additional requirements for charter school applications.*
- *Allow State funds to be used to acquire real property for charter schools, allow counties to provide funds to the nonprofit, tax-exempt corporation that holds the charter of a charter school for specific purposes, and allow counties to allocate lottery monies to charter schools for capital needs.*

The Proposed Committee Substitute would make the following changes:

- *Change the governance of the Commission by requiring it to operate under the SBE and submit its recommendations as proposals to the SBE. If the SBE rejects a proposal, it must specify the reasons for the rejection. The SBE may not act in an arbitrary and capricious manner in withholding approval of proposals resubmitted by the Commission. The SBE's rejection of resubmitted proposals is subject to judicial review.*
- *Require, for charters granted after July 1, 2011, that those schools must provide transportation for enrolled students residing in a household within 3 miles of the school which has an income below 185% of the poverty level.*
- *Require charters to include the additional standard of post-secondary readiness and success for high schools.*
- *Delete the reinstatement of annual leave for teachers employed by a charter school who return to employment with a local school administrative unit without a break in service.*
- *Require counties that provide funds to charter schools to distribute those funds equitably and apportion according to the average daily membership of each charter school that requested funds.*
- *Delete the provision that required local boards of education to amend their 2010-2011 budget resolutions to comply with the Uniform Budget Format statute as amended by this bill.*

BILL ANALYSIS:

Section 2

Current Law: Part 6A of Article 16 of Chapter 115C establishes charter schools and provides that the SBE is the entity that oversees charter schools in the State by granting, monitoring, and revoking charters. A maximum of 100 charter schools may be authorized in the State at any given time. Charter schools are prohibited from receiving State monies for obtaining any interest in real property or mobile classroom units other than leases.

115C-238.29A – Adds language to encourage replication of successful charter schools.

115C-238.29A1 – Creates the Commission.

- Commission would operate under the SBE. It would have 13 members including the Superintendent of Public Instruction, and 4 members appointed by the Governor, 4 by the Speaker of the House, and 4 by the President Pro Tempore of the Senate.
- The Commission would have the following powers and duties: provide technical assistance, recommend policies to the SBE for charter school operations, oversee and make recommendations to the SBE regarding final approval of charter applications, oversee monitoring of charter schools, and make recommendations to the SBE on actions on charter renewals, nonrenewals, and revocations.
- The SBE would assign the Office of Charter Schools as staff to the Commission.

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- The Commission would submit recommendations to the SBE as proposals which the SBE must adopt or reject within 95 days of the submission or a proposal would be deemed as adopted. The SBE could not make any substantive changes to any proposal that it adopts. If the SBE rejects a proposal, it must state with specificity the reasons for rejection and allow the Commission to amend and resubmit that proposal. The SBE would not be able to act in an arbitrary and capricious manner in withholding approval of a proposal resubmitted by the Commission. Any such rejection of a resubmitted proposal is subject to judicial review.

115C-238.29B – Charter school applications

- Applications would be required to include new information including the following: an executive summary; targeted school population and community; instructional design; plans for identifying and serving special populations; proposed governing by-laws; proposed budget for first 5 years of operation; numbers of students to be served, with a minimum of 50 students, minimum number of teachers to be employed; organizational chart; plans for transportation and food services for certain low-income students; explanations of partnerships central to school mission; and a detailed start-up plan.
- For applicants seeking a charter for a virtual charter school, the application must include information showing that the school has a physical facility in the state, that the chief administrator of the school is located in the State, and that the teachers serving the virtual charter school are responsible for improving learning by planned instruction, diagnosing learning needs, prescribing content delivery through instructional activities, assessing learning, reporting outcomes to administrators and parents and guardians, and evaluating the effects of instruction.
- Local boards of education would be exempted from the requirement of having to form a nonprofit, tax-exempt corporation for converting a traditional school to a charter school if the local board of education serves as the board of directors of the charter school.
- The Commission would have the authority to recommend approval of a charter school to the SBE in accordance with the standards and criteria set forth in the charter schools statutes.
- Other entities such as local boards of education, and constituent institutions of The University of North Carolina would no longer be authorized to grant preliminary charters.

115C-238.29C – Application assessment

- The Commission, subject to the approval of the SBE, would be authorized to establish deadlines for applications and make determinations when applications were complete.
- The requirements governing preliminary approval of charters by other chartering entities would be eliminated.

115C-238.29D – Final approval of applications

- Upon recommendation of the Commission, the SBE would be authorized to grant approval of applications that met requirements.
- Eliminates State-wide charter school cap of 100 schools and provides that no more than 50 additional charter schools could be authorized in each calendar year, not including charter renewals.
- The Commission would be required to establish a timeline approved by the SBE to take final action on applications declared complete and make this information available to applicants. The decision on the application must be based on the evidence contained in the application or collected through an application review uniform across all applicants.
- Applicants would have the opportunity to request reconsideration of a denial of an application.
- Decisions to disapprove applications would be exempt from review under Chapter 150B.
- Standards must be included in the school's charter to measure academic proficiency and growth, achievement gaps between student subgroups, post-secondary readiness and success for high schools, attendance and recurrent enrollment, financial performance and stability, and compliance with laws, regulations and charter terms,
- Enrollment growth cap of 10% per year would be raised to 20%

115C-238.29E – Charter School Operation

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- The bill makes conforming changes.

115C-238.29F – General Requirements

- Charter schools would be allowed to charge any fees charged by the local LEA in which the charter school is located.
- The SBE would adopt rules as recommended by the Commission regarding liability insurance and set forth the student assessments required of charter schools.
- Charter schools would be prohibited from hiring teachers whose certification has been revoked by the State Board of Education.
- Teachers employed by charter schools who return to employment with a local school administrative unit without a break in service would be able to have unused sick leave from previous employment with a local school administrative unit reinstated and be given credit for the years of service for purposes of the salary schedule, longevity pay and rate of earned leave.
- Charter schools that have capacity would be able to enroll non-domiciled students and charge those students tuition that is equal at least to the per pupil allocation of the local appropriation for the county in which the charter school is located and the per pupil State appropriation for that school year. Non-domiciliaries of the State would be limited to 10% of the total number of students enrolled in the charter school.
- Public schools converted to charter schools would be required to give enrollment preference to students in the former attendance area for at least 2 years.
- Charter schools could give enrollment priority to the children of full-time employees of the charter school.
- The bill would clarify that the statutory admissions requirements would not preclude the formation of a charter school to serve special populations.
- Charters granted after July 1, 2011 must provide transportation for enrolled students residing in a household within 3 miles of the school which has an income below 185% of the poverty level.
- Charters granted after July 1, 2011 must provide food services for enrolled students residing in a household which has an income below 185% of the poverty level.
- Upon dissolution of a charter school, State or county funds used to purchase real property must be remitted back to the funding source after all liens on the property are satisfied.

115C-238.29G -- Causes for nonrenewal and termination

- Upon recommendation of the Commission, the SBE would have to adopt criteria for adequate performance by a charter school and identify charters with inadequate performance, including those with no growth in student performance and annual performance composites below 60% within a 3 year period. Identified charter schools must develop school improvement plans approved by the SBE upon recommendation by the Commission, and failure to demonstrate improvement under the plan is cause for termination or nonrenewal.
- Any decision to terminate or not renew a charter would be exempted from review under Chapter 150B of the General Statutes.

115C-238.29H – State and local funds for charters schools

- State funds would be allowed to be used to acquire equipment, real property, buildings, and mobile classrooms for school facilities, to enter into operational and financing leases for equipment, and for other purposes permitted for capital outlay fund appropriations, such as the acquisition of school buses.
- The funding to be transferred by an LEA for a student attending a charter school is clarified to mean the per pupil share of the local current expense fund established under the uniform budget format for LEAs.
- Per pupil share of the local current expense fund that consists of revenue derived from supplemental taxes would be transferred to a charter school for students residing within the tax district for which the taxes are levied.
- LEAs would be required to provide an accounting of the local current expense fund to be transferred to charter schools within 15 days of receipt of that appropriation. LEAs would be assessed a penalty for failure to comply with the deadlines.

Senate PCS 8

Page 4

- Counties would be permitted to provide funds to charter schools by direct appropriations for any of the purposes for appropriations included in the capital outlay fund, such as acquisition of real property, building construction, furnishings and equipment, and school buses.
- Counties that provide funds to charter schools would be required to distribute those funds equitably and apportion according to the average daily membership of each charter school that requested funds.

115C-238.29I – Notice of charter school process and Charter School Advisory Committee

- The bill would repeal this section in order to make conforming changes.

115C-238.29J – Public and private assistance to charter schools

- The bill makes only conforming changes

115C-238.29K – Criminal History Checks

- The bill makes conforming changes

Section 3

Current Law: The Department of Justice is authorized to conduct criminal history checks of school personnel.

Analysis: The bill makes conforming changes to allow the Department of Justice to conduct criminal history checks of charter school employees.

Section 4

Current Law: G.S. 115C-105.37B authorizes the State Board of Education to approve LEA requests to reform low-performing schools.

Analysis: The bill makes conforming changes eliminating references to the charter schools cap.

Section 5

Current Law: G.S. 115C-426 established the uniform budget format for LEAs. LEAs are required to have the State Public School Fund, the local current expense fund, and the capital outlay fund. They are also authorized to have other funds for items such as indirect costs, fees, tuition costs restricted as to use, trust funds, federal appropriations made directly to LEAs, fund for prekindergarten programs, and special programs.

Analysis: The bill would eliminate the use of other funds to account for sales tax revenues distributed using the ad valorem method and sales tax refunds and would eliminate the exclusion of interest income from the local current expense appropriation.

Section 6

Current Law: G.S. 115C-448 allows the creation of special funds of individual schools to account for funds received from activities such as interscholastic athletic competition, school annual sales, and student organization dues.

Analysis: The bill would prohibit special funds of individual schools from being included in the local current expense fund amount transferred to charter schools.

Section 7

Current Law: Funds from the State lottery for school construction are not allocated to charter schools.

Analysis: The bill would permit counties to allocate a portion of the lottery funds for school construction to charter schools. Charter schools would be able to use the monies to pay for school construction projects or retire debt from school construction projects incurred after July 1, 2011.

Section 8

Analysis: The bill makes conforming changes in Chapter 150B allowing for the exemption from review for disapproval of applications and terminations and non-renewals of charters.

Section 9

Analysis: The bill would authorize counties to appropriate funds for capital needs for charter schools, lease real property to charter schools, and levy property taxes for these purposes.

Sections 10-11

Current Law: Section 7.17 of the 2010 Appropriations Act provided that LEAs that had not fully complied with local requirements for funding charter schools and who are subject to a judgment, court order, or settlement agreement may make payments over three years.

Senate PCS 8

Page 5

Analysis: These sections of the bill would repeal the 2010 Budget provisions and would provide that if an LEA approves a budget resolution that fails to comply with the Uniform Budget Format and fails to include all monies required to be in the local current expense fund, it will have been deemed to do so by this bill.

Section 12

Analysis: The State Board of Education would be required to repeal all policies inconsistent with this Act.

Section 13

Analysis: The SBE in conjunction with the Commission must report annually to the Joint Legislative Education Oversight Committee on the strategic vision and plan for the charter schools, the status of the charter schools as well as composite annual data on the gender, race, ethnicity, and disability of students enrolled in charter schools. The report must also include suspension and expulsion data, the number of students receiving free or reduced meals, and the number of students receiving special education services.

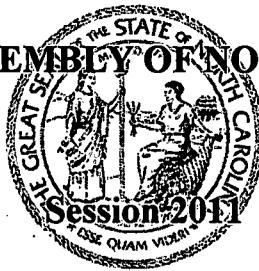
Section 14

Analysis: The Department of Public Instruction must annually report to the Joint Legislative Education Oversight Committee on charter school programs and policies that could improve the public schools, and send a copy of that report to local boards of education.

EFFECTIVE DATE: Appointments required in in the Act must be made by August 1, 2011. Sections 5, 10, and 11 are effective when they become law. The remainder of this Act becomes effective July 1, 2011.

S8-SMRQ-17(CSRQ-8) v4

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: April 6, 2011

TO: Rep. Julia Howard
Rep. Edgar Starnes
Rep. Mitchell Setzer
Sen. Richard Stevens

FROM: Rodney Bizzell and Brian Matteson
Fiscal Research Division

RE: Senate Bill 8—House Finance PCS

FISCAL IMPACT

	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES					
Local	*No impact on local revenues – expands allowable uses of property tax to include charter school capital funding*				
EXPENDITURES					
State	33,029	39,635	39,635	39,635	39,635
Local	(indeterminate increase in funding transferred from local school districts to local public charter schools)				
POSITIONS (cumulative): None					

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Public Instruction, State Board of Education, Local School Administrative Units, County Governments, North Carolina Charter Schools

EFFECTIVE DATE: July 1, 2011, except for sections 5, 10, and 11 of the act which will be effective immediately

BILL SUMMARY:

The bill makes several changes to the management, approval, and fiduciary treatment of North Carolina charter schools. It removes a 100 school limit on charter schools and makes other significant changes:

Public Charter Schools Commission—The bill creates a new Public Charter Schools Commission (Commission). The Commission will have within its duties and powers: (1) to oversee the application process for charter schools and to make recommendations to the State Board of Education (State Board) for approval of new charter applications; (2) to recommend policies to the State Board regarding all aspects of charter school operation; (3) to oversee the process of monitoring the operation of charter schools with assistance from the Department of Public Instruction (DPI); (4) to make recommendations to the State Board regarding charter renewals, nonrenewals and revocations; and (5) to provide technical assistance to charter schools and charter school applicants. The State Board of Education is required to assign the Department of Public Instruction's Office of Charter Schools as staff to the Commission.

Modification of Certain Charter School Policies—The bill removes the overall cap on charter schools, allowing for authorization of up to 50 new charter schools each calendar year. The bill also modifies the cap on enrollment growth for charter schools from its prior limit of 10 percent growth to 20 percent growth. Charter schools will be permitted to have a minimum student enrollment of 50 students, 15 less than the current minimum of 65. Charters granted after July 1, 2011 must provide transportation for enrolled students residing in a household within 3 miles of the school which has an income below 185% of the poverty level and provide food services for all enrolled students residing in a household which has an income below 185% of the poverty level.

Changes to the Uses and Allocation of State and Local Funding to Charter Schools— The bill allows State and local funds to be used to acquire real property for charter schools. It also will permit counties to provide funds for specific purposes to the nonprofit, tax-exempt corporation that holds the charter of a charter school. Allocation of these funds must be apportioned based on the average daily membership of each charter school requesting funds should a county opt to provide funding. These funds may now include State lottery proceeds allocated to the counties for school capital needs and property tax revenues.

With respect to local funding, the bill clarifies the composition of the Uniform Budget Format for the purposes of determining the required per-pupil local current expense appropriation that must be transferred to a charter school from a local school administrative unit (LEA). Additionally, LEAs will be required to provide an accounting of the local current expense fund to be transferred to

charter schools within 15 days of receipt of that appropriation. LEAs will be assessed a penalty for failure to comply with the deadlines.

ASSUMPTIONS AND METHODOLOGY:

There are several components of the bill which will impact the distribution of funds to charter schools, traditional public schools, the Public School Charter Commission, the North Carolina Department of Public Instruction and county governments. A more detailed analysis of each of these items follows:

Elimination of the 100 School Cap on Charter Schools

North Carolina charter schools receive State and local funding support as guaranteed by G.S. 115C-238.29H. State funding for an existing charter school is based on the dollars per student [as measured by Average Daily Membership (ADM)] of the Local Education Agency (LEA) in which the school is located, and is unchanged by this legislation. Funding for new charter schools is based on the dollars per ADM of the LEA in which the student is, or would be, currently enrolled. The total number of public school students attending a new charter school will reduce a LEA's initial allotment. However, the redirection of funds from a LEA to a charter school has a net neutral impact on total State funding.

State Board of Education policy holds LEAs harmless for potential reductions in the Central Office Administration, School Building Administration and Staff Development allotments if there is a reduction in an LEA's ADM for students attending charter schools. The impact of the hold harmless for these three allotments is to maintain overall funding to the LEAs for these allotments. For the purposes of this memo, these potential costs are not currently identifiable given the uncertainty of the total number of charter schools that would be created in response to this bill. The estimated cost of the hold harmless in FY 2010-11 is \$465,910 based on additional charter school ADM growth of 1,553 students.

Establishment of the Public School Charter Commission

The Commission will be composed of 13 members, which must be appointed by August 1, 2011. It will be located administratively under the State Board of Education but operate independently of the Board.

Section 2 of the bill rewrites 115C-238.29A1 to direct the State Board of Education to assign personnel of the Department of Public Instruction's Office of Charter Schools (OCS) as staff to the Commission. There are currently eight staff at DPI directly working on charter schools issues, with six staff in OCS and two in the Financial and Business Services section that work exclusively on accounting and financial support matters. The impact of eliminating the cap on charter schools may increase the workload for existing OCS staff, but information from DPI on its initial staffing history indicates that the current staffing levels were sufficient to handle the workload associated with years in which more than fifteen new charter schools were approved and opened. Clearly, if the growth in newly approved charter schools is significant, then additional staffing in OCS may

be justified. However, this analysis is unable to reliably estimate potential growth in charter schools, so justification for additional staffing is unknown.

Lastly, the Commission may hold meetings as it deems necessary, and its members shall be reimbursed for travel and subsistence expenses related to meeting participation. Assuming monthly meetings, the estimated annual cost of these expenses is \$39,635. Due to the August 1, 2011 deadline for the appointment of Commission members, this analysis assumes that only ten meetings will occur in fiscal year 2011-12. As such, first year Commission costs are estimated to be \$33,029. Attachment A of this Fiscal Memo contains detailed information about those estimates.

Local Per-Pupil Transfer

G.S. 115C-238.29H requires LEAs (in which a charter school student resides) to, “transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year.” The definition of what sources comprise the local current expense appropriation is defined in G.S. 115C-426. This section requires LEAs to establish a State Public School Fund, local current expense fund, and a capital outlay fund in its standard budget format.

LEAs are also currently allowed, under G.S. 115C-426(c), to account for fund sources outside of these three categories. Prior to 2010, the explicit definition of those sources had been subject to dispute. The definition of those sources that may have been considered as “other funds” had been less explicitly defined by statute. However, three legal decisions (Delaney, Sugar Creek I and Sugar Creek II) had served to clarify those funds that should be budgeted in the local current expense appropriation.

Specifically, Sugar Creek I found that certain funds budgeted in the local current expense fund by Charlotte-Mecklenburg Public Schools were erroneously excluded from transfer to affected charter schools. These funds included monies for prekindergarten programs and high school reform efforts. Additionally, the ruling held that an LEA must transfer per-pupil funding to the charter school using the same methodology for determining student attendance at the district’s traditional public schools.

In 2009, the Sugar Creek II judgments essentially upheld all of the findings in Sugar Creek I except to omit Textbook funds from those funds included in the local current expense funds for per-capita transfer to charter schools. In total, the plaintiff schools in this case were found to be entitled to compensation based on the improper distribution of local current expense funding.

The Legislature took action in S.L. 2010-31 to further enumerate fund sources that may be budgeted in “other funds”. These sources are defined as: “reimbursements, including indirect costs, fees for actual costs, tuition, sales tax revenues distributed using the ad valorem method pursuant to G.S. 105-472(b)(2), sales tax refunds, gifts and grants restricted as to use, trust funds, federal appropriations made directly to local school administrative units, funds received for prekindergarten programs, and special programs.”

Clearly the language in S.L. 2010-31 has the effect of broadening the latitude over which LEAs could budget certain funds outside of the local current expense fund. This bill does not allow two of those sources to be budgeted as "other funds":

1. "...sales tax revenues distributed using the ad valorem method pursuant to G.S. 105-472(b)(2)..."
and
2. "...sales tax refunds..."

In addition, Section 6 permits special funds of individual schools, such as school newspapers and student fees, to be excluded from the local current expense fund. The impact of Section 5 and 6 would cause some shift in local funds distribution from the LEA to existing charter schools in each instance that the LEA was including certain funds as "other funds" that would now be properly considered "local current expense" by this bill. There is no data available on the extent of this shift. All LEAs with students in charter schools have the latitude to include certain local, Federal and State funds in its local current expense fund.

The changes made in Sections 5 and 6 of the bill will have no material impact on State funding.

North Carolina Education Lottery Funds

Section 7 of the bill will allow counties to share a pro-rata amount of its Lottery school capital funding with charter schools. Currently, these funds are allocated to the counties on the basis of student headcount in the traditional public schools, as charter schools have been prohibited from receiving any State capital funding. To properly implement this section of the bill, DPI will have to distribute funding based on the total public school ADM in all counties and not just the traditional public school ADM. While this provision will not adjust the amount of State capital funding available to the counties, it will have the impact of sending slightly more Lottery capital funding to those counties with charter schools and slightly less funding to those counties without charter schools. Currently charter school students comprise about 3.3% of all North Carolina public school students.

Property Tax Revenues

Section 9 expands the purposes listed in G.S. 153A-149(c) for which counties may use property tax revenues to include capital funding for charter schools. Counties are not required to appropriate property tax revenues for this purpose, and the bill does not change the limitation of \$1.50 per \$100 valuation for the purposes included in the subsection.

SOURCES OF DATA: Department of Public Instruction and State Board of Education

Attachment A: Public Charter School Commission Costs

Number of legislative members:
0

Number of non-legislative members:
13

Number of meetings:
10

FY 2011-12 Committee Budget Estimate	
1) Legislative Members Subsistence	\$0.00
\$104.00 <i>Legislative Subsistence</i>	
X 0 <i>Number of Legislative members</i>	
X 1.5 <i>Half of Members using Two Days of Subsistence</i>	
X 10 <i>Number of Meetings</i>	
= <u>\$0.00</u> <i>Total Legislative Members Subsistence</i>	
2) Non-Legislative Members Subsistence	\$22,629.75
\$116.05 * <i>Non-Legislative Members Subsistence</i>	
X 13 <i>Number of Non-Legislative Members</i>	
X 1.5 <i>Half of Non-Legislative Members using Two Days Subsistence</i>	
X 10 <i>Number of Meetings</i>	
= <u>\$22,629.75</u> <i>Total Non-Legislative Members Subsistence</i>	
* \$101.05 Daily Per Diem Rate Plus \$15 Committee Per Diem Rate (GS133-5)	
3) Travel Expenses	\$10,400.00
a) Legislative Members	
\$70.00 <i>Round Trip Reimbursement (230 miles @ \$0.29/mile)</i>	
X 0 <i>Number of Legislative Members</i>	
X 10 <i>Number of Meetings</i>	
= <u>\$0.00</u> <i>Total Travel for Legislative Members</i>	
b) Non-Legislative Member	
\$60.00 <i>Round Trip Reimbursement (230 miles @ \$0.33/mile)</i>	
X 13 <i>Number of Non-Legislative Members</i>	
X 10 <i>Number of Meetings</i>	
= <u>\$10,400.00</u> <i>Total Travel for Non-Legislative Members</i>	
4) Clerical Staff	\$0.00
\$0.00 * <i>Average Salary with Benefits for 5 day work week</i>	
X 10 <i>Number of Meetings</i>	
= <u>\$0.00</u> <i>Total Clerical Staff</i>	
* Average Weekly Wages for LA, CAI, CAJ & CAII with Fringes Added.	
5) Professional Staff	\$0.00
6) Special Travel and Expenses	\$0.00
7) Postage and Telephone Expenses	\$0.00
8) Supplies	\$0.00
9) Copying and Printing	\$0.00
10) Reserve	\$0.00
Total \$33,029.75	

Attachment A: Public Charter School Commission Costs

Number of legislative members:
0

Number of non-legislative members:
13

Number of meetings:
12

FY 2012-16 Committee Budget Estimate	
1) Legislative Members Subsistence	\$0.00
\$104.00 Legislative Subsistence	
X 0 Number of Legislative members	
X 1.5 Half of Members using Two Days of Subsistence	
X 12 Number of Meetings	
= \$0.00 Total Legislative Members Subsistence	
2) Non-Legislative Members Subsistence	\$27,155.70
\$116.05 * Non-Legislative Members Subsistence	
X 13 Number of Non-Legislative Members	
X 1.5 Half of Non-Legislative Members using Two Days Subsistence	
X 12 Number of Meetings	
= \$27,155.70 Total Non-Legislative Members Subsistence	
* \$101.05 Daily Per Diem Rate Plus \$15 Committee Per Diem Rate (GS133-5)	
3) Travel Expenses	\$12,480.00
a) Legislative Members	
\$70.00 Round Trip Reimbursement (230 miles @ \$0.20/mile)	
X 0 Number of Legislative Members	
X 12 Number of Meetings	
= \$0.00 Total Travel for Legislative Members	
b) Non-Legislative Member	
\$60.00 Round Trip Reimbursement (230 miles @ \$0.35/mile)	
X 13 Number of Non-Legislative Members	
X 12 Number of Meetings	
= \$12,480.00 Total Travel for Non-Legislative Members	
4) Clerical Staff	\$0.00
\$0.00 * Average Salary with Benefits for 5 day work week	
X 12 Number of Meetings	
= \$0.00 Total Clerical Staff	
* Average Weekly Wages for LA, CAI, CAII & CAIII with Fringes Added.	
5) Professional Staff	\$0.00
6) Special Travel and Expenses	\$0.00
7) Postage and Telephone Expenses	\$0.00
8) Supplies	\$0.00
9) Copying and Printing	\$0.00
10) Reserve	\$0.00
Total: \$39,635.70	



North Carolina General Assembly
House of Representatives

PAUL STAM
HOUSE MAJORITY LEADER
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16 W. JONES STREET
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COMMITTEES:
APPROPRIATIONS, SUB. ON EDUCATION
EDUCATION
ELECTIONS
FINANCE
JT. LEG. ETHICS COMMITTEE, CO-CHAIR
JUDICIARY, SUBCOMMITTEE B, CO-CHAIR
RULES, CALENDAR, AND OPERATIONS OF THE
HOUSE

April 4, 2011

Re: Charter Schools/Diversion of Resources from Public Schools??

Some opponents of Senate Bill 8 claim that charter schools divert resources from traditional public schools. To the contrary. Let me illustrate my point mathematically. The exact figures may be uncertain but the point is the same regardless. This example uses figures from the 2009-2010 fiscal year.

A County "LEA" has 20,000 students in K-12 for which it spends an average of \$8,451.00 in state, federal and county funds for a total of \$169,020,000.

A charter school is authorized and is operated for 1,000 students. While the funding for charter schools is more like 70% of the funding for traditional public schools, let's say, for purpose of the argument, that it is 80%. The charter school would therefore receive $1,000 \times \$8,451 \times .80 = \$6,760,800$.

The remaining resources for the traditional public school of the LEA are therefore \$162,259,200.

Since there are 19,000 students remaining in the traditional public schools the amount available per child is now \$8,539 instead of \$8,451. Some say that in some places it is 90%. In that case the amount available per child would be \$8,495 instead of \$8,451.00.

Some school systems say "yes" but the total amount is still less. Not really. Because the growth in enrollment in charter schools is less than the total growth in enrollment of the entire traditional public school system, total resources (as well as per capita resources) have actually grown as well.

Long story short: charters do not divert resources from the public schools despite slogans to the contrary because (1) they are public schools and (2) the funding mechanism established for them ensures that traditional public schools get more resources per student as and when more charters are established.

I hope this is helpful.

Rep. Paul Stam
Republican House Leader

Cc: Sen. Richard Stevens
General Assembly/Glazier-Charter Schools





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ATC-33 [v.1]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
SB-CSTC-1

Date _____, 2011

- 1 moves to amend the bill on page 6, lines 42-43, by inserting between those lines the following:
- 2 "(b3) The Commission shall approve no application for a virtual charter school. For
- 3 purposes of this subsection, "virtual charter school" means a school with no physical facilities
- 4 in this State that provides instruction to students only via the Internet or other electronic
- 5 means."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



Christin Danchi (Rep. Stam)

From: Kara McCraw (Research)
Sent: Tuesday, April 05, 2011 11:37 AM
To: Rep. Paul Stam
Cc: Sen. Richard Stevens; Drupti Chauhan (Research)
Subject: Virtual Charter Schools - Glazier Amendment
Attachments: Glazier - S8-ATC-33.pdf

Representative Stam,

Attached is the amendment that Rep. Glazier offered for review by the chairs and sponsors for inclusion on the PCS for House Education on barring virtual charter schools.

*Kara A. McCraw
Staff Attorney and Legislative Analyst
NC General Assembly, Research Division
545 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: 919-733-2578 FAX: 919-715-5460
karam@ncleg.net*



#6

Withdrawn

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S8-ATC-60 [v.1]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
S8-PCS55209-RQ-8

Date 4.6, 2011

Representative T. Moore

1 moves to amend the bill on page 13, lines 33-34, by rewriting those lines to read:
2
3 "nonrenewal of the charter, a pro rata share of the county funds used to purchase real property
4 shall be remitted back to the county from which the funds originated after all liens on the
5 property are satisfied."

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S8-ATC-60 [v.1]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
S8-PCS55209-RQ-8

Date _____, 2011

Representative T. Moore

1 moves to amend the bill on page 13, lines 33-34, by rewriting those lines to read:
2
3 "nonrenewal of the charter, a pro rata share of the county funds used to purchase real property
4 shall be remitted back to the county from which the funds originated after all liens on the
5 property are satisfied." *su' impose*

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

S8-ATC-60 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S8-PCS55209-RQ-8

T. Moore

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

Page 1 of 1

Date _____, 2011

Representative T. Moore

1 moves to amend the bill on page 13, lines 33-34, by rewriting those lines to read:

2

3 "nonrenewal of the charter, a pro rata share of the county funds used to purchase real property
4 shall be remitted back to the county from which the funds originated after all liens on the
5 property are satisfied."

for improve

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* S 8 - A T C - 6 0 - V - 1 *



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S8-ATC-58 [v.4]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
PCS-55209-RQ-8

Date 4-6, 2011

Representative T. Moore

1 moves to amend the bill on page 15, lines 36-39, by rewriting those lines to read:
2
3 ~~appropriation to~~ the local school administrative unit for the fiscal year. The amount transferred
4 under this subsection that consists of revenue derived from supplemental taxes shall be
5 transferred to a charter school only if the student resides in the tax district for which these taxes
6 are levied and the charter school is located in the same county as the supplemental tax district.
7 ~~only to a charter school located in the tax district for which these taxes are levied and in which~~
8 ~~the student resides.~~ The amount transferred".

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____
18/9





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

S8-ATC-58 [v.4]

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

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
PCS-55209-RQ-8

Date _____, 2011

Representative T. Moore

1 moves to amend the bill on page 15, lines 36-39, by rewriting those lines to read:
2
3 ~~appropriation to the local school administrative unit for the fiscal year. The amount transferred~~
4 ~~under this subsection that consists of revenue derived from supplemental taxes shall be~~
5 ~~transferred to a charter school only if the student resides in the tax district for which these taxes~~
6 ~~are levied and the charter school is located in the same county as the supplemental tax district.~~
7 ~~only to a charter school located in the tax district for which these taxes are levied and in which~~
8 ~~the student resides. The amount transferred".~~

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____

TABLED _____

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Hinder 18
OPPOSED 9

Handwritten notes:
Amendment
Moore -
STAMP - OPPOSE
STAMP -
PRES -



8



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S8-ARQ-78 [v.2]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [YES]
S8-PCS55209-RQ-8

Date 4.6, 2011

Representative James

1 moves to amend the bill on page 21, line 35, by deleting "July 1, 2011," and substituting
2 "January 1, 2010,".
3
4

SIGNED E. Starvo
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED FAILED _____ TABLED _____

16/13



* S 8 - A R Q - 7 8 - V - 2 *



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ARQ-78 [v.2]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [YES]
S8-PCS55209-RQ-8

Date _____, 2011

✓
Starnes

Representative Starnes

1
2
3
4

moves to amend the bill on page 21, line 35, by deleting "July 1, 2011," and substituting "January 1, 2010,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Oppose 13

on amendment Paul - Starnes

Ames 16 -



* S 8 - A R Q - 7 8 - V - 2 *



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ARQ-78 [v.2]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [YES]
S8-PCS55209-RQ-8

Date _____, 2011

Representative ~~Starr~~ *Starnio*

- 1 moves to amend the bill on page 21, line 35, by deleting "July 1, 2011," and substituting
- 2 "January 1, 2010,".
- 3
- 4

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

S8-ATC-60 [v.3]
Comm. Sub. [YES]
Amends Title [NO]
S8-PCS55209-RQ-8

Page 1 of 1

Date 4.6, 2011

Representative T. Moore

- 1 moves to amend the bill on page 13, lines 30-34, by rewriting those lines to read:
- 2
- 3 "charter school is located. Upon dissolution of the charter school or upon the nonrenewal of the
- 4 charter, State funds used to purchase real or improve property shall be remitted back to the
- 5 State after all liens on the property are satisfied. Upon dissolution of the charter school or upon
- 6 the nonrenewal of the charter, a pro rata share of the county funds used to purchase or improve
- 7 real property shall be remitted back to the county from which the funds originated after all liens
- 8 on the property are satisfied."

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

27/2





North Carolina General Assembly
House Committee on Finance

Minutes

April 7, 2011

The House Committee on Finance met on Thursday, April 7, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:31 am and recognized the six (6) pages present: (1) Maggie Lee of Wake County sponsored by Representative Stam; (2) Jessica Williams of Robeson County sponsored by Representative Graham; (3) Caroline Ricciarelli of Pitt County sponsored by Representative McLawhorn; (4) Sydney Swain of Mecklenburg County sponsored by Representative Samuelson; (5) Davis McKinney of Mitchell County sponsored by Representative Frye; and (6) Alex Moffitt of Buncombe County sponsored by Representative Hager.

The first bill considered by the Committee was **SB 8 No Cap on Number of Charter Schools** (see **attachment 3**). The Chair recognized Representative Carney who moved to adopt the new proposed committee substitute for purpose of discussion. Chairwoman Howard reminded the Committee that Representative Starnes had moved that SB 8 be given a favorable report as to the proposed committee substitute, unfavorable to the original bill. That motion being on the floor from the April 6th meeting. The motion was held for further statements from members. Representative Stam was recognized for comments. Being no further discussion or debate, the Chair recognized Representative Starnes who repeated his motion that SB 8 be given a favorable report as to the proposed committee substitute, unfavorable to the original bill. The Chair recognized Representative Luebke who requested the ayes and noes. The Chair requested the clerk to call the roll (see **attachment 4**). The vote being 19 affirmative and 13 against, the bill passed.

The next bill considered by the Committee was **SB 29 Tax Certification – Alamance County** (see **attachment 5**). Chairwoman Howard recognized Senator Gunn to explain the bill. The Chair recognized Representative Faison who moved that SB 29 be given a favorable report. The motion carried.

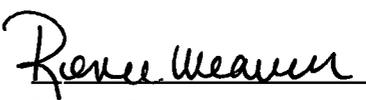
The next bill before the Committee was **HB 313 Repeal Savings Bond Payroll Savings Program – AB** (see **attachment 6**). The Chair recognized Representative Moore to explain the bill. The Chair recognized Representative Ross who moved that HB 313 be given a favorable report. The motion carried.

The final bill heard by the Committee was **HB 168 Farms exempt from City Annexation/ETJ/Zoning** (see **attachment 7**). The Chair recognized Representatives Sanderson and Cleveland to explain the bill. The Chair recognized Representative Weiss who moved that HB 168 be given a favorable report. The motion was held for further discussion. Chairwoman Howard invited people who signed up to speak on HB 168 to proceed to the podium when their name was called. Each speaker was given three minutes to speak. The following people spoke: Marilyn Kille, Peppermint Spring Farm, Chapel Hill; Kathy Hartkopf, North Carolina FreedomWorks; and Glenn Jernigan, North Carolina Grange (see **attachment 8**). Chairwoman Howard recognized Representative Weiss who withdrew her motion that HB 168 be given a favorable report. After much discussion and debate, the Chair recognized Representative Starnes who moved HB 169 be given a favorable report. The Chair called for a show of hands for the motion. The vote being 17 affirmative and 8 against, the motion carried.

There being no further business presently before the Committee, Chairwoman Howard adjourned the meeting at 9:44 am.

Respectfully submitted,


Representative Julia Howard
Presiding Senior Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 168 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE DEFINITION OF "BONA FIDE FARM PURPOSES," TO PROHIBIT THE INVOLUNTARY MUNICIPAL ANNEXATION OF PROPERTY USED FOR BONA FIDE FARM PURPOSES, TO EXEMPT PROPERTY USED FOR BONA FIDE FARM PURPOSES FROM THE EXTRATERRITORIAL PLANNING AND ZONING JURISDICTION OF MUNICIPALITIES, AND TO EXEMPT PROPERTY USED FOR BONA FIDE FARMING PURPOSES FROM MUNICIPAL ZONING.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 313 A BILL TO BE ENTITLED AN ACT TO REPEAL THE PAYROLL SAVINGS PROGRAM FOR SAVINGS BONDS DUE TO RECENT CHANGES MADE BY THE UNITED STATES TREASURY DEPARTMENT.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

House Committee Substitute # 1 for

SB 8 A BILL TO BE ENTITLED AN ACT TO INCREASE EDUCATIONAL OPPORTUNITIES FOR THE CHILDREN OF NORTH CAROLINA BY REMOVING THE CAP ON CHARTER SCHOOLS, BY CREATING A NEW PUBLIC CHARTER SCHOOLS COMMISSION TO APPROVE AND MONITOR CHARTER SCHOOLS, BY STRENGTHENING THE STANDARDS FOR GRANTING AND RETAINING A CHARTER FOR A CHARTER SCHOOL, BY AUTHORIZING LOCAL BOARDS OF EDUCATION TO CONVERT SCHOOLS TO CHARTER SCHOOLS WITHOUT FORMING A NONPROFIT CORPORATION, BY CLARIFYING THE FUNDING FORMULA FOR CHARTER SCHOOLS, AND BY PROVIDING THAT COUNTIES MAY PROVIDE FUNDING FOR CHARTER SCHOOLS IN THEIR JURISDICTIONS; AND TO MAKE OTHER CHANGES TO THE GENERAL STATUTES GOVERNING CHARTER SCHOOLS.

With a favorable report as to House committee substitute bill 2, which changes the title, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 29 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ALAMANCE COUNTY TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

AGENDA
House Finance Committee

Thursday, April 7, 2011

8:30 am

Room 544 LOB

Chaired by: Representative Julia C. Howard

Call to Order

Introduction of Pages

Bills:

HB 168 Farms Exempt from City Annexation/ETJ/Zoning
Representatives Sanderson, Cleveland, Hill

HB 313 Repeal Savings Bond Payroll Savings Program - AB
Representatives Hastings, T. Moore

SB 8 No Cap on Number of Charter Schools
Senator Stevens

SB 29 Tax Certification - Alamance County
Senator Gunn

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: APRIL 7, 2011 Room: 544

*Name: <u>Jessica Williams</u>	#6 <u>Davis McKinney</u>
County: <u>Robeson</u>	<u>Mitchell</u>
Sponsor: <u>Graham</u>	<u>Frye</u>

*Name: Alex Mottitt
 County: Buncombe
 Sponsor: Hagar

*Name: Caroline Ricciarelli
 County: Pitt
 Sponsor: McLawhorn

*Name: Sydney Swain
 County: Mecklenburg
 Sponsor: Samuelson

*Name: Maggie Lee
 County: Wake
 Sponsor: Stam

House Sgt-At Arms:

- | | |
|------------------------------|---------------------------|
| Name: <u>FRED HINES</u> | 4. Name: <u>KEN KIRBY</u> |
| 2. Name: <u>JOHN BRANDON</u> | 5. Name: _____ |
| 3. Name: <u>EARL COKER</u> | 6. Name: _____ |

VISITOR REGISTRATION SHEET

House Finance

April 7, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jodi Medley	NCOP
Pat A. Yancy	APPCAC/LLPP
Ken Melton	K.M.A.
Joy Hicks	NCDA
SD Cannon	—
ZEB ALLEY	N M R S
DAVID BECK	Self-Help
DAVID BARNES	PS
Doug Lassiter	NCSTA
Caithan Tart	Meredith College
MARY SARAH O'BRYAN	Meredith College

VISITOR REGISTRATION SHEET

House Finance

April 7, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jimmy Broughton	Woubole Carlyle
Kathy Hartkopf	Freedom Works
Allison Fowler	NC Grange
Jimmy Gentry	NC GRANGE
Christopher Hill	NC Justice Center
Dick Carlton	atly
Kille, Marilyn	SocFLOC O-DCA ; scheduled speaker
Paul Sherman	NCFB
Meredith Tronch	NCAAC
Jimmy Gentry	nc grange
Shirley May	Out of session Sustainable Food NC

VISITOR REGISTRATION SHEET

House Finance

April 7, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kelli Kuller	NCLM
Pam O'Keefe	NCLM
Matt Farrell	NCSBA
Steve Papp	MWC
Leanne Womier	NCSBA
Andy Ellen	NCRMA
Chrl Howell	DST
Barbara Jane Weber	Meredith College
Janana Espinoza	Meredith College
Courtney Hasty	meredith college
David McZul	NCSALS

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rebecca U Fothergill

NCASTA

Philip Isberg

MAJ / MOON

92

MWC

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

April 7, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Anna Beavon Gravely	Norfolk College
Joe McClees	McClees Consulting
Mike Benson	BSA
Wm. G. Kelly	Billy Group
Amey Basom	NCACE
Terry McGehee	NCCF
Paul Borner	NCCF
Susan McClain	Appalachian State

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

April 7, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
<i>Susan Harner</i>	TA: NCNA
<i>Katherine Joyce</i>	NCASA
<i>Mary Ellen Taft</i>	NCSCA
<i>Cheryl Posner-Cahill</i>	NC School Psych Assoc
<i>Matt Gross</i>	Sigma Star
<i>Cameron Henley</i>	Electro Citrus
<i>Jackson</i>	DPI
<i>DARRELL Allison</i>	PEFNC
<i>Ann McN</i>	SBE
<i>Dawn Shephard Pope</i>	Office of the Governor
<i>Jim Deans</i>	JDS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

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SENATE BILL 8
Education/Higher Education Committee Substitute Adopted 2/16/11
Third Edition Engrossed 2/22/11
Fourth Edition Engrossed 2/24/11
House Committee Substitute Favorable 3/16/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S8-PCS55220-RQ-10

Short Title: No Cap on Number of Charter Schools. (Public)

Sponsors:

Referred to:

January 31, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE EDUCATIONAL OPPORTUNITIES FOR THE CHILDREN OF
3 NORTH CAROLINA BY REMOVING THE CAP ON CHARTER SCHOOLS, BY
4 CREATING A NEW PUBLIC CHARTER SCHOOLS COMMISSION TO OVERSEE
5 CHARTER SCHOOLS, BY STRENGTHENING THE STANDARDS FOR GRANTING
6 AND RETAINING A CHARTER FOR A CHARTER SCHOOL, BY AUTHORIZING
7 LOCAL BOARDS OF EDUCATION TO CONVERT SCHOOLS TO CHARTER
8 SCHOOLS WITHOUT FORMING A NONPROFIT CORPORATION, BY CLARIFYING
9 THE FUNDING FORMULA FOR CHARTER SCHOOLS, AND BY PROVIDING THAT
10 COUNTIES MAY PROVIDE FUNDING FOR CHARTER SCHOOLS IN THEIR
11 JURISDICTIONS; AND TO MAKE OTHER CHANGES TO THE GENERAL
12 STATUTES GOVERNING CHARTER SCHOOLS.

13 The General Assembly of North Carolina enacts:

14 SECTION 1. This act shall be known and may be cited as the "Charter Schools Act
15 of 2011."

16 SECTION 2. Part 6A of Article 16 of Chapter 115C of the General Statutes reads
17 as rewritten:

18 "Part 6A. Charter Schools.

19 "§ 115C-238.29A. Purpose.

20 The purpose of this Part is to authorize a system of charter schools to provide opportunities
21 for teachers, parents, pupils, and community members to establish and maintain schools that
22 operate independently of existing schools, as a method to ~~accomplish all of~~ accomplish, in the
23 aggregate, the following:

- 24 (1) Improve student ~~learning;~~ learning.
- 25 (2) Increase learning opportunities for all students, with special emphasis on
26 expanded learning experiences for students who are identified as at risk of
27 academic failure or academically ~~gifted;~~ gifted.
- 28 (3) Encourage the use of different and innovative teaching ~~methods;~~ methods.



- 1 (4) Create new professional opportunities for ~~teachers,~~ teachers and
2 administrators, including the opportunities to be responsible for the learning
3 program at the school ~~site;~~ site.
- 4 (5) Provide parents and students with expanded choices in the types of
5 educational opportunities that are available within the public school
6 ~~system;~~ system.
- 7 (6) Hold the schools established under this Part accountable for meeting
8 measurable student achievement results, and provide the schools with a
9 method to change from rule-based to performance-based accountability
10 systems.
- 11 (7) Encourage the replication of successful charter schools.

12 **"§ 115C-238.29A1. North Carolina Public Charter Schools Commission established.**

13 (a) Creation. – There is created the North Carolina Public Charter Schools Commission,
14 hereinafter referred to as the Commission. The Commission shall be located administratively
15 under the State Board of Education and shall exercise its powers and functions as provided in
16 this section.

17 (b) Purpose. – The purpose of the Commission is to oversee high-quality public charter
18 schools throughout the State, consistent with the purposes of this Part, and to recommend
19 approval of charter applicants to the State Board of Education.

20 (c) Membership. – The Commission shall consist of the following 13 members:

21 (1) Four members appointed by the Governor.

22 (2) Four members, one of whom shall be a teacher, administrator, or board
23 member of a charter school or a parent of a child attending a charter school,
24 appointed by the General Assembly upon the recommendation of the
25 President Pro Tempore of the Senate in accordance with G.S. 120-121.

26 (3) Four members, one of whom shall be a teacher, administrator, or board
27 member of a charter school or a parent of a child attending a charter school,
28 appointed by the General Assembly upon the recommendation of the
29 Speaker of the House of Representatives in accordance with G.S. 120-121.

30 (4) The Superintendent of Public Instruction or the Superintendent's designee.

31 (d) Qualifications of Members. – Members appointed to the Commission shall
32 collectively possess strong experience and expertise in public and nonprofit governance,
33 management and finance, public school leadership, assessment, curriculum and instruction,
34 public charter schools, and public education law. All appointed members of the Commission
35 shall have demonstrated an understanding of and a commitment to charter schools as a strategy
36 for strengthening public education.

37 (e) Terms of Office. – No appointed member shall serve more than seven consecutive
38 years. The terms of office are as follows:

39 (1) The initial term of office for members appointed by the Governor shall be
40 two years until June 30, 2013, and thereafter shall be three years.

41 (2) The initial term of office for the members appointed by the General
42 Assembly upon the recommendation of the Speaker of the House of
43 Representatives shall be three years until June 30, 2014, and thereafter shall
44 be three years.

45 (3) The initial term of office for the members appointed by the General
46 Assembly upon the recommendation of the President Pro Tempore of the
47 Senate shall be four years until June 30, 2015, and thereafter shall be three
48 years.

49 (f) Officers. – The Commission shall elect a chair and a vice-chair from among its
50 membership. In the absence of the chair, the vice-chair shall preside over the Commission's

1 meetings. All members are voting members, and a majority of the Commission constitutes a
2 quorum. The Commission shall adopt rules to govern its proceedings.

3 (g) Meetings. – Meetings of the Commission shall be held upon the call of the chair or
4 the vice-chair with the approval of the chair.

5 (h) Expenses. – Members of the Commission shall be reimbursed for travel and
6 subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

7 (i) The Commission is subject to the provisions of Chapter 132 ("Public Records") and
8 Article 33C of Chapter 143 ("Meetings of Public Bodies") of the General Statutes.

9 (j) Removal. – Any member of the Commission, other than the Superintendent of
10 Public Instruction, may be removed by a vote of at least two-thirds of members at any duly held
11 meeting for any cause that renders the member incapable or unfit to discharge the duties of the
12 office. Whenever a vacancy on the Commission exists, the original appointing authority shall
13 appoint or elect a member for the remaining portion of the term.

14 (k) Staff. – The State Board of Education shall assign the Office of Charter Schools as
15 staff to the Commission.

16 (l) Powers and Duties. – The Commission shall have the following duties:

17 (1) To provide technical assistance, through the Office of Charter Schools and
18 the Department of Public Instruction, to charter school applicants and to
19 charter schools that are approved under this Part.

20 (2) To recommend policies to the State Board regarding all aspects of charter
21 school operation, including time lines, standards, and criteria for acceptance
22 and approval of applications, monitoring of charter schools, and grounds for
23 revocation of charters.

24 (3) To oversee the process for accepting and approving applications for charters
25 and to make recommendations to the State Board for final approval of
26 charter applications.

27 (4) To oversee the process for monitoring the operation of charter schools, with
28 the assistance and counsel of staff from the Department of Public
29 Instruction.

30 (5) To make recommendations to the State Board regarding any actions
31 involving a charter school, including renewals of charters, nonrenewals of
32 charters, and revocation of charters.

33 (6) To undertake any duties and responsibilities consistent with the above
34 powers and duties and incident thereto.

35 (m) The Commission shall submit recommendations as designated proposals to the State
36 Board. The State Board shall adopt or reject a designated proposal within 95 days. If the State
37 Board takes no action on a designated proposal within 95 days, the proposal shall be deemed
38 adopted. The State Board shall not make any substantive changes to any designated proposal of
39 the Commission that the State Board adopts. If the State Board rejects a designated proposal, it
40 shall state with specificity its reasons for rejection; the Commission then may amend that
41 designated proposal and resubmit it to the State Board. The State Board shall not act in an
42 arbitrary and capricious manner in withholding approval of a designated proposal resubmitted
43 by the Commission. The State Board's rejection of a resubmitted designated proposal is subject
44 to judicial review.

45 **"§ 115C-238.29B. Eligible applicants; contents of applications; submission of applications**
46 **for approval.**

47 (a) Any person, group of persons, or nonprofit corporation seeking to establish a charter
48 school may apply to establish a charter school. If ~~the~~any applicant other than a local board of
49 education seeks to convert a public school to a charter school, the application shall include a
50 statement signed by a majority of the teachers and instructional support personnel currently

1 employed at the school indicating that they favor the conversion and evidence that a significant
2 number of parents of children enrolled in the school favor conversion.

3 (b) The application shall include an executive summary and shall contain at least the
4 following information:

5 (1) A description of a program that aligns with State standards and implements
6 one or more of the purposes in G.S. 115C-238.29A.

7 (1a) The targeted student population and the community the school intends to
8 serve, as well as evidence of need and community support for the proposed
9 charter school.

10 (2) A description of student achievement goals for the school's educational
11 program and the method of demonstrating that students have attained the
12 skills and knowledge specified for those student achievement goals.

13 (2a) A description of the school's instructional design, including the type of
14 learning environment, such as classroom-based or independent study, class
15 size and structure, curriculum overview, and teaching methods.

16 (2b) The school's plans for identifying and successfully serving students with
17 disabilities, students who are English language learners, academically at-risk
18 students, and academically gifted students, including, but not limited to,
19 compliance with applicable laws and regulations.

20 (3) The governance structure of the school—school, including proposed
21 governing bylaws and the names and biographical information of the
22 proposed initial members of the board of directors of the nonprofit,
23 tax-exempt corporation—corporation. and the process to be followed by the
24 school to ensure parental involvement. A local board of education seeking to
25 convert a school to a charter school shall not be required to form a nonprofit,
26 tax-exempt corporation if the local board of education serves as the board of
27 directors of the charter school.

28 (3a) The local school administrative unit in which the school will be located.

29 (4) Admission policies and procedures.

30 (5) A proposed budget for the school for at least the first five years of operation
31 and evidence that the financial plan for the school is economically sound.

32 (6) Requirements and procedures for program and financial audits.

33 (7) A description of how the school will comply with G.S. 115C-238.29F.

34 (8) Types and amounts of insurance coverage, including bonding insurance for
35 the principal officers of the school, to be obtained by the charter school.

36 (9) The term of the charter.

37 (10) The qualifications required for individuals employed by the school.

38 (11) The procedures by which students can be excluded from the charter school
39 and returned to a public school. Notwithstanding any law to the contrary,
40 any local board may refuse to admit any student who is suspended or
41 expelled from a charter school due to actions that would lead to suspension
42 or expulsion from a public school under G.S. 115C-391 until the period of
43 suspension or expulsion has expired.

44 (12) The number of students to be served, which number shall be at least 65, The
45 number of students to be served, including the grades to be served each year
46 for the full term of the charter, and the minimum, planned, and maximum
47 enrollment per grade per year for the term of the charter. The number of
48 students to be served shall be at least 50, however, the charter school may
49 serve fewer than 50 students if the application contains a compelling reason,
50 such as the school would serve a geographically remote and small student
51 population and the minimum number of teachers to be employed at the

1 ~~school, which number shall be at least three. However, the charter school~~
2 ~~may serve fewer than 65 students or employ fewer than three teachers if the~~
3 ~~application contains a compelling reason, such as the school would serve a~~
4 ~~geographically remote and small student population.~~

5 (12a) The minimum number of teachers to be employed at the school.

6 (12b) An organization chart that clearly presents the school's organizational
7 structure, including lines of authority and reporting between the governing
8 board, staff, any related bodies, such as advisory bodies or parent and
9 teacher councils, and any external organizations that will play a role in
10 managing the school.

11 (13) Information regarding the facilities to be used by the school and the manner
12 in which administrative services of the school are to be provided.

13 (14) Repealed by Session Laws 1997-430, s. 1.

14 (15) The process to be followed by the school to ensure parental involvement.

15 (16) The school's plans for providing transportation. The school shall develop a
16 plan for transportation for any student enrolled in the charter school who
17 resides within three miles of the charter school in a household with an
18 income below one hundred eighty-five percent (185%) of the poverty level
19 as defined by the federal government.

20 (17) The school's plans for providing food services. The school shall develop a
21 plan for food services for any student enrolled in the charter school who
22 resides in a household with an income below one hundred eighty-five
23 percent (185%) of the poverty level as defined by the federal government.

24 (18) Explanations of any partnerships or contractual relationships central to the
25 school's operations or mission.

26 (19) A detailed school start-up plan, identifying tasks, time lines, and responsible
27 individuals.

28 (20) For an applicant seeking a charter to operate a virtual charter school,
29 information showing that the school has a physical facility in the State, that
30 the chief administrator of the school is located in the State, and that the
31 teachers serving the virtual charter school are responsible for improving
32 learning by planned instruction, diagnosing learning needs, prescribing
33 content delivery through instructional activities, assessing learning, reporting
34 outcomes to administrators and parents and guardians, and evaluating the
35 effects of instruction.

36 (c) An applicant shall submit the application to the Commission, which shall have the
37 authority to recommend the approval of a charter school to the State Board in accordance with
38 the standards and criteria set forth in this Part. ~~a chartering entity for preliminary approval. A~~
39 ~~chartering entity may be:~~

40 ~~(1) The local board of education of the local school administrative unit in which~~
41 ~~the charter school will be located;~~

42 ~~(2) The board of trustees of a constituent institution of The University of North~~
43 ~~Carolina, so long as the constituent institution is involved in the planning,~~
44 ~~operation, or evaluation of the charter school; or~~

45 ~~(3) The State Board of Education.~~

46 ~~Regardless of which chartering entity receives the application for preliminary approval, the~~
47 ~~State Board of Education shall have final approval of the charter school.~~

48 ~~Notwithstanding the provisions of this subsection, if the State Board of Education finds that~~
49 ~~an applicant (i) submitted an application to a local board of education and received final~~
50 ~~approval from the State Board of Education, but (ii) is unable to find a suitable location within~~
51 ~~that local school administrative unit to operate, the State Board of Education may authorize the~~

1 charter school to operate within an adjacent local school administrative unit for one year only.
2 The charter school cannot operate for more than one year unless it reappplies, in accordance with
3 subdivision (1), (2), or (3) of this subsection, and receives final approval from the State Board
4 of Education.

5 (d) ~~Unless an applicant submits its application under subsection (c) of this section to the~~
6 ~~local board of education of the local school administrative unit in which the charter school will~~
7 ~~be located, the~~ applicant shall submit a copy of its application to ~~that local board~~ the local
8 board of education of the local school administrative unit in which the charter school will be
9 located within seven days of its submission under subsection (c) of this section. The local board
10 may offer any information or comment concerning the application it considers appropriate to
11 the ~~chartering entity~~ Commission within a time period imposed uniformly for all applications.
12 ~~The local board shall deliver this information to the chartering entity no later than January 1 of~~
13 ~~the next calendar year.~~ The applicant shall not be required to obtain or deliver this information
14 to the ~~chartering entity~~ Commission on behalf of the local board. The ~~State Board~~ Commission
15 shall consider any information or comment it receives from a local board and shall consider the
16 impact on the local school administrative unit's ability to provide a sound basic education to its
17 students when determining whether to recommend grant preliminary and final approval of the
18 charter school.

19 **"§ 115C-238.29C. Preliminary approval of Completeness determination for applications**
20 **for charter schools.**

21 (a) ~~The chartering entity that receives a request for preliminary approval of a charter~~
22 ~~school shall act on each request received prior to November 1 of a calendar year by February 1~~
23 ~~of the next calendar year~~ Commission, subject to the approval of the State Board, shall
24 determine the schedule and deadlines for the submission of charter school applications.

25 (b) ~~The chartering entity~~ Commission shall ~~give preliminary approval to the application~~
26 issue a determination that the application is complete if the ~~chartering entity~~ Commission
27 determines that ~~(i) the information contained in the application meets the requirements set out in~~
28 ~~this Part or adopted by the State Board of Education,~~ Education. ~~(ii) the applicant has the ability~~
29 ~~to operate the school and would be likely to operate the school in an educationally and~~
30 ~~economically sound manner, and (iii) granting the application would improve student learning~~
31 ~~and would achieve one of the other purposes set out in G.S. 115C 238.29A. In reviewing~~
32 ~~applications for the establishment of charter schools within a local school administrative unit,~~
33 ~~the chartering entity is encouraged to give preference to applications that demonstrate the~~
34 ~~capability to provide comprehensive learning experiences to students identified by the~~
35 ~~applicants as at risk of academic failure. If the chartering entity approves more than one~~
36 ~~application for charter schools located in a local school administrative unit, the chartering entity~~
37 ~~may state its order of preference among the applications that it approves.~~

38 (c) ~~If a chartering entity other than the State Board disapproves an application, the~~
39 ~~applicant may appeal to the State Board of Education prior to February 15. The State Board~~
40 ~~shall consider the appeal at the same time it is considering final approval in accordance with~~
41 ~~G.S. 115C 238.29D. The State Board shall give preliminary approval of the application if it~~
42 ~~finds that the chartering entity acted in an arbitrary or capricious manner in disapproving the~~
43 ~~application, failed to consider appropriately the application, or failed to act within the time set~~
44 ~~out in G.S. 115C 238.29C.~~

45 ~~If the chartering entity, the State Board of Education, or both, disapprove an application, the~~
46 ~~applicant may modify the application and reapply subject to the application deadline contained~~
47 ~~in subsection (a) of this section.~~

48 **"§ 115C-238.29D. Final approval of applications for charter schools.**

49 (a) ~~Upon recommendation of the Commission, the State Board shall~~ may grant
50 final approval of an application if it finds that determines that the application meets the

1 requirements set out in this Part or adopted by the State Board of Education and that granting
2 the application would achieve one or more of the purposes set out in G.S. 115C-238.29A.

3 ~~The Commission State Board shall act by March 15 of a calendar year on all applications~~
4 ~~and appeals it receives prior to February 15 of that calendar year.~~ establish a time line approved
5 by the State Board to take final action on applications declared complete under
6 G.S. 115C-238.29C and shall make this information available to applicants. The decision shall
7 be based on the evidence contained in the application or collected following a procedure for
8 application review that is uniform across all applicants and provides opportunities for
9 applicants to respond to questions and requests for further information.

10 (b) ~~The State Board shall authorize no more than five charter schools per year in one~~
11 ~~local school administrative unit.~~ The State Board shall authorize no more than 100-50
12 additional charter schools statewide in each calendar year, not including renewals of existing
13 charters. If more than five charter schools in one local school administrative unit or more than
14 100 schools statewide meet the standards for final approval, the State Board shall give priority
15 to applications that are most likely to further State education policies and to strengthen the
16 educational program offered in the local school administrative units in which they are located.

17 (b1) If the State Board or Commission disapproves an application, it shall provide the
18 applicant with the opportunity to request reconsideration of the decision. However, neither the
19 State Board nor the Commission shall be required to consider any request for reconsideration
20 from an applicant that fails to include additional information not previously presented by the
21 applicant.

22 (b2) A decision to disapprove an application is exempt from review pursuant to Chapter
23 150B of the General Statutes.

24 (c) The State Board of Education may authorize a school before the applicant has
25 secured its space, equipment, facilities, and personnel if the applicant indicates the authority is
26 necessary for it to raise working capital. The State Board shall not allocate any funds to the
27 school until the school has obtained space.

28 (d) The State Board of Education may grant the initial charter for a period not to exceed
29 10 years and may renew the charter upon the request of the chartering entity for subsequent
30 periods not to exceed 10 years each. The State Board, upon recommendation of the
31 Commission, may include in the charter any standards or requirements it determines are
32 necessary to fulfill the purposes of this Part as well as any other objectives set forth by the
33 charter school applicant. The charter shall set forth clear, measurable, and attainable academic
34 and operational performance standards the chartering entity must meet to earn charter renewal
35 and the type of objective and verifiable data which will be reviewed to evaluate performance.
36 Those standards shall include:

- 37 (1) Measures of student academic achievement status or proficiency.
- 38 (2) Student academic growth, including adequacy of growth toward State
39 standards.
- 40 (3) Achievement gaps among student subgroups identified by the Department of
41 Public Instruction for all public schools.
- 42 (4) Postsecondary readiness and success for high schools.
- 43 (5) Attendance and recurrent enrollment from year to year.
- 44 (6) Financial performance and sustainability.
- 45 (7) Compliance with all applicable laws, regulations, and terms of the charter
46 contract.

47 ~~The State Board of Education-Commission~~ shall review the operations of each charter
48 school at least once every five years to ensure that the school is meeting the expected academic,
49 financial, and governance standards.

50 A material revision of the provisions of a charter application shall be made only upon the
51 approval of the State Board of ~~Education.~~ Education upon recommendation of the Commission.

1 It shall not be considered a material revision of a charter application and shall not require
2 the prior approval of the State Board for a charter school to increase its enrollment during the
3 charter school's second year of operation and annually thereafter (i) by up to ~~ten~~twenty percent
4 ~~(10%)~~(20%) of the school's previous year's enrollment or (ii) in accordance with planned
5 growth as authorized in the charter. Other enrollment growth shall be considered a material
6 revision of the charter application, and upon recommendation of the Commission, the State
7 Board may approve such additional enrollment growth of greater than ~~ten~~twenty percent ~~(10%)~~
8 (20%) only if the ~~State Board~~Commission finds that:

- 9 (1) The actual enrollment of the charter school is within ten percent (10%) of its
10 maximum authorized enrollment;
- 11 (2) The charter school has commitments for ninety percent (90%) of the
12 requested maximum growth;
- 13 (3) The board of education of the local school administrative unit in which the
14 charter school is located has had an opportunity to be heard by the ~~State~~
15 ~~Board of Education~~Commission on any adverse impact the proposed growth
16 would have on the unit's ability to provide a sound basic education to its
17 students;
- 18 (4) The charter school is not currently identified as low-performing;
- 19 (5) The charter school meets generally accepted standards of fiscal
20 management; and
- 21 (6) It is otherwise appropriate to approve the enrollment growth.

22 **"§ 115C-238.29E. Charter school operation.**

23 (a) A charter school that is approved by the State shall be a public school within the
24 local school administrative unit in which it is located. ~~It shall be accountable to the local board~~
25 ~~of education if it applied for and received preliminary approval from that local board for~~
26 ~~purposes of ensuring compliance with applicable laws and the provisions of its charter. All~~
27 ~~other charter schools located, and shall be accountable to the State Board for ensuring~~
28 compliance with applicable laws and the provisions of their charters, ~~except that any of these~~
29 ~~charter schools may agree to be accountable to the local board of the school administrative unit~~
30 ~~in which the charter school is located rather than to the State Board charters.~~

31 (b) A charter school shall be operated by a private nonprofit corporation that shall have
32 received federal tax-exempt status no later than 24 months following final approval of the
33 application. A local board of education approved to convert a school to a charter school shall
34 not be required to form a nonprofit, tax-exempt corporation if the local board of education
35 serves as the board of directors of the charter school.

36 (c) A charter school shall operate under the written charter signed by the State Board
37 ~~entity to which it is accountable under subsection (a) of this section~~ and the applicant. A charter
38 school is not required to enter into any other contract. The charter shall incorporate the
39 information provided in the application, as modified during the charter approval process, and
40 any terms and conditions imposed on the charter school by the State Board of ~~Education~~
41 Education, as recommended by the Commission. No other terms may be imposed on the charter
42 school as a condition for receipt of local funds.

43 (d) The board of directors of the charter school shall decide matters related to the
44 operation of the school, including budgeting, curriculum, and operating procedures.

45 (e) A charter school's specific location shall not be prescribed or limited by a local
46 board or other authority except a zoning authority. The school may lease space from a local
47 board of education or as is otherwise lawful in the local school administrative unit in which the
48 charter school is located. If a charter school leases space from a sectarian organization, the
49 charter school classes and students shall be physically separated from any parochial students,
50 and there shall be no religious artifacts, symbols, iconography, or materials on display in the
51 charter school's entrance, classrooms, or hallways. Furthermore, if a charter school leases space

1 from a sectarian organization, the charter school shall not use the name of that organization in
2 the name of the charter school.

3 At the request of the charter school, the local board of education of the local school
4 administrative unit in which the charter school will be located shall lease any available building
5 or land to the charter school unless the board demonstrates that the lease is not economically or
6 practically feasible or that the local board does not have adequate classroom space to meet its
7 enrollment needs. Notwithstanding any other law, a local board of education may provide a
8 school facility to a charter school free of charge; however, the charter school is responsible for
9 the maintenance of and insurance for the school facility.

10 (f) Except as provided in this Part and pursuant to the provisions of its charter, a charter
11 school is exempt from statutes and rules applicable to a local board of education or local school
12 administrative unit.

13 **"§ 115C-238.29F. General requirements.**

14 (a) Health and Safety Standards. – A charter school shall meet the same health and
15 safety requirements required of a local school administrative unit. The Department of Public
16 Instruction shall ensure that charter schools provide parents and guardians with information
17 about meningococcal meningitis and influenza and their vaccines at the beginning of every
18 school year. This information shall include the causes, symptoms, and how meningococcal
19 meningitis and influenza are spread and the places where parents and guardians may obtain
20 additional information and vaccinations for their children.

21 The Department of Public Instruction shall also ensure that charter schools provide parents
22 and guardians with information about cervical cancer, cervical dysplasia, human
23 papillomavirus, and the vaccines available to prevent these diseases. This information shall be
24 provided at the beginning of the school year to parents of children entering grades five ~~though~~
25 through 12. This information shall include the causes and symptoms of these diseases, how
26 they are transmitted, how they may be prevented by vaccination, including the benefits and
27 possible side effects of vaccination, and the places where parents and guardians may obtain
28 additional information and vaccinations for their children.

29 The Department of Public Instruction shall also ensure that charter schools provide students
30 in grades nine through 12 with information annually on the manner in which a parent may
31 lawfully abandon a newborn baby with a responsible person, in accordance with G.S. 7B-500.

32 The Department of Public Instruction shall also ensure that the guidelines for individual
33 diabetes care plans adopted by the State Board of Education under G.S. 115C-12(31) are
34 implemented in charter schools in which students with diabetes are enrolled and that charter
35 schools otherwise comply with the provisions of G.S. 115C-375.3.

36 (b) School Nonsectarian. – A charter school shall be nonsectarian in its programs,
37 admission policies, employment practices, and all other operations and shall not charge tuition
38 or ~~fees.~~ fees, except that a charter school may charge any fees that are charged by the local
39 school administrative unit in which the charter school is located. A charter school shall not be
40 affiliated with a nonpublic sectarian school or a religious institution.

41 (c) Civil Liability and Insurance. –

42 (1) The board of directors of a charter school may sue and be sued. The State
43 Board of Education shall adopt rules as recommended by the Commission to
44 establish reasonable amounts and types of liability insurance that the board
45 of directors shall be required by the charter to obtain. The board of directors
46 shall obtain at least the amount of and types of insurance required by these
47 rules to be included in the charter. Any sovereign immunity of the charter
48 school, of the organization that operates the charter school, or its members,
49 officers, or directors, or of the employees of the charter school or the
50 organization that operates the charter school, is waived to the extent of
51 indemnification by insurance.

- 1 (2) No civil liability shall attach to any chartering entity, to the State Board of
2 Education, the Commission, or to any of their members or employees,
3 individually or collectively, for any acts or omissions of the charter school.
- 4 (d) Instructional Program. –
- 5 (1) The school shall provide instruction each year for at least 180 days.
- 6 (2) The school shall design its programs to at least meet the student performance
7 standards adopted by the State Board of Education and the student
8 performance standards contained in the charter.
- 9 (3) A charter school shall conduct the student assessments required for charter
10 schools by the State Board of Education.
- 11 (4) The school shall comply with policies adopted by the State Board of
12 Education for charter schools relating to the education of children with
13 disabilities.
- 14 (5) The school is subject to and shall comply with Article 27 of Chapter 115C of
15 the General Statutes, except that a charter school may also exclude a student
16 from the charter school and return that student to another school in the local
17 school administrative unit in accordance with the terms of its charter.
- 18 (e) Employees. –
- 19 (1) An employee of a charter school is not an employee of the local school
20 administrative unit in which the charter school is ~~located~~. located, except for
21 employees of charter schools converted by a local board of education where
22 a nonprofit, tax-exempt corporation was not required to be formed because
23 the local board of education serves as the board of directors of the charter
24 school. The charter school's board of directors shall employ and contract
25 with necessary teachers to perform the particular service for which they are
26 employed in the school; at least seventy-five percent (75%) of these teachers
27 in grades kindergarten through five, at least fifty percent (50%) of these
28 teachers in grades six through eight, and at least fifty percent (50%) of these
29 teachers in grades nine through 12 shall hold teacher certificates. All
30 teachers in grades six through 12 who are teaching in the core subject areas
31 of mathematics, science, social studies, and language arts shall be college
32 graduates. No charter school shall employ as a teacher any person whose
33 certification has been revoked by the State Board of Education.
- 34 The board also may employ necessary employees who are not required to
35 hold teacher certificates to perform duties other than teaching and may
36 contract for other services. The board may discharge teachers and
37 noncertificated employees.
- 38 (2) No local board of education shall require any employee of the local school
39 administrative unit to be employed in a charter school.
- 40 (3) If a teacher employed by a local school administrative unit makes a written
41 request for a leave of absence to teach at a charter school, the local school
42 administrative unit shall grant the leave for one year. For the initial year of a
43 charter school's operation, the local school administrative unit may require
44 that the request for a leave of absence be made up to 45 days before the
45 teacher would otherwise have to report for duty. After the initial year of a
46 charter school's operation, the local school administrative unit may require
47 that the request for a leave of absence be made up to 90 days before the
48 teacher would otherwise have to report for duty. A local board of education
49 is not required to grant a request for a leave of absence or a request to extend
50 or renew a leave of absence for a teacher who previously has received a
51 leave of absence from that school board under this subdivision. A teacher

1 who has career status under G.S. 115C-325 prior to receiving a leave of
 2 absence to teach at a charter school may return to a public school in the local
 3 school administrative unit with career status at the end of the leave of
 4 absence or upon the end of employment at the charter school if an
 5 appropriate position is available. If an appropriate position is unavailable,
 6 the teacher's name shall be placed on a list of available teachers and that
 7 teacher shall have priority on all positions for which that teacher is qualified
 8 in accordance with G.S. 115C-325(e)(2).

9 (3a) A teacher employed by a charter school who returns to employment with a
 10 local school administrative unit without a break in service shall have unused
 11 sick leave from previous employment with a local school administrative unit
 12 reinstated. A teacher employed by a charter school who returns to
 13 employment with a local school administrative unit without a break in
 14 service shall be credited for the years of service at the charter school for the
 15 purposes of the salary schedule, longevity pay, and rate of earned leave.

16 (4) The employees of the charter school shall be deemed employees of the local
 17 school administrative unit for purposes of providing certain State-funded
 18 employee benefits, including membership in the Teachers' and State
 19 Employees' Retirement System and the State Health Plan for Teachers and
 20 State Employees. The State Board of Education provides funds to charter
 21 schools, approves the original members of the boards of directors of the
 22 charter schools, has the authority to grant, supervise, and revoke charters,
 23 and demands full accountability from charter schools for school finances and
 24 student performance. Accordingly, it is the determination of the General
 25 Assembly that charter schools are public schools and that the employees of
 26 charter schools are public school employees. Employees of a charter school
 27 whose board of directors elects to become a participating employer under
 28 G.S. 135-5.3 are "teachers" for the purpose of membership in the North
 29 Carolina Teachers' and State Employees' Retirement System. In no event
 30 shall anything contained in this Part require the North Carolina Teachers'
 31 and State Employees' Retirement System to accept employees of a private
 32 employer as members or participants of the System.

33 (f) Accountability. –

- 34 (1) The school is subject to the financial audits, the audit procedures, and the
 35 audit requirements adopted by the State Board of Education for charter
 36 schools. These audit requirements may include the requirements of the
 37 School Budget and Fiscal Control Act.
- 38 (2) The school shall comply with the reporting requirements established by the
 39 State Board of Education in the Uniform Education Reporting System.
- 40 (3) The school shall report at least annually to the ~~chartering entity and the~~
 41 Commission and the State Board of Education the information required by
 42 the ~~chartering entity~~ Commission or the State Board.

43 (g) Admission Requirements. –

- 44 (1) Any child who is qualified under the laws of this State for admission to a
 45 public school is qualified for admission to a charter school. Any charter
 46 school that is unable to fill its current enrollment with students qualified
 47 under the laws of this State for admission to a public school may enroll
 48 persons of school age who are not domiciliaries of the State and charge those
 49 students a tuition amount equal to the per pupil allocation of the local
 50 appropriation for the county in which the charter school is located and the
 51 per pupil State appropriation for that school year. The number of persons of

- 1 school age who are not domiciliaries of the State who are enrolled in a
2 charter school may not exceed ten percent (10%) of the total number of
3 students enrolled in the charter school.
- 4 (2) No local board of education shall require any student enrolled in the local
5 school administrative unit to attend a charter school.
- 6 (3) Admission to a charter school shall not be determined according to the
7 school attendance area in which a student resides, except that any ~~local~~
8 ~~school administrative unit in which a public school converts to a charter~~
9 ~~school shall give admission preference to students who reside within the~~
10 ~~former attendance area of that school.~~ public school converting to a charter
11 school shall adopt a policy giving enrollment preference to students who
12 reside within the former attendance area of that public school for at least the
13 first two years of operation of the charter school.
- 14 (4) Admission to a charter school shall not be determined according to the local
15 school administrative unit in which a student resides.
- 16 (5) A charter school shall not discriminate against any student on the basis of
17 ethnicity, national origin, gender, or disability. Except as otherwise provided
18 by law or the mission of the school as set out in the charter, the school shall
19 not limit admission to students on the basis of intellectual ability, measures
20 of achievement or aptitude, athletic ability, disability, race, creed, gender,
21 national origin, religion, or ancestry. The charter school may give enrollment
22 priority to siblings of currently enrolled students who were admitted to the
23 charter school in a previous year and to children of the school's principal,
24 teachers, ~~and teacher assistants.~~ teacher assistants, and other full-time
25 employees of the charter school. In addition, and only for its first year of
26 operation, the charter school may give enrollment priority to children of the
27 initial members of the charter school's board of directors, so long as (i) these
28 children are limited to no more than ten percent (10%) of the school's total
29 enrollment or to 20 students, whichever is less, and (ii) the charter school is
30 not a former public or private school. If multiple birth siblings apply for
31 admission to a charter school and a lottery is needed under
32 G.S. 115C-238.29F(g)(6), the charter school shall enter one surname into the
33 lottery to represent all of the multiple birth siblings. If that surname of the
34 multiple birth siblings is selected, then all of the multiple birth siblings shall
35 be admitted. Within one year after the charter school begins operation, the
36 population of the school shall reasonably reflect the racial and ethnic
37 composition of the general population residing within the local school
38 administrative unit in which the school is located or the racial and ethnic
39 composition of the special population that the school seeks to serve residing
40 within the local school administrative unit in which the school is located.
41 The school shall be subject to any court-ordered desegregation plan in effect
42 for the local school administrative unit.
- 43 (6) During each period of enrollment, the charter school shall enroll an eligible
44 student who submits a timely application, unless the number of applications
45 exceeds the capacity of a program, class, grade level, or building. In this
46 case, students shall be accepted by lot. Once enrolled, students are not
47 required to reapply in subsequent enrollment periods.
- 48 (7) Notwithstanding any law to the contrary, a charter school may refuse
49 admission to any student who has been expelled or suspended from a public
50 school under G.S. 115C-391 until the period of suspension or expulsion has
51 expired.

1 (8) Nothing in this subsection shall be interpreted to preclude the formation of a
2 charter school whose mission is focused on serving students with
3 disabilities, students of the same gender, students who pose such severe
4 disciplinary problems that they warrant a specific educational program,
5 academically at-risk students, or academically gifted students.

6 (h) Transportation. – The charter school may provide transportation for students
7 enrolled at the school. ~~The For charter schools approved after July 1, 2011, the charter school~~
8 ~~shall develop a transportation plan so that transportation is not a barrier to provide~~
9 ~~transportation for any student enrolled in the charter school who resides in the local school~~
10 ~~administrative unit in which the school is located within three miles of the charter school in a~~
11 ~~household with an income below one hundred eighty-five percent (185%) of the poverty level~~
12 ~~as defined by the federal government. The charter school is not required to provide~~
13 ~~transportation to any student who lives within one and one-half miles of the school. At the~~
14 request of the charter school and if the local board of the local school administrative unit in
15 which the charter school is located operates a school bus system, then that local board may
16 contract with the charter school to provide transportation in accordance with the charter
17 school's transportation plan to students who reside in the local school administrative unit and
18 who reside at least one and one-half miles ~~of~~ from the charter school. A local board may charge
19 the charter school a reasonable charge that is sufficient to cover the cost of providing this
20 transportation. Furthermore, a local board may refuse to provide transportation under this
21 subsection if it demonstrates there is no available space on buses it intends to operate during the
22 term of the contract or it would not be practically feasible to provide this transportation.

23 (h1) Food Services. – For charter schools approved after July 1, 2011, the charter school
24 shall provide food services for any student enrolled in the charter school who resides in a
25 household with an income below one hundred eighty-five percent (185%) of the poverty level
26 as defined by the federal government.

27 (i) Assets. – Upon dissolution of the charter school or upon the nonrenewal of the
28 charter, all net assets of the charter ~~school~~ school, other than real property, purchased with
29 public funds shall be deemed the property of the local school administrative unit in which the
30 charter school is located. Upon dissolution of the charter school or upon the nonrenewal of the
31 charter, State funds used to purchase or improve real property shall be remitted back to the
32 State after all liens on the property are satisfied. Upon dissolution of the charter school or upon
33 the nonrenewal of the charter, a pro rata share of the county funds used to purchase or improve
34 real property shall be remitted back to the county from which the funds originated after all liens
35 on the property are satisfied.

36 (j) Driving Eligibility Certificates. – In accordance with rules adopted by the State
37 Board of Education, the designee of the school's board of directors shall do all of the following:

- 38 (1) Sign driving eligibility certificates that meet the conditions established in
39 G.S. 20-11.
- 40 (2) Obtain the necessary written, irrevocable consent from parents, guardians, or
41 emancipated juveniles, as appropriate, in order to disclose information to the
42 Division of Motor Vehicles.
- 43 (3) Notify the Division of Motor Vehicles when a student who holds a driving
44 eligibility certificate no longer meets its conditions.

45 (k) The Display of the United States and North Carolina Flags and the Recitation of the
46 Pledge of Allegiance. – A charter school shall (i) display the United States and North Carolina
47 flags in each classroom when available, (ii) require the recitation of the Pledge of Allegiance on
48 a daily basis, and (iii) provide age-appropriate instruction on the meaning and historical origins
49 of the flag and the Pledge of Allegiance. A charter school shall not compel any person to stand,
50 salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise
51 available, flags shall be displayed in each classroom.

1 **"§ 115C-238.29G. Causes for nonrenewal or termination; disputes.**

2 (a) ~~The Upon recommendation of the Commission, the State Board of Education~~
3 ~~Education, or a chartering entity subject to the approval of the State Board of Education,~~ may
4 terminate or not renew a charter upon any of the following grounds:

- 5 (1) Failure to meet the requirements for student performance contained in the
6 charter;
7 (2) Failure to meet generally accepted standards of fiscal management;
8 (3) Violations of law;
9 (4) Material violation of any of the conditions, standards, or procedures set forth
10 in the charter;
11 (5) Two-thirds of the faculty and instructional support personnel at the school
12 request that the charter be terminated or not renewed; or
13 (6) Other good cause identified.

14 (a) Upon recommendation of the Commission, the State Board shall adopt criteria for
15 adequate performance by a charter school and shall identify charter schools with inadequate
16 performance. The criteria shall include a requirement that a charter school which demonstrates
17 no growth in student performance and has annual performance composites below sixty percent
18 (60%) in any three-year period shall be deemed inadequate. A charter school identified as
19 inadequate shall develop a school improvement plan to meet specific goals for student
20 performance that are consistent with State Board criteria and the mission approved in the
21 charter of the school. The school improvement plan shall be reviewed and approved by the
22 State Board upon recommendation by the Commission. Failure to demonstrate improvement
23 under the school improvement plan shall be cause for termination or nonrenewal of the charter.

24 (b) The State Board of Education shall develop and implement a process to address
25 contractual and other grievances between a charter school and ~~its chartering entity~~the
26 Commission, State Board, or the local board of education during the time of its charter.

27 (c) The State Board and the charter school are encouraged to make a good-faith attempt
28 to resolve the differences that may arise between them. They may agree to jointly select a
29 mediator. The mediator shall act as a neutral facilitator of disclosures of factual information,
30 statements of positions and contentions, and efforts to negotiate an agreement settling the
31 differences. The mediator shall, at the request of either the State Board or a charter school,
32 commence a mediation immediately or within a reasonable period of time. The mediation shall
33 be held in accordance with rules and standards of conduct adopted under Chapter 7A of the
34 General Statutes governing mediated settlement conferences but modified as appropriate and
35 suitable to the resolution of the particular issues in disagreement.

36 Notwithstanding Article 33C of Chapter 143 of the General Statutes, the mediation
37 proceedings shall be conducted in private. Evidence of statements made and conduct occurring
38 in a mediation are not subject to discovery and are inadmissible in any court action. However,
39 no evidence otherwise discoverable is inadmissible merely because it is presented or discussed
40 in a mediation. The mediator shall not be compelled to testify or produce evidence concerning
41 statements made and conduct occurring in a mediation in any civil proceeding for any purpose,
42 except disciplinary hearings before the State Bar or any agency established to enforce standards
43 of conduct for mediators. The mediator may determine that an impasse exists and discontinue
44 the mediation at any time. The mediator shall not make any recommendations or public
45 statement of findings or conclusions. The State Board and the charter school shall share equally
46 the mediator's compensation and expenses. The mediator's compensation shall be determined
47 according to rules adopted under Chapter 7A of the General Statutes.

48 (d) A decision to terminate or not renew a charter is exempt from review pursuant to
49 Chapter 150B of the General Statutes.

50 **"§ 115C-238.29H. State and local funds for a charter school.**

51 (a) The State Board of Education shall allocate to each charter school:

- 1 (1) An amount equal to the average per pupil allocation for average daily
2 membership from the local school administrative unit allotments in which
3 the charter school is located for each child attending the charter school
4 except for the allocation for children with disabilities and for the allocation
5 for children with limited English proficiency;
- 6 (2) An additional amount for each child attending the charter school who is a
7 child with disabilities; and
- 8 (3) An additional amount for children with limited English proficiency attending
9 the charter school, based on a formula adopted by the State Board.

10 In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual
11 adjustments to the amount allocated to a charter school based on its enrollment growth in
12 school years subsequent to the initial year of operation.

13 In the event a child with disabilities leaves the charter school and enrolls in a public school
14 during the first 60 school days in the school year, the charter school shall return a pro rata
15 amount of funds allocated for that child to the State Board, and the State Board shall reallocate
16 those funds to the local school administrative unit in which the public school is located. In the
17 event a child with disabilities enrolls in a charter school during the first 60 school days in the
18 school year, the State Board shall allocate to the charter school the pro rata amount of
19 additional funds for children with disabilities.

20 (a1) Funds allocated by the State Board of Education may be used to enter into
21 operational and financing leases for real property or mobile classroom units for use as school
22 facilities for charter schools and may be used for payments on loans made to charter schools for
23 facilities or equipment. Funds allocated by the State Board of Education may also be used to
24 acquire equipment, real property, buildings, and mobile classroom units for use as school
25 facilities for charter schools, to enter into operational and financing leases for equipment, and
26 for any other purpose identified in G.S. 115C-426(f). However, State funds shall not be used to
27 obtain any other interest in real property or mobile classroom units. No indebtedness of any
28 kind incurred or created by the charter school shall constitute an indebtedness of the State or its
29 political subdivisions, and no indebtedness of the charter school shall involve or be secured by
30 the faith, credit, or taxing power of the State or its political subdivisions. Every contract or
31 lease into which a charter school enters shall include the previous sentence. The school also
32 may own land and buildings it obtains through non-State sources.

33 (b) If a student attends a charter school, the local school administrative unit in which
34 the child resides shall transfer to the charter school an amount equal to the per pupil share of
35 the local current expense fund, as defined by G.S. 115C-426, of local current expense
36 appropriation to the local school administrative unit for the fiscal year. The amount transferred
37 under this subsection that consists of revenue derived from supplemental taxes shall be
38 transferred to a charter school only if the student resides in the tax district for which these taxes
39 are levied and the charter school is located in the same county as the supplemental tax district.
40 only to a charter school located in the tax district for which these taxes are levied and in which
41 the student resides. The amount transferred under this subsection shall not include special funds
42 of individual schools established pursuant to G.S. 115C-448. The local school administrative
43 unit shall provide a detailed accounting of the funds to be transferred and transfer these funds
44 based on a preliminary projection of charter school enrollment provided to the local school
45 administrative unit by the charter school no later than 15 days after the local school
46 administrative unit receives its local current expense appropriation. Adjustments to this amount
47 shall be made within 30 days of the State Board of Education determining and certifying to the
48 charter school its average daily membership for the school year. If the local school
49 administrative unit fails to comply with the deadlines set forth in this subsection, it shall pay a
50 penalty of one percent (1%) of the amount transferred to the charter school.

1 (c) Counties may provide funds to the nonprofit tax-exempt corporation that holds the
2 charter of a charter school by direct appropriation as set forth in G.S. 153A-457. These funds
3 shall be used only for purposes identified in G.S. 115C-426(f). If a county decides to provide
4 funds, the funds shall be distributed equitably and apportioned according to the average daily
5 membership of each charter school that has requested funds. These funds shall be used only for
6 purposes identified in G.S. 115C-426(f).

7 ~~"§ 115C-238.29I. Notice of the charter school process; review of charter schools; Charter~~
8 ~~School Advisory Committee.~~

9 ~~(a) The State Board of Education shall distribute information announcing the~~
10 ~~availability of the charter school process described in this Part to each local school~~
11 ~~administrative unit and public postsecondary educational institution and, through press releases,~~
12 ~~to each major newspaper in the State.~~

13 ~~(b) Repealed by Session Laws 1997-18, s. 15(i).~~

14 ~~(c) The State Board of Education shall review and evaluate the educational~~
15 ~~effectiveness of the charter school approach authorized under this Part and the effect of charter~~
16 ~~schools on the public schools in the local school administrative unit in which the charter~~
17 ~~schools are located. The Board shall report no later than January 1, 2002, to the Joint~~
18 ~~Legislative Education Oversight Committee with recommendations to modify, expand, or~~
19 ~~terminate that approach. The Board shall base its recommendations predominantly on the~~
20 ~~following information:~~

21 ~~(1) The current and projected impact of charter schools on the delivery of~~
22 ~~services by the public schools.~~

23 ~~(2) Student academic progress in the charter schools as measured, where~~
24 ~~available, against the academic year immediately preceding the first~~
25 ~~academic year of the charter schools' operation.~~

26 ~~(3) Best practices resulting from charter school operations.~~

27 ~~(4) Other information the State Board considers appropriate.~~

28 ~~(d) The State Board of Education may establish a Charter School Advisory Committee~~
29 ~~to assist with the implementation of this Part. The Charter School Advisory Committee may (i)~~
30 ~~provide technical assistance to chartering entities or to potential applicants, (ii) review~~
31 ~~applications for preliminary approval, (iii) make recommendations as to whether the State~~
32 ~~Board should approve applications for charter schools, (iv) make recommendations as to~~
33 ~~whether the State Board should terminate or not renew a charter, (v) make recommendations~~
34 ~~concerning grievances between a charter school and its chartering entity, the State Board, or a~~
35 ~~local board, (vi) assist with the review under subsection (c) of this section, and (vii) provide~~
36 ~~any other assistance as may be required by the State Board.~~

37 ~~(e) Notwithstanding the dates set forth in this Part, the State Board of Education may~~
38 ~~establish an alternative time line for the submission of applications, preliminary approvals,~~
39 ~~criminal record checks, appeals, and final approvals so long as the Board grants final approval~~
40 ~~by March 15 of each calendar year.~~

41 **"§ 115C-238.29J. Public and private assistance to charter schools.**

42 (a) Local boards of education are authorized and encouraged to provide administrative
43 and evaluative support to charter schools located within their local school administrative units.

44 (b) Private persons and organizations are encouraged to provide funding and other
45 assistance to the establishment or operation of charter schools.

46 (c) The State Board of Education shall direct the Department of Public Instruction to
47 provide guidance and technical assistance, upon request, to existing charter schools as well as
48 applicants and/or potential applicants for charters.

49 (d) The State Board of Education shall direct the Department of Public Instruction to
50 notify the Department of Revenue when the State Board of Education terminates, fails to
51 renew, or grants a charter for a charter school.

"§ 115C-238.29K. Criminal history checks.

(a) As used in this section:

(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates an individual (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. These crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "School personnel" means any:

- a. Member of the board of directors of a charter school,
- b. Employee of a charter school, or
- c. Independent contractor or employee of an independent contractor of a charter school if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds, who has significant access to students or who has responsibility for the fiscal management of a charter school.

(b) The State Board of ~~Education~~ Education, upon recommendation of the Commission, shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history. ~~The policy shall not require school personnel to be checked for a criminal history check before preliminary approval is granted under G.S. 115C-238.29B. The Board shall apply its policy shall be applied~~ uniformly in requiring school personnel to be checked for a criminal history. ~~The Board~~ Commission may ~~grant~~ recommend conditional approval of an application while the ~~Board~~ Commission is checking a person's criminal history and making a decision based on the results of the check.

~~The State Board shall not require members~~ Members of boards of directors of charter schools or employees of charter schools shall not be required to pay for the criminal history check authorized under this section.

(c) The ~~Board of Education~~ Commission shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required

1 by the Department of Justice to a person designated by the ~~State Board, Commission~~, or to the
2 local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign
3 a form consenting to the check of the criminal record and to the use of fingerprints and other
4 identifying information required by the repositories. The ~~State Board Commission~~ shall
5 consider refusal to consent when deciding whether to ~~grant-recommend~~ final approval of an
6 application under G.S. 115C-238.29D and when making an employment recommendation. The
7 fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a
8 search of the State criminal history record file, and the State Bureau of Investigation shall
9 forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal
10 history record check. The Department of Justice shall provide to the ~~State Board of~~
11 ~~Education Commission~~ the criminal history from the State and National Repositories of
12 Criminal Histories of any school personnel for which the ~~Board Commission~~ requires a
13 criminal history check.

14 ~~The State Board shall not require members~~ Members of boards of directors of charter
15 schools or employees of charter schools shall not be required to pay for the fingerprints
16 authorized under this section.

17 (d) The ~~State Board Commission~~ shall review the criminal history it receives on an
18 individual. The ~~State Board Commission~~ shall determine whether the results of the review
19 indicate that the individual (i) poses a threat to the physical safety of students or personnel, or
20 (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her
21 duties as school personnel and shall use the information when deciding whether to ~~grant~~
22 recommend final approval of an application for a charter school under G.S. 115C-238.29D and
23 for making an employment recommendation to the board of directors of a charter school. The
24 ~~State Board Commission~~ shall make written findings to the State Board of Education with
25 regard to how it used the information when deciding whether to ~~grant-recommend~~ final
26 approval under G.S. 115C-238.29D and when making an employment recommendation.

27 (e) The ~~State Board Commission~~ shall notify in writing the board of directors of the
28 charter school of the determination by the ~~State Board Commission~~ as to whether the school
29 personnel is qualified to operate or be employed by a charter school based on the school
30 personnel's criminal history. At the same time, the ~~State Board Commission~~ shall provide to the
31 charter school's board of directors the written findings the ~~Board Commission~~ makes in
32 subsection (d) of this section and its employment recommendation. If the ~~State~~
33 ~~Board Commission~~ recommends dismissal or nonemployment of any person, the board of
34 directors of the charter school shall dismiss or refuse to employ that person. In accordance with
35 the law regulating the dissemination of the contents of the criminal history file furnished by the
36 Federal Bureau of Investigation, the ~~State Board Commission~~ shall not release nor disclose any
37 portion of the school personnel's criminal history to the charter school's board of directors or
38 employees. The ~~State Board Commission~~ also shall notify the school personnel of the procedure
39 for completing or challenging the accuracy of the criminal history and the personnel's right to
40 contest the ~~State Board's Commission's~~ determination in court.

41 (f) All the information received by the State Board of ~~Education~~ Education, the
42 Commission, or the charter school in accordance with subsection (e) of this section through the
43 checking of the criminal history is privileged information and is not a public record but is for
44 the exclusive use of the State Board of ~~Education~~ Education, the Commission, or the board of
45 directors of the charter school. The State Board of ~~Education~~ Education, the Commission, or
46 the board of directors of the charter school may destroy the information after it is used for the
47 purposes authorized by this section after one calendar year.

48 (g) There shall be no liability for negligence on the part of the State Board of ~~Education~~
49 Education, the Commission, or the board of directors of the charter school, or their employees,
50 arising from any act taken or omission by any of them in carrying out the provisions of this
51 section. The immunity established by this subsection shall not extend to gross negligence,

1 wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity
2 established by this subsection shall be deemed to have been waived to the extent of
3 indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of
4 the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims
5 Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

6 **SECTION 3.** G.S. 114-19.2 reads as rewritten:

7 "**§ 114-19.2. Criminal record checks of school personnel.**

8 (a) The Department of Justice may provide a criminal record check to the local board of
9 education of a person who is employed in a public school in that local school district or of a
10 person who has applied for employment in a public school in that local school district, if the
11 employee or applicant consents to the record check. The Department may also provide a
12 criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to
13 the local board of education from National Repositories of Criminal Histories, in accordance
14 with G.S. 115C-332. The information shall be kept confidential by the local board of education
15 as provided in Article 21A of Chapter 115C of the General Statutes.

16 (a1) The Department of Justice may provide a criminal history record check to the North
17 Carolina Public Charter Schools Commission of a person who is employed at a charter school
18 or of a person who has applied for employment at a charter school, if the employee or applicant
19 consents to the record check. The Department may also provide a criminal history record check
20 of school personnel as defined in G.S. 115C-238.29K by fingerprint card to the North Carolina
21 Public Charter Schools Commission from National Repositories of Criminal Histories, in
22 accordance with G.S. 115C-238.29K. The information shall be kept confidential by the North
23 Carolina Public Charter Schools Commission as provided in G.S. 115C-238.29K.

24 (b) The Department of Justice may provide a criminal record check to the employer of a
25 person who is employed in a nonpublic school or of a person who has applied for employment
26 in a nonpublic school, if the employee or applicant consents to the record check. For purposes
27 of this subsection, the term nonpublic school is one that is subject to the provisions of Article
28 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in
29 that Article.

30 (c) The Department of Justice shall charge a reasonable fee for conducting a criminal
31 record check under this section. The fee shall not exceed the actual cost of locating, editing,
32 researching, and retrieving the information.

33 (c1) The Department of Justice may provide a criminal record check to the schools
34 within the Department of Health and Human Services of a person who is employed, applies for
35 employment, or applies to be selected as a volunteer, if the employee or applicant consents to
36 the record check. The Department of Health and Human Services shall keep all information
37 pursuant to this subsection confidential, as provided in Article 7 of Chapter 126 of the General
38 Statutes.

39 (d) The Department of Justice shall adopt rules to implement this section."

40 **SECTION 4.** G.S. 115C-105.37B(a)(2) reads as rewritten:

41 "(a) Notwithstanding any other provision of this Article, the State Board of Education is
42 authorized to approve a local board of education's request to reform any school in its
43 administrative unit which the State Board of Education has identified as one of the continually
44 low-performing schools in North Carolina.

45 If the State Board of Education approves a local board of education's request to reform a
46 school, the State Board of Education may authorize the local board of education to adopt one of
47 the following models in accordance with State Board of Education requirements:

48 ...
49 (2) Restart model, in which the State Board of Education would authorize the
50 local board of education to operate the school with the same exemptions
51 from statutes and rules as a charter school authorized under Part 6A of

1 Article 16 of this Chapter, or under the management of an educational
2 management organization that has been selected through a rigorous review
3 process. A school operated under this subdivision remains under the control
4 of the local board of education, and employees assigned to the school are
5 employees of the local school administrative unit with the protections
6 provided by G.S. 115C-325. ~~This subdivision shall not be interpreted to~~
7 ~~increase the maximum number of charter schools provided in~~
8 ~~G.S. 115C-238.29D(b). No school authorized under this subsection shall~~
9 ~~count against the limit provided for charter schools in~~
10 ~~G.S. 115C-238.29D(b)."~~

11 SECTION 5. G.S. 115C-426 reads as rewritten:

12 "§ 115C-426. Uniform budget format.

13 ...

14 (c) The uniform budget format shall require the following funds:

- 15 (1) The State Public School Fund.
16 (2) The local current expense fund.
17 (3) The capital outlay fund.

18 In addition, other funds may be used to account for reimbursements, including indirect costs,
19 fees for actual costs, tuition, ~~sales tax revenues distributed using the ad valorem method~~
20 ~~pursuant to G.S. 105-472(b)(2), sales tax refunds,~~ gifts and grants restricted as to use, trust
21 funds, federal appropriations made directly to local school administrative units, funds received
22 for prekindergarten programs, and special programs. In addition, the appropriation or use of
23 fund balance ~~or interest income~~ by a local school administrative unit shall not be construed as a
24 local current expense appropriation.

25 Each local school administrative unit shall maintain those funds shown in the uniform
26 budget format that are applicable to its operations."

27 SECTION 6. G.S. 115C-448 reads as rewritten:

28 "§ 115C-448. Special funds of individual schools.

29 (a) The board of education shall appoint a treasurer for each school within the local
30 school administrative unit that handles special funds. The treasurer shall keep a complete
31 record of all moneys in his charge in such form and detail as may be prescribed by the finance
32 officer of the local school administrative unit, and shall make such reports to the superintendent
33 and finance officer of the local school administrative unit as they or the board of education may
34 prescribe. Special funds of individual schools shall be deposited in an official depository of the
35 local school administrative unit in special accounts to the credit of the individual school, and
36 shall be paid only on checks or drafts signed by the principal of the school and the treasurer.
37 The board of education may, in its discretion, waive the requirements of this section for any
38 school which handles less than three hundred dollars (\$300.00) in any school year.

39 (b) Nothing in this section shall prevent the board of education from requiring that all
40 funds of individual schools be deposited with and accounted for by the school finance officer.
41 If this is done, these moneys shall be disbursed and accounted for in the same manner as other
42 school funds except that the check or draft shall not bear the certificate of preaudit.

43 (c) For the purposes of this section, "special funds of individual schools" includes by
44 way of illustration and not limitation funds realized from gate receipts of interscholastic athletic
45 competition, sale of school annuals and newspapers, and dues of student organizations.

46 (d) Special funds of individual schools shall not be included as part of the local current
47 expense fund of a local school administrative unit for the purposes of determining the per pupil
48 share of the local current expense fund transferred to a charter school pursuant to
49 G.S. 115C-238.29H(b)."

50 SECTION 7. G.S. 115C-546.2 reads as rewritten:

1 **"§ 115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General**
2 **Fund; matching requirements.**

3 ...
4 (d) Monies transferred into the Fund in accordance with Chapter 18C of the General
5 Statutes shall be allocated for capital projects for school construction projects as follows:

6 (1) A sum equal to sixty-five percent (65%) of those monies transferred in
7 accordance with G.S. 18C-164 shall be allocated on a per average daily
8 membership basis according to the average daily membership for the budget
9 year as determined and certified by the State Board of Education.

10 (2) A sum equal to thirty-five percent (35%) of those monies transferred in
11 accordance with G.S. 18C-164 shall be allocated to those local school
12 administrative units located in whole or part in counties in which the
13 effective county tax rate as a percentage of the State average effective tax
14 rate is greater than one hundred percent (100%), with the following
15 definitions applying to this subdivision:

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

21 b. "State average effective tax rate" means the average effective county
22 tax rates for all counties.

23 c. "Sales assessment ratio studies" means sales assessment ratio studies
24 performed by the Department of Revenue under G.S. 105-289(h).

25 (3) No county shall have to provide matching funds required under subsection
26 (c) of this section.

27 (4) A county may use monies in this Fund to pay for school construction
28 projects in local school administrative units and to retire indebtedness
29 incurred for school construction projects incurred on or after January 1,
30 2003.

31 (5) A county may not use monies in this Fund to pay for school technology
32 needs.

33 (6) Counties receiving funds under this subsection may allocate a portion of
34 funds received each budget year under this subsection to charter schools on a
35 per average daily membership basis according to each such school's share of
36 the average daily membership of the unit. Charter schools may use the
37 monies to pay for school construction projects or to retire indebtedness
38 incurred for school construction projects incurred on or after January 1,
39 2010, and shall not be subject to the matching fund requirement set forth in
40 subsection (c) of this section."

41 **SECTION 8.** G.S. 150B-1(e) is amended by adding a new subdivision to read:

42 **"(18) The State Board of Education with respect to the disapproval, termination, or**
43 **nonrenewal of charters under Part 6A of Article 16 of Chapter 115C of the**
44 **General Statutes."**

45 **SECTION 9.(a)** Article 23 of Chapter 153A of the General Statutes is amended by
46 adding a new section to read:

47 **"§ 153A-457. Charter schools.**

48 **Each county is authorized to appropriate funds and lease real property to schools chartered**
49 **under Part 6A of Article 16 of Chapter 115C of the General Statutes. Counties may provide**
50 **funds only for the purposes set forth in G.S. 115C-238.29H(c)."**

51 **SECTION 9.(b)** G.S. 153A-149(c) reads as rewritten:

1 "(c) Each county may levy property taxes for one or more of the purposes listed in this
2 subsection up to a combined rate of one dollar and fifty cents (\$1.50) on the one hundred
3 dollars (\$100.00) appraised value of property subject to taxation. Authorized purposes subject
4 to the rate limitation are:

5 ...

6 (8a) Charter Schools. – To provide capital funding for charter schools as
7 authorized by G.S. 153A-457.

8 "

9 **SECTION 10.** If in any fiscal year a local board of education approves a budget
10 resolution that, as amended, fails to comply with G.S. 115C-426 and therefore fails to include
11 in the local current expense fund all those moneys required under G.S. 115C-426(e), that
12 budget resolution shall be deemed to have been amended to include all such moneys in the
13 local current expense fund for the purposes of compliance with G.S. 115C-238.29H(b).

14 **SECTION 11.** Section 3.2 of S.L. 2010-123 and Section 7.17(b) of S.L. 2010-31
15 are repealed.

16 **SECTION 12.** The State Board of Education shall repeal all adopted policies
17 inconsistent with this act.

18 **SECTION 13.** Beginning in 2012, the State Board of Education in conjunction
19 with the North Carolina Public Charter Schools Commission shall prepare an annual report to
20 the Joint Legislative Education Oversight Committee of the General Assembly no later than
21 October 15 of each year. The report shall include, at a minimum, the following information:

- 22 (1) The strategic vision and plan for charter schools and progress toward
23 achieving the vision and carrying out the plan.
- 24 (2) The academic and financial performance of all operating charter schools
25 according to the performance expectations for charter schools set forth in
26 this act.
- 27 (3) The status of the charter school portfolio, identifying all charter schools in
28 each of the following categories: approved to open, in operation, renewed,
29 transferred, revoked, not renewed, voluntarily closed, or never opened.
- 30 (4) Composite annual data disaggregated by charter school on the gender, race
31 and ethnicity, and disability status of students enrolled in charter schools;
32 testing data disaggregated by the purpose of the charter school, and by
33 gender, race, ethnicity, and disability; the number of students long-term
34 suspended and expelled; the number of students receiving a free or reduced
35 meal plan through a federal subsidy program; the number of students
36 receiving a free or reduced meal plan through means other than a federal
37 subsidy program; and the number of students receiving special education
38 services.

39 **SECTION 14.** Beginning in 2012, the Department of Public Instruction shall
40 prepare an annual report to the Joint Legislative Education Oversight Committee of the General
41 Assembly no later than October 15 of each year. This report shall also be distributed
42 electronically to each local board of education in the State. The report shall be based on a
43 review of charter school programs throughout North Carolina and shall identify operational,
44 educational, and administrative programs and policies implemented by charter schools that the
45 Department finds could improve the State's public schools, or some subset, based on
46 demographics, academic performance, or other criteria, of the State's public schools. The
47 North Carolina Public Charter Schools Commission shall provide the Department any
48 information needed by the Department to meet the reporting requirement set forth in this
49 section.

1 **SECTION 15.** Appointments required in Section 2 of this act shall be made no
2 later than August 1, 2011. Sections 5, 10, and 11 of this act are effective when they become
3 law. The remainder of this act becomes effective July 1, 2011.



SENATE BILL 8: No Cap on Number of Charter Schools

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Stevens
Analysis of: PCS to Fifth Edition
S8-PCS55220-RQ-10

Date: April 7, 2011
Prepared by: Drupti Chauhan and
Kara McCraw

SUMMARY: *Senate Bill 8 would make the following changes to laws related to charter schools, including:*

- *Remove the cap on charter schools and allow up to 50 new charters annually.*
- *Create a new Public Charter Schools Commission (Commission) to oversee charter schools..*
- *Add additional requirements for charter school applications.*
- *Allow State funds to be used to acquire real property for charter schools, allow counties to provide funds to the nonprofit, tax-exempt corporation that holds the charter of a charter school for specific purposes, and allow counties to allocate lottery monies to charter schools for capital needs.*

The Proposed Committee Substitute would make the following changes:

- *Change the governance of the Commission by requiring it to operate under the SBE and submit its recommendations as proposals to the SBE. If the SBE rejects a proposal, it must specify the reasons for the rejection. The SBE may not act in an arbitrary and capricious manner in withholding approval of proposals resubmitted by the Commission. The SBE's rejection of resubmitted proposals is subject to judicial review.*
- *Require, for charters granted after July 1, 2011, that those schools must provide transportation for enrolled students residing in a household within 3 miles of the school which has an income below 185% of the poverty level.*
- *Require charters to include the additional standard of post-secondary readiness and success for high schools.*
- *Delete the reinstatement of annual leave for teachers employed by a charter school who return to employment with a local school administrative unit without a break in service.*
- *Clarify that on dissolution of the charter school or a nonrenewal of the charter, State funds used to purchase or improve real property must be remitted back to the State after liens are satisfied and a pro rata share of the county funds used to purchase or improve real property must be remitted back to the county from which the funds originated after liens are satisfied.*
- *Allow supplemental taxes to be transferred to a charter school only if the student resides in supplemental tax district and the charter school is located in the same county as the supplemental tax district.*
- *Require counties that provide funds to charter schools to distribute those funds equitably and apportion according to the average daily membership of each charter school that requested funds.*
- *Delete the provision that required local boards of education to amend their 2010-2011 budget resolutions to comply with the Uniform Budget Format statute as amended by this bill.*

BILL ANALYSIS:

Section 2

Current Law: Part 6A of Article 16 of Chapter 115C establishes charter schools and provides that the SBE is the entity that oversees charter schools in the State by granting, monitoring, and revoking charters. A maximum of 100 charter schools may be authorized in the State at any given time. Charter schools are prohibited from receiving State monies for obtaining any interest in real property or mobile classroom units other than leases.

115C-238.29A – Adds language to encourage replication of successful charter schools.

115C-238.29A1 – Creates the Commission.

- Commission would operate under the SBE. It would have 13 members including the Superintendent of Public Instruction, and 4 members appointed by the Governor, 4 by the Speaker of the House, and 4 by the President Pro Tempore of the Senate.

Senate PCS 8

Page 2

- The Commission would have the following powers and duties: provide technical assistance, recommend policies to the SBE for charter school operations, oversee and make recommendations to the SBE regarding final approval of charter applications, oversee monitoring of charter schools, and make recommendations to the SBE on actions on charter renewals, nonrenewals, and revocations.
- The SBE would assign the Office of Charter Schools as staff to the Commission.
- The Commission would submit recommendations to the SBE as proposals which the SBE must adopt or reject within 95 days of the submission or a proposal would be deemed as adopted. The SBE could not make any substantive changes to any proposal that it adopts. If the SBE rejects a proposal, it must state with specificity the reasons for rejection and allow the Commission to amend and resubmit that proposal. The SBE would not be able to act in an arbitrary and capricious manner in withholding approval of a proposal resubmitted by the Commission. Any such rejection of a resubmitted proposal is subject to judicial review.

115C-238.29B – Charter school applications

- Applications would be required to include new information including the following: an executive summary; targeted school population and community; instructional design; plans for identifying and serving special populations; proposed governing by-laws; proposed budget for first 5 years of operation; numbers of students to be served, with a minimum of 50 students, minimum number of teachers to be employed; organizational chart; plans for transportation and food services for certain low-income students; explanations of partnerships central to school mission; and a detailed start-up plan.
- For applicants seeking a charter for a virtual charter school, the application must include information showing that the school has a physical facility in the state, that the chief administrator of the school is located in the State, and that the teachers serving the virtual charter school are responsible for improving learning by planned instruction, diagnosing learning needs, prescribing content delivery through instructional activities, assessing learning, reporting outcomes to administrators and parents and guardians, and evaluating the effects of instruction.
- Local boards of education would be exempted from the requirement of having to form a nonprofit, tax-exempt corporation for converting a traditional school to a charter school if the local board of education serves as the board of directors of the charter school.
- The Commission would have the authority to recommend approval of a charter school to the SBE in accordance with the standards and criteria set forth in the charter schools statutes.
- Other entities such as local boards of education, and constituent institutions of The University of North Carolina would no longer be authorized to grant preliminary charters.

115C-238.29C – Application assessment

- The Commission, subject to the approval of the SBE, would be authorized to establish deadlines for applications and make determinations when applications were complete.
- The requirements governing preliminary approval of charters by other chartering entities would be eliminated.

115C-238.29D – Final approval of applications

- Upon recommendation of the Commission, the SBE would be authorized to grant approval of applications that met requirements.
- Eliminates State-wide charter school cap of 100 schools and provides that no more than 50 additional charter schools could be authorized in each calendar year, not including charter renewals.
- The Commission would be required to establish a timeline approved by the SBE to take final action on applications declared complete and make this information available to applicants. The decision on the application must be based on the evidence contained in the application or collected through an application review uniform across all applicants.
- Applicants would have the opportunity to request reconsideration of a denial of an application.
- Decisions to disapprove applications would be exempt from review under Chapter 150B.
- Standards must be included in the school's charter to measure academic proficiency and growth, achievement gaps between student subgroups, post-secondary readiness and success for high schools, attendance and

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recurrent enrollment, financial performance and stability, and compliance with laws, regulations and charter terms,

- Enrollment growth cap of 10% per year would be raised to 20%

115C-238.29E – Charter School Operation

- The bill makes conforming changes.

115C-238.29F – General Requirements

- Charter schools would be allowed to charge any fees charged by the local LEA in which the charter school is located.
- The SBE would adopt rules as recommended by the Commission regarding liability insurance and set forth the student assessments required of charter schools.
- Charter schools would be prohibited from hiring teachers whose certification has been revoked by the State Board of Education.
- Teachers employed by charter schools who return to employment with a local school administrative unit without a break in service would be able to have unused sick leave from previous employment with a local school administrative unit reinstated and be given credit for the years of service for purposes of the salary schedule, longevity pay and rate of earned leave.
- Charter schools that have capacity would be able to enroll non-domiciled students and charge those students tuition that is equal at least to the per pupil allocation of the local appropriation for the county in which the charter school is located and the per pupil State appropriation for that school year. Non-domiciliaries of the State would be limited to 10% of the total number of students enrolled in the charter school.
- Public schools converted to charter schools would be required to give enrollment preference to students in the former attendance area for at least 2 years.
- Charter schools could give enrollment priority to the children of full-time employees of the charter school.
- The bill would clarify that the statutory admissions requirements would not preclude the formation of a charter school to serve special populations.
- Charters granted after July 1, 2011 must provide transportation for enrolled students residing in a household within 3 miles of the school which has an income below 185% of the poverty level.
- Charters granted after July 1, 2011 must provide food services for enrolled students residing in a household which has an income below 185% of the poverty level.
- Upon dissolution of a charter school or the nonrenewal of a charter, State funds used to purchase or improve real property must be remitted back to the State after all liens on the property are satisfied; a pro rata share of the county funds used to purchase or improve real property must be remitted back to the county from which the funds originated after all liens on the property are satisfied.

115C-238.29G -- Causes for nonrenewal and termination

- Upon recommendation of the Commission, the SBE would have to adopt criteria for adequate performance by a charter school and identify charters with inadequate performance, including those with no growth in student performance and annual performance composites below 60% within a 3 year period. Identified charter schools must develop school improvement plans approved by the SBE upon recommendation by the Commission, and failure to demonstrate improvement under the plan is cause for termination or nonrenewal.
- Any decision to terminate or not renew a charter would be exempted from review under Chapter 150B of the General Statutes.

115C-238.29H – State and local funds for charters schools

- State funds would be allowed to be used to acquire equipment, real property, buildings, and mobile classrooms for school facilities, to enter into operational and financing leases for equipment, and for other purposes permitted for capital outlay fund appropriations, such as the acquisition of school buses.
- The funding to be transferred by an LEA for a student attending a charter school is clarified to mean the per pupil share of the local current expense fund established under the uniform budget format for LEAs.

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- Per pupil share of the local current expense fund that consists of revenue derived from supplemental taxes would be transferred to a charter school only if the student resides in the tax district for which the supplemental taxes are levied and the charter school is located in the same county as the supplemental tax district.
- LEAs would be required to provide an accounting of the local current expense fund to be transferred to charter schools within 15 days of receipt of that appropriation. LEAs would be assessed a penalty for failure to comply with the deadlines.
- Counties would be permitted to provide funds to charter schools by direct appropriations for any of the purposes for appropriations included in the capital outlay fund, such as acquisition of real property, building construction, furnishings and equipment, and school buses.
- Counties that provide funds to charter schools would be required to distribute those funds equitably and apportion according to the average daily membership of each charter school that requested funds.

115C-238.29I – Notice of charter school process and Charter School Advisory Committee

- The bill would repeal this section in order to make conforming changes.

115C-238.29J – Public and private assistance to charter schools

- The bill makes only conforming changes

115C-238.29K – Criminal History Checks

- The bill makes conforming changes

Section 3

Current Law: The Department of Justice is authorized to conduct criminal history checks of school personnel.

Analysis: The bill makes conforming changes to allow the Department of Justice to conduct criminal history checks of charter school employees.

Section 4

Current Law: G.S. 115C-105.37B authorizes the State Board of Education to approve LEA requests to reform low-performing schools.

Analysis: The bill makes conforming changes eliminating references to the charter schools cap.

Section 5

Current Law: G.S. 115C-426 established the uniform budget format for LEAs. LEAs are required to have the State Public School Fund, the local current expense fund, and the capital outlay fund. They are also authorized to have other funds for items such as indirect costs, fees, tuition costs restricted as to use, trust funds, federal appropriations made directly to LEAs, fund for prekindergarten programs, and special programs.

Analysis: The bill would eliminate the use of other funds to account for sales tax revenues distributed using the ad valorem method and sales tax refunds and would eliminate the exclusion of interest income from the local current expense appropriation.

Section 6

Current Law: G.S. 115C-448 allows the creation of special funds of individual schools to account for funds received from activities such as interscholastic athletic competition, school annual sales, and student organization dues.

Analysis: The bill would prohibit special funds of individual schools from being included in the local current expense fund amount transferred to charter schools.

Section 7

Current Law: Funds from the State lottery for school construction are not allocated to charter schools.

Analysis: The bill would permit counties to allocate a portion of the lottery funds for school construction to charter schools. Charter schools would be able to use the monies to pay for school construction projects or retire debt from school construction projects incurred after January 1, 2010.

Section 8

Analysis: The bill makes conforming changes in Chapter 150B allowing for the exemption from review for disapproval of applications and terminations and non-renewals of charters.

Section 9

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Analysis: The bill would authorize counties to appropriate funds for capital needs for charter schools, lease real property to charter schools, and levy property taxes for these purposes.

Sections 10-11

Current Law: Section 7.17 of the 2010 Appropriations Act provided that LEAs that had not fully complied with local requirements for funding charter schools and who are subject to a judgment, court order, or settlement agreement may make payments over three years.

Analysis: These sections of the bill would repeal the 2010 Budget provisions and would provide that if an LEA approves a budget resolution that fails to comply with the Uniform Budget Format and fails to include all monies required to be in the local current expense fund, it will have been deemed to do so by this bill.

Section 12

Analysis: The State Board of Education would be required to repeal all policies inconsistent with this Act.

Section 13

Analysis: The SBE in conjunction with the Commission must report annually to the Joint Legislative Education Oversight Committee on the strategic vision and plan for the charter schools, the status of the charter schools as well as composite annual data on the gender, race, ethnicity, and disability of students enrolled in charter schools. The report must also include suspension and expulsion data, the number of students receiving free or reduced meals, and the number of students receiving special education services.

Section 14

Analysis: The Department of Public Instruction must annually report to the Joint Legislative Education Oversight Committee on charter school programs and policies that could improve the public schools, and send a copy of that report to local boards of education.

EFFECTIVE DATE: Appointments required in in the Act must be made by August 1, 2011. Sections 5, 10, and 11 are effective when they become law. The remainder of this Act becomes effective July 1, 2011.

S8-SMRQ-19(PCS55220-RQ-10) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: April 6, 2011

TO: Rep. Julia Howard
Rep. Edgar Starnes
Rep. Mitchell Setzer
Sen. Richard Stevens

FROM: Rodney Bizzell and Brian Matteson
Fiscal Research Division

RE: Senate Bill 8—House Finance PCS

FISCAL IMPACT

	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES					
Local	*No impact on local revenues – expands allowable uses of property tax to include charter school capital funding*				
EXPENDITURES					
State	33,029	39,635	39,635	39,635	39,635
Local	(indeterminate increase in funding transferred from local school districts to local public charter schools)				
POSITIONS (cumulative): None					

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Public Instruction, State Board of Education, Local School Administrative Units, County Governments, North Carolina Charter Schools

EFFECTIVE DATE: July 1, 2011, except for sections 5, 10, and 11 of the act which will be effective immediately

BILL SUMMARY:

The bill makes several changes to the management, approval, and fiduciary treatment of North Carolina charter schools. It removes a 100 school limit on charter schools and makes other significant changes:

Public Charter Schools Commission—The bill creates a new Public Charter Schools Commission (Commission). The Commission will have within its duties and powers: (1) to oversee the application process for charter schools and to make recommendations to the State Board of Education (State Board) for approval of new charter applications; (2) to recommend policies to the State Board regarding all aspects of charter school operation; (3) to oversee the process of monitoring the operation of charter schools with assistance from the Department of Public Instruction (DPI); (4) to make recommendations to the State Board regarding charter renewals, nonrenewals and revocations; and (5) to provide technical assistance to charter schools and charter school applicants. The State Board of Education is required to assign the Department of Public Instruction's Office of Charter Schools as staff to the Commission.

Modification of Certain Charter School Policies—The bill removes the overall cap on charter schools, allowing for authorization of up to 50 new charter schools each calendar year. The bill also modifies the cap on enrollment growth for charter schools from its prior limit of 10 percent growth to 20 percent growth. Charter schools will be permitted to have a minimum student enrollment of 50 students, 15 less than the current minimum of 65. Charters granted after July 1, 2011 must provide transportation for enrolled students residing in a household within 3 miles of the school which has an income below 185% of the poverty level and provide food services for all enrolled students residing in a household which has an income below 185% of the poverty level.

Changes to the Uses and Allocation of State and Local Funding to Charter Schools— The bill allows State and local funds to be used to acquire real property for charter schools. It also will permit counties to provide funds for specific purposes to the nonprofit, tax-exempt corporation that holds the charter of a charter school. Allocation of these funds must be apportioned based on the average daily membership of each charter school requesting funds should a county opt to provide funding. These funds may now include State lottery proceeds allocated to the counties for school capital needs and property tax revenues.

With respect to local funding, the bill clarifies the composition of the Uniform Budget Format for the purposes of determining the required per-pupil local current expense appropriation that must be transferred to a charter school from a local school administrative unit (LEA). Additionally, LEAs will be required to provide an accounting of the local current expense fund to be transferred to

charter schools within 15 days of receipt of that appropriation. LEAs will be assessed a penalty for failure to comply with the deadlines.

ASSUMPTIONS AND METHODOLOGY:

There are several components of the bill which will impact the distribution of funds to charter schools, traditional public schools, the Public School Charter Commission, the North Carolina Department of Public Instruction and county governments. A more detailed analysis of each of these items follows:

Elimination of the 100 School Cap on Charter Schools

North Carolina charter schools receive State and local funding support as guaranteed by G.S. 115C-238.29H. State funding for an existing charter school is based on the dollars per student [as measured by Average Daily Membership (ADM)] of the Local Education Agency (LEA) in which the school is located, and is unchanged by this legislation. Funding for new charter schools is based on the dollars per ADM of the LEA in which the student is, or would be, currently enrolled. The total number of public school students attending a new charter school will reduce a LEA's initial allotment. However, the redirection of funds from a LEA to a charter school has a net neutral impact on total State funding.

State Board of Education policy holds LEAs harmless for potential reductions in the Central Office Administration, School Building Administration and Staff Development allotments if there is a reduction in an LEA's ADM for students attending charter schools. The impact of the hold harmless for these three allotments is to maintain overall funding to the LEAs for these allotments. For the purposes of this memo, these potential costs are not currently identifiable given the uncertainty of the total number of charter schools that would be created in response to this bill. The estimated cost of the hold harmless in FY 2010-11 is \$465,910 based on additional charter school ADM growth of 1,553 students.

Establishment of the Public School Charter Commission

The Commission will be composed of 13 members, which must be appointed by August 1, 2011. It will be located administratively under the State Board of Education but operate independently of the Board.

Section 2 of the bill rewrites 115C-238.29A1 to direct the State Board of Education to assign personnel of the Department of Public Instruction's Office of Charter Schools (OCS) as staff to the Commission. There are currently eight staff at DPI directly working on charter schools issues, with six staff in OCS and two in the Financial and Business Services section that work exclusively on accounting and financial support matters. The impact of eliminating the cap on charter schools may increase the workload for existing OCS staff, but information from DPI on its initial staffing history indicates that the current staffing levels were sufficient to handle the workload associated with years in which more than fifteen new charter schools were approved and opened. Clearly, if the growth in newly approved charter schools is significant, then additional staffing in OCS may

be justified. However, this analysis is unable to reliably estimate potential growth in charter schools, so justification for additional staffing is unknown.

Lastly, the Commission may hold meetings as it deems necessary, and its members shall be reimbursed for travel and subsistence expenses related to meeting participation. Assuming monthly meetings, the estimated annual cost of these expenses is \$39,635. Due to the August 1, 2011 deadline for the appointment of Commission members, this analysis assumes that only ten meetings will occur in fiscal year 2011-12. As such, first year Commission costs are estimated to be \$33,029. Attachment A of this Fiscal Memo contains detailed information about those estimates.

Local Per-Pupil Transfer

G.S. 115C-238.29H requires LEAs (in which a charter school student resides) to, “transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year.” The definition of what sources comprise the local current expense appropriation is defined in G.S. 115C-426. This section requires LEAs to establish a State Public School Fund, local current expense fund, and a capital outlay fund in its standard budget format.

LEAs are also currently allowed, under G.S. 115C-426(c), to account for fund sources outside of these three categories. Prior to 2010, the explicit definition of those sources had been subject to dispute. The definition of those sources that may have been considered as “other funds” had been less explicitly defined by statute. However, three legal decisions (Delaney, Sugar Creek I and Sugar Creek II) had served to clarify those funds that should be budgeted in the local current expense appropriation.

Specifically, Sugar Creek I found that certain funds budgeted in the local current expense fund by Charlotte-Mecklenburg Public Schools were erroneously excluded from transfer to affected charter schools. These funds included monies for prekindergarten programs and high school reform efforts. Additionally, the ruling held that an LEA must transfer per-pupil funding to the charter school using the same methodology for determining student attendance at the district’s traditional public schools.

In 2009, the Sugar Creek II judgments essentially upheld all of the findings in Sugar Creek I except to omit Textbook funds from those funds included in the local current expense funds for per-capita transfer to charter schools. In total, the plaintiff schools in this case were found to be entitled to compensation based on the improper distribution of local current expense funding.

The Legislature took action in S.L. 2010-31 to further enumerate fund sources that may be budgeted in “other funds”. These sources are defined as: “reimbursements, including indirect costs, fees for actual costs, tuition, sales tax revenues distributed using the ad valorem method pursuant to G.S. 105-472(b)(2), sales tax refunds, gifts and grants restricted as to use, trust funds, federal appropriations made directly to local school administrative units, funds received for prekindergarten programs, and special programs.”

Clearly the language in S.L. 2010-31 has the effect of broadening the latitude over which LEAs could budget certain funds outside of the local current expense fund. This bill does not allow two of those sources to be budgeted as "other funds":

1. "...sales tax revenues distributed using the ad valorem method pursuant to G.S. 105-472(b)(2)..."
and
2. "...sales tax refunds..."

In addition, Section 6 permits special funds of individual schools, such as school newspapers and student fees, to be excluded from the local current expense fund. The impact of Section 5 and 6 would cause some shift in local funds distribution from the LEA to existing charter schools in each instance that the LEA was including certain funds as "other funds" that would now be properly considered "local current expense" by this bill. There is no data available on the extent of this shift. All LEAs with students in charter schools have the latitude to include certain local, Federal and State funds in its local current expense fund.

The changes made in Sections 5 and 6 of the bill will have no material impact on State funding.

North Carolina Education Lottery Funds

Section 7 of the bill will allow counties to share a pro-rata amount of its Lottery school capital funding with charter schools. Currently, these funds are allocated to the counties on the basis of student headcount in the traditional public schools, as charter schools have been prohibited from receiving any State capital funding. To properly implement this section of the bill, DPI will have to distribute funding based on the total public school ADM in all counties and not just the traditional public school ADM. While this provision will not adjust the amount of State capital funding available to the counties, it will have the impact of sending slightly more Lottery capital funding to those counties with charter schools and slightly less funding to those counties without charter schools. Currently charter school students comprise about 3.3% of all North Carolina public school students.

Property Tax Revenues

Section 9 expands the purposes listed in G.S. 153A-149(c) for which counties may use property tax revenues to include capital funding for charter schools. Counties are not required to appropriate property tax revenues for this purpose, and the bill does not change the limitation of \$1.50 per \$100 valuation for the purposes included in the subsection.

SOURCES OF DATA: Department of Public Instruction and State Board of Education

Attachment A: Public Charter School Commission Costs

Number of legislative members:
0

Number of non-legislative members:
13

Number of meetings:
10

FY 2011-12 Committee Budget Estimate											
1) Legislative Members Subsistence	\$0.00										
<table> <tr> <td>\$104.00</td> <td><i>Legislative Subsistence</i></td> </tr> <tr> <td>X 0</td> <td><i>Number of Legislative members</i></td> </tr> <tr> <td>X 1.5</td> <td><i>Half of Members using Two Days of Subsistence</i></td> </tr> <tr> <td>X 10</td> <td><i>Number of Meetings</i></td> </tr> <tr> <td><u> </u></td> <td>Total Legislative Members Subsistence</td> </tr> </table>	\$104.00	<i>Legislative Subsistence</i>	X 0	<i>Number of Legislative members</i>	X 1.5	<i>Half of Members using Two Days of Subsistence</i>	X 10	<i>Number of Meetings</i>	<u> </u>	Total Legislative Members Subsistence	
\$104.00	<i>Legislative Subsistence</i>										
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X 1.5	<i>Half of Members using Two Days of Subsistence</i>										
X 10	<i>Number of Meetings</i>										
<u> </u>	Total Legislative Members Subsistence										
2) Non-Legislative Members Subsistence	\$22,629.75										
<table> <tr> <td>\$116.05*</td> <td><i>Non-Legislative Members Subsistence</i></td> </tr> <tr> <td>X 13</td> <td><i>Number of Non-Legislative Members</i></td> </tr> <tr> <td>X 1.5</td> <td><i>Half of Non-Legislative Members using Two Days Subsistence</i></td> </tr> <tr> <td>X 10</td> <td><i>Number of Meetings</i></td> </tr> <tr> <td><u> </u></td> <td>Total Non-Legislative Members Subsistence</td> </tr> </table>	\$116.05*	<i>Non-Legislative Members Subsistence</i>	X 13	<i>Number of Non-Legislative Members</i>	X 1.5	<i>Half of Non-Legislative Members using Two Days Subsistence</i>	X 10	<i>Number of Meetings</i>	<u> </u>	Total Non-Legislative Members Subsistence	
\$116.05*	<i>Non-Legislative Members Subsistence</i>										
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X 10	<i>Number of Meetings</i>										
<u> </u>	Total Non-Legislative Members Subsistence										
* \$101.05 Daily Per Diem Rate Plus \$15 Committee Per Diem Rate (GS133-5)											
3) Travel Expenses	\$10,400.00										
a) Legislative Members											
<table> <tr> <td>\$70.00</td> <td><i>Round Trip Reimbursement (230 miles @ \$0.20/mile)</i></td> </tr> <tr> <td>X 0</td> <td><i>Number of Legislative Members</i></td> </tr> <tr> <td>X 10</td> <td><i>Number of Meetings</i></td> </tr> <tr> <td><u> </u></td> <td>Total Travel for Legislative Members</td> </tr> </table>	\$70.00	<i>Round Trip Reimbursement (230 miles @ \$0.20/mile)</i>	X 0	<i>Number of Legislative Members</i>	X 10	<i>Number of Meetings</i>	<u> </u>	Total Travel for Legislative Members			
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X 0	<i>Number of Legislative Members</i>										
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<u> </u>	Total Travel for Legislative Members										
b) Non-Legislative Member											
<table> <tr> <td>\$60.00</td> <td><i>Round Trip Reimbursement (230 miles @ \$0.33/mile)</i></td> </tr> <tr> <td>X 13</td> <td><i>Number of Non-Legislative Members</i></td> </tr> <tr> <td>X 10</td> <td><i>Number of Meetings</i></td> </tr> <tr> <td><u> </u></td> <td>Total Travel for Non-Legislative Members</td> </tr> </table>	\$60.00	<i>Round Trip Reimbursement (230 miles @ \$0.33/mile)</i>	X 13	<i>Number of Non-Legislative Members</i>	X 10	<i>Number of Meetings</i>	<u> </u>	Total Travel for Non-Legislative Members			
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X 13	<i>Number of Non-Legislative Members</i>										
X 10	<i>Number of Meetings</i>										
<u> </u>	Total Travel for Non-Legislative Members										
4) Clerical Staff	\$0.00										
<table> <tr> <td>\$0.00*</td> <td><i>Average Salary with Benefits for 5 day work week</i></td> </tr> <tr> <td>X 10</td> <td><i>Number of Meetings</i></td> </tr> <tr> <td><u> </u></td> <td>Total Clerical Staff</td> </tr> </table>	\$0.00*	<i>Average Salary with Benefits for 5 day work week</i>	X 10	<i>Number of Meetings</i>	<u> </u>	Total Clerical Staff					
\$0.00*	<i>Average Salary with Benefits for 5 day work week</i>										
X 10	<i>Number of Meetings</i>										
<u> </u>	Total Clerical Staff										
* Average Weekly Wages for LA, CAI, CAII & CAIII with Fringes Added.											
5) Professional Staff	\$0.00										
6) Special Travel and Expenses	\$0.00										
7) Postage and Telephone Expenses	\$0.00										
8) Supplies	\$0.00										
9) Copying and Printing	\$0.00										
10) Reserve	\$0.00										
Total	\$33,029.75										

Attachment A: Public Charter School Commission Costs

Number of legislative members:
0

Number of non-legislative members:
13

Number of meetings:
12

FY 2012-16 Committee Budget Estimate	
1) Legislative Members Subsistence	\$0.00
\$104.00 <i>Legislative Subsistence</i>	
X 0 <i>Number of Legislative members</i>	
X 1.5 <i>Half of Members using Two Days of Subsistence</i>	
X 12 <i>Number of Meetings</i>	
= <u>\$0.00</u> <i>Total Legislative Members Subsistence</i>	
2) Non-Legislative Members Subsistence	\$27,155.70
\$116.05 * <i>Non-Legislative Members Subsistence</i>	
X 13 <i>Number of Non-Legislative Members</i>	
X 1.5 <i>Half of Non-Legislative Members using Two Days Subsistence</i>	
X 12 <i>Number of Meetings</i>	
= <u>\$27,155.70</u> <i>Total Non-Legislative Members Subsistence</i>	
* \$101.05 Daily Per Diem Rate Plus \$15 Committee Per Diem Rate (GS133-E)	
3) Travel Expenses	\$12,480.00
a) Legislative Members	
\$70.00 <i>Round Trip Reimbursement (230 miles @ \$0.29/mile)</i>	
X 0 <i>Number of Legislative Members</i>	
X 12 <i>Number of Meetings</i>	
= <u>\$0.00</u> <i>Total Travel for Legislative Members</i>	
b) Non-Legislative Member	
\$30.00 <i>Round Trip Reimbursement (230 miles @ \$0.33/mile)</i>	
X 13 <i>Number of Non-Legislative Members</i>	
X 12 <i>Number of Meetings</i>	
= <u>\$12,480.00</u> <i>Total Travel for Non-Legislative Members</i>	
4) Clerical Staff	\$0.00
\$0.00 * <i>Average Salary with Benefits for 5 day work week</i>	
X 12 <i>Number of Meetings</i>	
= <u>\$0.00</u> <i>Total Clerical Staff</i>	
* Average Weekly Wage for LA, CAI, CAI & CAII with Fringes Added.	
5) Professional Staff	\$0.00
6) Special Travel and Expenses	\$0.00
7) Postage and Telephone Expenses	\$0.00
8) Supplies	\$0.00
9) Copying and Printing	\$0.00
10) Reserve	\$0.00
Total \$39,635.70	

ROLL CALL VOTE

19 13 = 32 (TOTAL)
YES NO

HB# _____
SB# 8

HOUSE STANDING COMMITTEE ON FINANCE

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Howard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moore
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Folwell	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Rhyne
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Setzer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ross
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Starnes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Samuelson
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lewis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stam
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	McComas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stone
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Wainwright	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Warren
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Alexander	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Weiss
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brandon	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Womble
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brawley	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Carney	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Collins	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cotham	<input type="checkbox"/>	<input type="checkbox"/>	
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<input type="checkbox"/>	<input type="checkbox"/>	Gibson	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hackney	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hall	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hill	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jordan	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Luebke	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCormick	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	McGee	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	McGuirt	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moffitt	<input type="checkbox"/>	<input type="checkbox"/>	

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 29*

Short Title: Tax Certification - Alamance County. (Local)

Sponsors: Senator Gunn.

Referred to: Finance.

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ALAMANCE COUNTY TO REQUIRE THE PAYMENT OF
DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING
PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Alamance, Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties."

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





SENATE BILL 29: Tax Certification - Alamance County

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Gunn
Analysis of: First Edition

Date: March 30, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *Senate Bill 29¹ authorizes Alamance County to require payment of delinquent property taxes prior to recording deeds conveying property.*

CURRENT LAW:

G.S. 161-31(a) permits tax certification by allowing a county board of commissioners, by resolution, to require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

G.S. 161-31(a1) provides an exception to the tax certification by requiring the register of deeds to accept, without certification, a deed containing the following statement: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

G.S. 161-31(b) lists the 69 counties to which this provision currently applies.²

The following four counties have a similar requirement but under different authorizing legislation:

Avery County	Chapter 305 of the 1963 Session Laws, as amended by S.L. 1997-410 and S.L. 1998-73 ³
Ashe County	S.L. 1993-657, as amended by S.L. 1997-410 and S.L. 2005-433 ⁴
Alleghany County	S.L. 1997-410
Mitchell County	S.L. 1987-537, as amended by S.L. 1997-410 and S.L. 1999-326 ⁵

These local acts provide that the Register of Deeds shall not record any deed unless it is accompanied by a certification that all delinquent taxes have been paid. These local acts are in contrast to G.S. 161-31, which gives certain counties the discretion to pass a resolution to that effect.

BILL ANALYSIS: Senate Bill 29 would amend G.S. 161-31(b) to add Alamance County to the list of counties in which the board of commissioners is permitted to pass a resolution requiring the register of deeds not to accept any deed transferring real property unless the county tax collector certifies that the taxes listed in the statute are not delinquent and are not a lien on the property. (The taxes listed in G.S. 161-31(a) are ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged.)

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

S29-SMSV-17(e1) v1

¹On March 9, 2011, the House Finance Committee reported favorably on a proposed committee substitute for HB 68 that included authorization for Alamance County to require payment of delinquent taxes prior to recording deeds conveying property. That bill is currently in Senate State and Local Government.

²The Register of Deeds in Duplin County must also receive a certification that no municipal taxes or any other taxes the collector is charged with collecting are a lien on the property before a deed transferring the property may be recorded.

³The Town of Newland was added in 1997; the Town of Banner Elk was added in 1998.

⁴S.L. 2005-433 provides that in addition to receiving a certification from the county tax collector, the Register of Deeds must also receive a certification from any municipal tax collector, where applicable, verifying that all delinquent taxes on the property have been paid.

⁵This local act also provides that if the property is located in the Town of Spruce Pine or the Town of Bakersville, the deed must also be accompanied by a certification from the town tax collector that all municipal taxes have been paid with respect to the property.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 313

Short Title: Repeal Savings Bond Payroll Savings Program.-AB (Public)

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

Referred to: State Personnel, if favorable, Finance.

March 10, 2011

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A BILL TO BE ENTITLED
AN ACT TO REPEAL THE PAYROLL SAVINGS PROGRAM FOR SAVINGS BONDS
DUE TO RECENT CHANGES MADE BY THE UNITED STATES TREASURY
DEPARTMENT.
The General Assembly of North Carolina enacts:
SECTION 1. Article 32 of Chapter 143 of the General Statutes is repealed.
SECTION 2. G.S. 115C-343 is repealed.
SECTION 3. This act is effective when it becomes law.





HOUSE BILL 313: Repeal Savings Bond Payroll Savings Program.-

2011-2012 General Assembly **AB**

Committee: House Finance	Date: April 6, 2011
Introduced by: Reps. Hastings, T. Moore	Prepared by: Trina Griffin
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 313 would repeal the statutory provisions that authorize the payroll deduction plan for the purchase of United States Savings Bonds by State employees and school employees.*

CURRENT LAW: Article 32 of Chapter 143 authorizes the Payroll Savings Plan for State Employees and contains the following sections:

- § 143-301 pertains to the authority of the Governor to establish a voluntary payroll deduction plan for the purchase of United States savings bonds by State employees.
- § 143-302 describes how funds may be allotted to defray expenses.
- § 143-303 authorizes employees of the State to enter into written agreements to authorize deductions from their salary to be invested in US savings bonds.
- § 143-304 authorizes State departments, institutions, or agencies to deduct the sum specified by the employee from the weekly or monthly salary, to show the deduction, and to hold the sums until sufficient amounts have accumulated to purchase a bond.
- § 143-305 pertains to the cancellation of agreements.

G.S. 115C-343 permits the State Board of Education to authorize any local school administrative unit to establish a voluntary payroll deduction plan for the purchase of United States Savings Bonds by employees.

BILL ANALYSIS: House Bill 313 would repeal Article 32 of Chapter 143 and G.S. 115C-343.

EFFECTIVE DATE: House Bill 313 would become effective when it becomes law.

BACKGROUND: This bill was requested by the Office of the State Controller.

The information below is from the TreasuryDirect website¹ and pertains to the phasing out of paper savings bonds through employer-sponsored payroll savings plans as of January 1, 2011.

"The U.S. Department of Treasury phased out the issuance of paper savings bonds through traditional employer-sponsored payroll savings plans. As of September 30, 2010, federal employees are no longer able to purchase paper savings bonds through payroll deduction. The end date for all other (non-federal) employees is January 1, 2011. With TreasuryDirect, Treasury can continue to offer employees the convenience of payroll savings while reducing the cost of the savings bond program. Savings bonds in TreasuryDirect are electronic securities in an account; they have all of the benefits of paper bonds but can't be misplaced or destroyed. Printing fewer paper bonds reduces the cost of the savings bond program and fits with our long-term goal of one day issuing all of our securities electronically. To continue your payroll savings, you'll need to open a TreasuryDirect account. You can continue purchasing savings bonds (or other Treasury securities) and hold them electronically in TreasuryDirect."

Theresa Matula, analyst for the House State Personnel Committee, substantially contributed to this summary.

H313-SMSV-21(e1) v1

¹ Source: http://www.treasurydirect.gov/news/news_elimination_paperpayrollqa.htm
Research Division

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 168
Committee Substitute Favorable 3/21/11

Short Title: Farms Exempt From City Annexation/ETJ/Zoning. (Public)

Sponsors:

Referred to:

February 24, 2011

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A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF "BONA FIDE FARM PURPOSES," TO PROHIBIT THE INVOLUNTARY MUNICIPAL ANNEXATION OF PROPERTY USED FOR BONA FIDE FARM PURPOSES, TO EXEMPT PROPERTY USED FOR BONA FIDE FARM PURPOSES FROM THE EXTRATERRITORIAL PLANNING AND ZONING JURISDICTION OF MUNICIPALITIES, AND TO EXEMPT PROPERTY USED FOR BONA FIDE FARMING PURPOSES FROM MUNICIPAL ZONING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-340(b)(2) reads as rewritten:

"(b) (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of ~~agricultural products~~ agriculture as defined in ~~G.S. 106-581.1~~ G.S. 106-581.1 having a domestic or foreign market. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 2. G.S. 160A-36 is amended by adding a new subsection to read:

"(f) No land being used for 'bona fide farm purposes,' as defined in G.S. 153A-340, on the date of the resolution of intent to consider annexation, shall be annexed without the written consent of the owner or owners of the property."

SECTION 3. G.S. 160A-48 is amended by adding a new subsection to read:

"(g) No land being used for 'bona fide farm purposes,' as defined in G.S. 153A-340, on the date of the resolution of intent to consider annexation, shall be annexed without the written consent of the owner or owners of the property."

SECTION 4. G.S. 160A-360 is amended by adding a new subsection to read:

"(k) Property used for 'bona fide farm purposes,' as defined in G.S. 153A-340, is exempt from a municipality's extraterritorial jurisdiction under this Article."

SECTION 5. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-393.1. Part not applicable to property used for bona fide farm purposes.
The provisions of this Part are not applicable to property used for 'bona fide farm purposes,' as defined in G.S. 153A-340."

SECTION 6. This act is effective when it becomes law.





HOUSE BILL 168: Farms Exempt From City Annexation/ETJ/Zoning

2011-2012 General Assembly

Committee: House Finance	Date: April 6, 2011
Introduced by: Reps. Sanderson, Cleveland, Hill	Prepared by: Trina Griffin
Analysis of: Second Edition	Committee Counsel

SUMMARY: *House Bill 168 clarifies the definition of "bona fide farm purposes", prohibits the involuntary municipal annexation of property used for bona fide farm purposes, exempts property used for bona fide farm purposes from municipal ETJ regulations, and exempts property used for bona fide farming purposes from municipal zoning.*

CURRENT LAW: There are special provisions that apply to the involuntary annexation of agricultural land, horticultural land, or forestland. For the provisions to apply, the property must meet one of the following conditions:

- (1) The land is being taxed at present-use value pursuant to G.S. 105-277.4.
- (2) The land meets both of the following conditions:
 - a. On the date of the resolution of intent for annexation, it was being used for actual production and is eligible for present-use value taxation, but the land had not been in use for actual production for the required time under G.S. 105-277.3.
 - b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision.

If the property meets (1) or (2) above, then it is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city planning and regulation of development.¹

If the property becomes ineligible for present-use value classification or otherwise doesn't meet the conditions above, then the property would become subject to property taxation by the city, and the city would be required to provide services to the property.

BILL ANALYSIS:

Section 1 clarifies the definition of "bona fide farm purposes" by deleting the phrase "agricultural products" and substituting the term "agriculture" as it is defined in G.S. 106-581.1 (*statute attached below*); and by deleting the phrase "having a domestic or foreign market." Property used for bona fide farm purposes is broader than and would include property that is eligible for present-use value.

Sections 2 and 3 prohibit the involuntary municipal annexation of property used for bona fide farm purposes by both large (5,000 or more) and small (less than 5,000) municipalities.

Section 4 exempts property used for bona fide farm purposes from municipal extraterritorial planning and zoning jurisdiction.

Section 5 exempts property used for bona fide farm purposes from municipal zoning.

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

¹ G.S. 160A-37, -49.
Research Division

House Bill 168

Page 2

CROSS-REFERENCES:

§ 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

- (1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
 - (2) The planting and production of trees and timber.
 - (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
 - (4) Aquaculture as defined in G.S. 106-758.
 - (5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- (6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm.

§ 99E-30. Definitions.

As used in this Article, the following terms mean:

- (1) Agritourism activity. – Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. "Agritourism activity" includes an activity involving any animal exhibition at an agricultural fair licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H168-SMSV-22(e2) v1

HB 168

People who would like to speak:

Marilyn Kille, Peppermint Spring Farm, Chapel Hill

Kathy Hartkopf, North Carolina FreedomWorks

Brian Voyce - *Did not show*

Glenn Jernigan, North Carolina Grange

Renee Weaver (House Staff Clerk)

From: MMKille@aol.com
Sent: Wednesday, April 06, 2011 11:55 AM
To: Renee Weaver (House Staff Clerk)
Subject: Fwd: Permission to address House Finance Comm. re HB168, Thurs., 4/7 @ 8:30AM

Dear Representative Howard and Ms. Weaver,

Thank you for providing the necessary information.

Hereby I am asking Representative Howard, in her capacity as senior chairman of the House Finance Committee, for the opportunity to speak during tomorrow's review of HB 168 as a representative of independent farm groups.

The objective of my presentation is twofold:

- (a) To demonstrate support by the independent farmers of the Piedmont for HB168; and
- (b) To summarize why, though highly desirable, HB168 represents only a partial solution for the issues that currently are threatening the viability of NC farmers, and in particular, those within the 17 Piedmont counties.

I shall look forward to receiving confirmation later today.

Respectfully,

Marilyn M. Kille

PEPPERMINT SPRING FARM
Chapel Hill, NC 27516
(919)621-1234-c

Sent on behalf of Piedmont region farmers and rural Landowners, and in particular, members of the Southern Orange County Farmers and Land Owners Coalition [SOCFLOC] and the Orange-Durham Cattlemen's Assoc. and their many supporters

"The rights of persons -- and the rights to own property -- are the objects for which protection by Government was instituted."- James Madison, author of the Federalist Papers, Founding Father and 4th President of the U.S.

Renee Weaver (House Staff Clerk)

Kathy Hartkopf

From: Rep. Julia Howard
Sent: Wednesday, April 06, 2011 3:20 PM
To: 'Kathy'
Cc: Renee Weaver (House Staff Clerk)
Subject: RE: Land Transfer

yes, please let Renee know...I will forward this email to her now. It helps us to know who wants to speak....3 mins. Julia

From: Kathy [mailto:khartkopf@earthlink.net]
Sent: Wednesday, April 06, 2011 04:26 PM
To: Rep. Julia Howard
Subject: RE: Land Transfer

You are always so kind. Please do not feel that you let us down at all. You did not. We appreciate you!!!!

~~I may want to speak on a bill tomorrow morning.~~ If so, would I need to sign up in advance or could I sign up then? FW Strongly Supports HB168, "Farms Exempt.....".

Thanks!
K

From: Rep. Julia Howard [mailto:Julia.Howard@ncleg.net]
Sent: Wednesday, April 06, 2011 3:12 PM
To: Kathy
Subject: RE: Land Transfer

thank you Kathy. I was so sorry that I could not stay longer and I sincerely appreciate you covering the issue with all the folks. I felt bad, I did not want to let you down, after I promised. Julia

From: Kathy [mailto:khartkopf@earthlink.net]
Sent: Wednesday, April 06, 2011 04:18 PM
To: Rep. Julia Howard
Subject: Land Transfer

Dear Representative Howard,

Thank you so much for joining us yesterday. I am so sorry that you needed to leave before you could speak. Senator Berger spoke until after noon.

I did want you to know that I explained to the crowd that you had joined us but had to leave to chair a committee meeting and were sorry to not have the opportunity to address them. I explained the issue. Most of those gathered had spent HOURS working in their counties against the land transfer tax. The bill's success and you personally as the primary received thunderous applause and cheers!

I thank you so much again for running such a fantastic and needed bill! We truly appreciate it.

Thanks Again,
Kathy Hartkopf
Legislative Liaison
North Carolina FreedomWorks

Allen said he enjoyed seeing you yesterday and even got a hug!

~~Brian~~ Brian Voyce - Did not show.

Rep. Julia Howard

From: Rep. Julia Howard
Sent: Thursday, April 07, 2011 6:59 AM
To: 'MMKille@aol.com'
Subject: RE: Add'l speaker reqes for HB168 hearing, Apr. 7 at 8:30AM

*Finance
I have
to speak!*

Marilyn, I have your message and will add Brian Voyce to the list of speaker. I do need to advise you that we will begin with Senate Bill 8 in order to try to vote that bill out this morning. It is my hope we will complete the agenda this morning but I wanted to advise you of this issue. Julia

From: MMKille@aol.com [mailto:MMKille@aol.com]
Sent: Thursday, April 07, 2011 05:14 AM
To: Renee Weaver (House Staff Clerk)
Cc: Rep. Julia Howard
Subject: Add'l speaker reqes for HB168 hearing, Apr. 7 at 8:30AM

Dear Representative Howard and Ms. Weaver,

I apologize for this last minute request, however, Brian Voyce, who has been an avid supporter of the reforms reflected in HB168, only returned from a business trip at about midnight to learn about today's Finance Committee hearing to consider HB168.

He has expressed an interest in speaking to the Committee this morning if at all possible; and I've agreed to attempt to make arrangements for this whereas I'm familiar with the process.

Otherwise Mr. Voyce brings a thorough and unique perspective to understanding the issues related to HB168.

He is an exceedingly capable attorney and businessman who, over the past two years, has represented agriculture and ETJ concerns as an ambassador for the farm groups to Governor Perdue, to the NCDA (Comm. Troxler, General Counsel Ray Starling), to legislators, and to the community at large. His views regarding ETJ and farmland abuses have been published widely in the regional press. He also is a former municipal mayoral candidate who has experienced first-hand the abuses associated with annexation of ETJ farmland. And lastly his has been victimized by forced annexation of his former ETJ home.

I have informed him that, if approved, he would be allowed a maximum of three minutes to speak. However, he would prefer to speak after any representative of the NC League of Municipalities whereas his expertise might be best suited to clarify ramifications of any proposed changes to the current bill's language.

I believe that he plans to depart for Raleigh a about 7:30 AM today, hoping for this opportunity. I will apprise him of this email.

Kindly confirm or decline this request by calling me at 919-621-1234 whereas I must also depart by 7:30AM in order to arrive on time for this hearing.

Respectfully,

Marilyn M. Kille

PEPPERMINT SPRING FARM
Chapel Hill, NC 27516
(919)621-1234-c

Sent on behalf of members of the Southern Orange County Farmers and Land Owners Coalition [SOCFLOC] and the Orange-Durham Cattlemen's Assoc. and their many supporters

"To accomplish great things, we must not only act but also dream; not only plan but also believe." - Anatole France



North Carolina General Assembly
House Committee on Finance

Minutes

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April 13, 2011

The House Committee on Finance met on Wednesday, April 13, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chair Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Luebke, McCormick, McGee, McGuirt, Moffitt, Ross, Samuelson; Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Starnes called the meeting to order at 8:31 am and recognized the four (4) pages present: (1) Tiara Smalls of Cumberland County sponsored by Representative Parmon; (2) Alec Viscount of Mecklenburg County sponsored by Representative Tillis; (3) Rose Goyette of Clay County sponsored by Representative West; and (4) Jesse Moffitt of Buncombe County sponsored by Representative Moffitt.

The first bill considered by the Committee was **HB 243 Certificates Under Seal in Indigent Cases/Fee** (see **attachment 3**). The Chair recognized Representative Jackson to explain the bill. The Chair recognized Representative Womble who moved that HB 243 be given a favorable report. The motion carried.

The next bill considered by the Committee was **HB 167 Extend Assessment Refund Period** (see **attachment 4**). The Chair recognized Representative Samuelson who moved to adopt the proposed committee substitute for purpose of discussion. Chairman Starnes recognized Representative Iler to explain the bill. The Chair then recognized Representative Hill who moved that HB 167 be given a favorable report as to committee substitute 2, unfavorable report to committee substitute 1. The motion carried.

The next bill before the Committee was **HB 296 Sampson-Delinquent Taxpayers** (see **attachment 5**). The Chair recognized Representative Bell to explain the bill. Chairman Starnes

recognized Representative Womble who moved that HB 296 be given a favorable report. The motion carried.

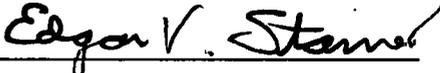
Next before the Committee was **HB 796 Study Property Tax Valuation Process** (see **attachment 6**). The Chair recognized Representative Moffitt to explain the bill. Representative Setzer was recognized to move that HB 796 be given a favorable report. The motion carried. The Chair re-referred HB 796 to Committee on Rules, Calendar and Operations of the House.

The last bill to be heard by Committee was **SB 288 Atlantic Beach/Beaufort/Parking** (see **attachment 7**). Senator Preston was recognized to explain the bill. Chairman Starnes recognized Representative Carney who moved that SB 288 be given a favorable report. The Chair called for the ayes and noes on SB 288. The motion failed the voice vote. Division having been called, the Chair then asked the bill Sponsor if the bill could be re-referred to a subcommittee for further discussion. The Sponsor agreed.

Chairperson Starnes re-referred **HB 545 Amend Moore County Occupancy Tax** to the subcommittee on Occupancy Tax.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 8:57 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 167 A BILL TO BE ENTITLED AN ACT TO EXTEND THE PERIOD FOR LOCAL GOVERNMENTS TO REFUND SPECIFIED UNUSED ASSESSMENTS.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 243 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT THE FEE CHARGED BY THE CLERK OF SUPERIOR COURT FOR CERTIFICATES UNDER SEAL IS WAIVED FOR APPOINTED ATTORNEYS REPRESENTING INDIGENT CLIENTS.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 296 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE SAMPSON COUNTY TO PROHIBIT THE ISSUANCE OF A SPECIAL USE OR CONDITIONAL USE PERMIT, OR A BUILDING PERMIT, TO A DELINQUENT TAXPAYER, AND TO AUTHORIZE SAMPSON COUNTY TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 796 A BILL TO BE ENTITLED AN ACT TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY THE METHODOLOGY OF VALUATION OF PROPERTY FOR PROPERTY TAX PURPOSES TO ENSURE THE PROCESS IS BOTH UNIFORM AND FAIR.

With a favorable report and recommendation that the bill be re-referred to the Committee on RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.

(FOR JOURNAL USE ONLY)

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

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

AGENDA
House Finance Committee

Wednesday, April 13, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 167 Extend Assessment Refund Period
Representatives Iler, Hill

HB 243 Certificates Under Seal in Indigent Cases/Fee
Representative Jackson

HB 296 Sampson-Delinquent Taxpayers
Representatives Bell, Langdon, Jr.

HB 796 Study Property Tax Valuation Process
Representative Moffitt

SB 288 Atlantic Beach/Beaufort/Parking
Senator Preston

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: APRIL 13, 2011 Room: 544

*Name: Tiara Smalls

County: Cumberland

Sponsor: Earion Parmon

*Name: Alce Viscount

County: Mechlenburg

Sponsor: Thom Tillis

*Name: Jesse Moffitt

County: Buncombe

Sponsor: Representative Moffitt

*Name: Rose Goyette

County: Clay

Sponsor: West

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: KEN KIRBY

2. Name: BOB ROSSI

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

April 13, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jeri Hayes	WCHBA
Lisa Martin	WCHBA
Christine Gates	Leadership Caldwell
Amy Bowman	Leadership Caldwell, Lenoir, N.C.
Breanna McKay	Leadership Caldwell
Wanda Ellis	Leadership Caldwell
Nicholas Dula	Leadership Caldwell
Forrest O. Tate III	Leadership Caldwell
BILL SCHREIBER	LEADERSHIP CALDWELL
Ben Willis	Leadership Caldwell
Jeff Bentley	Leadership Caldwell

VISITOR REGISTRATION SHEET

House Finance

April 13, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Thomas Maher	E D S
Chatham Olive	Angular Energy Solutions
GERRY DUDZIK	CAROLINA SOLAR ENERGY
Richard Harkader	" "
Betty D'Arcy	UNC Club H
Lindsay Moore	Peace College
Kase Moore	Peace College
Lachelle Pulliam	DML Wainwright's Office
Daniel Aubin	NCLM
Deborah Ashley	Caldwell Chamber Leadership
Melissa Hagman	Caldwell Chamber ✓

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 243

Short Title: Certificates Under Seal in Indigent Cases/Fee. (Public)

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

Referred to: Judiciary Subcommittee B, if favorable, Finance.

March 8, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT THE FEE CHARGED BY THE CLERK OF SUPERIOR
3 COURT FOR CERTIFICATES UNDER SEAL IS WAIVED FOR APPOINTED
4 ATTORNEYS REPRESENTING INDIGENT CLIENTS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 7A-308(b1) reads as rewritten:

7 "(b1) The fees set forth in ~~subdivisions~~ subdivisions (9) and (12) of subsection (a) of this
8 section are not chargeable when copies or certificates under seal are requested by an attorney
9 who has been appointed or who is under contract with the Office of Indigent Defense Services
10 to represent an indigent person at State expense, if the request is made in connection with the
11 appointed case or the contract and during the duration of the appointment or the contract."

12 SECTION 2. This act becomes effective July 1, 2011, and applies to fees assessed
13 or collected on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 243 (First Edition)

SHORT TITLE: Certificates Under Seal in Indigent Cases/Fee.

SPONSOR(S): Representative Jackson

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUE					
EXPENDITURES					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch					
EFFECTIVE DATE: July 1, 2011					

BILL SUMMARY:

The proposed legislation amends G.S. 7A-308(b1) to add certificates under seal as a category of service for which a clerk of superior court cannot charge a fee when the certificate is requested by an attorney representing an indigent client. The act applies to fees assessed or collected on or after July 1, 2011.

ASSUMPTIONS AND METHODOLOGY:

Office of Indigent Defense Services

The Office of Indigent Defense Services (IDS) does not track actual expenses associated with certificates under seal, so they are unable to estimate the fiscal impact of the proposed legislation.

Administrative Office of the Courts

The Administrative Office of the Courts (AOC) does not have an account for certificates under seal fees separate from other copying or miscellaneous fees. Thus, AOC cannot determine the amount of General Fund revenue that is currently received for certificates under seal, or the amount of the reduction due to the proposed legislation.

SOURCES OF DATA: Judicial Branch

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone and Douglas Holbrook

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: April 4, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 243: Certificates Under Seal in Indigent Cases/Fee

2011-2012 General Assembly

Committee: House Finance	Date: March 29, 2011
Introduced by: Rep. Jackson	Prepared by: Trina Griffin
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 243 would waive the \$3.00 fee charged by the Clerk of Superior Court for certificates under seal for appointed attorneys representing indigent clients.*

CURRENT LAW: G.S. 7A-308(b1) waives the cost of copies for attorneys who are appointed or under contract with the Office of Indigent Defense Services (IDS) to represent an indigent person at State expense, if the request is made in connection with the appointed case or the contract and during the duration of the appointment or contract.

G.S. 7A-308(a)(9) directs clerks to charge a \$3.00 fee for certifying that a document is a true and accurate copy of the original document on file in the case. Unlike the copying fees, there is no exemption from the fee for *certifying* copies for attorneys who are appointed or under contract with IDS. Some examples of when appointed attorneys need certified copies of documents include expert witness fee orders, orders to strike a call and failed, and judgments as evidence in superior court and in abuse/neglect/dependency cases.

Currently, some clerks' offices charge this fee to appointed attorneys representing indigent clients and others waive it in those cases. In the counties where fees are being collected from appointed counsel, attorneys have to advance the costs and then bill IDS for reimbursement from State funds. The clerks collect the money from the appointed attorneys and enter the payments into the Financial Management System for remittance to the General Fund.

BILL ANALYSIS: House Bill 243 would waive the \$3.00 fee for certifying that a document is a true and accurate copy of the original document on file for attorneys representing indigent defendants as part of an appointed case.

BACKGROUND: This bill has been requested by IDS because it believes the current process of reimbursement is cumbersome and causes an unnecessary transfer of State funds. It also generates transaction costs that increase the overall cost to the State for providing indigent representation. IDS believes this bill would simplify the process and eliminate unnecessary transaction costs.

EFFECTIVE DATE: This act would become effective July 1, 2011, and apply to fees assessed or collected on or after that date.

Susan Sitze, counsel to House Judiciary Subcommittee B, substantially contributed to this summary.

H243-SMSV-18(e1) v1

Research Division

O. Walker Reagan, Director

(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 167
Committee Substitute Favorable 3/7/11
PROPOSED COMMITTEE SUBSTITUTE H167-CSTM-1 [v.1]

3/9/2011 2:41:54 PM

Short Title: Extend Assessment Refund Period.

(Public)

Sponsors:

Referred to:

February 24, 2011

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A BILL TO BE ENTITLED
AN ACT TO EXTEND THE PERIOD FOR LOCAL GOVERNMENTS TO REFUND
SPECIFIED UNUSED ASSESSMENTS.
The General Assembly of North Carolina enacts:
SECTION 1. Section 7 of S.L. 2010-129 reads as rewritten:
"SECTION 7. A local government that imposed an assessment prior to 2007-2012 to
finance a capital project that has been assumed by another unit of local government may return
unused assessments to the person that paid the assessment."
SECTION 2. This act is effective when it becomes law.





HOUSE PCS 167: Extend Assessment Refund Period

2011-2012 General Assembly

Committee: House Finance	Date: April 13, 2011
Introduced by: Reps. Iler, Hill	Prepared by: Greg Roney
Analysis of: PCS to Second Edition H167-CSTM-1	Committee Counsel

SUMMARY: *House Bill 167 authorizes local governments to refund assessments imposed before 2012 where the assessment financed a capital project that was assumed by another local government.*

CURRENT LAW: Counties are authorized to impose assessments for certain capital improvements under Article 9 of Chapter 153A. Cities are authorized to impose assessments for certain capital improvements under Article 10 of Chapter 160A. These statutes do not provide a mechanism for refunds of unused assessments because assessments are imposed to reimburse local governments for the cost of completed projects.

S.L. 2010-129 authorized local governments to refund assessments imposed before 2007 where the assessment financed a capital project that was assumed by another local government.

BILL ANALYSIS: House Bill 167 would extend by five years the authority granted to local governments under S.L. 2010-129 to refund unused assessments. The bill does not change the other requirements of S.L. 2010-129 that the assessment finance a capital project and that the capital project be assumed by another local government.

BACKGROUND: House Bill 167 would allow Boiling Spring Lakes to refund unused assessments made to finance a capital project that was assumed by the county. Boiling Spring Lakes obtained a federal loan to pay for a water project, transferred its water project to the county, and now seeks to refund the unused assessments.

House Bill 167 was first heard in the Finance Committee on Wednesday, March 16, 2011. On April 5, 2011, the Board of Commissioners of the City of Boiling Spring Lakes approved a resolution that the refunds would be issued by June 30, 2012.

EFFECTIVE DATE: Effective when it becomes law.

R. Erika Churchill, counsel to House Government, substantially contributed to this summary.

H167-SMTM-1(CSTM-1) v8

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 296
Committee Substitute Favorable 3/31/11

Short Title: Sampson-Delinquent Taxpayers. (Local)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SAMPSON COUNTY TO PROHIBIT THE ISSUANCE OF A SPECIAL USE OR CONDITIONAL USE PERMIT, OR A BUILDING PERMIT, TO A DELINQUENT TAXPAYER, AND TO AUTHORIZE SAMPSON COUNTY TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 153A-340 is amended by adding a new subsection to read:

"§ 153A-340. Grant of power.

...

(c2) A county may by ordinance provide that a special use permit or conditional use permit may not be issued under subsection (c1) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. Such ordinance may provide that a special use permit or conditional use permit may be issued to a person protesting the assessment or collection of property taxes.

...."

SECTION 1.(b) This section applies to Sampson County only.

SECTION 2. G.S. 153A-357(c) reads as rewritten:

"§ 153A-357. Permits.

...

(c) (1) A county may by ordinance provide that a permit may not be issued under subsection (a) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. Such ordinance may provide that a building permit may be issued to a person protesting the assessment or collection of property taxes.

(2) This subsection applies to Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Currituck, Davie, Gates, Greene, Lenoir, Lincoln, Iredell, Sampson, Stokes, Surry, Tyrrell, Wayne, and Yadkin Counties only.

...."

SECTION 3. G.S. 161-31(b) reads as rewritten:

"§ 161-31. Tax certification.

...

(b) Applicability. – This section applies only to Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell,



1 Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt,
2 Polk, Robeson, Rockingham, Rowan, Rutherford, Sampson, Stanly, Surry, Swain,
3 Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties."

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



HOUSE BILL 296: Sampson-Delinquent Taxpayers

2011-2012 General Assembly

Committee: House Finance	Date: April 13, 2011
Introduced by: Reps. Bell, Langdon	Prepared by: Greg Roney
Analysis of: Second Edition	Committee Counsel

SUMMARY: *House Bill 296 authorizes Sampson County to: (1) prohibit the issuance of a special use or conditional use permit to a person who owes delinquent property taxes; (2) prohibit the issuance of a building permit to a person who owes delinquent property taxes; and (3) to require payment of delinquent property taxes prior to recording deeds conveying property.*

CURRENT LAW:

County Authority to Deny Special Use Permit for Delinquent Property Taxes: G.S. 153A-340 grants counties authority to adopt zoning and development regulation ordinances to promote health, safety, morals, or the general welfare. G.S. 153A-340(c1) authorizes a county to issue special use permits or conditional use permits pursuant to zoning and development regulation ordinances enacted by the county. G.S. 153A-340(c2) has been enacted to allow certain counties to prohibit the issuance of a special use permit or conditional use permit when a person owes delinquent property taxes.¹

County Authority to Deny Building Permit for Delinquent Property Taxes: In 2005, the General Assembly authorized Greene, Lenoir, Iredell, Wayne, and Yadkin Counties to deny issuance of a building permit to a person who owes delinquent property taxes on property owned by the person.² This authority was granted to Davie and Lincoln Counties in 2006,³ to Gates County in 2007,⁴ and to Alexander, Alleghany, Anson, Bertie, Catawba, Chowan, Stokes, Surry and Tyrell Counties in 2009.⁵ In 2010, Currituck County was added to the list of counties previously authorized to deny issuance of a building permit to a person who owes delinquent property taxes.⁶

County Authority to Deny Registration of Deed for Delinquent Property Taxes: G.S. 161-31(a) permits tax certification by allowing a county board of commissioners, by resolution, to require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

G.S. 161-31(a1) provides an exception to the tax certification by requiring the register of deeds to accept, without certification, a deed containing the following statement: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

G.S. 161-31(b) lists the 69 counties to which this provision currently applies.⁷

¹ S.L. 2010-30, s. 1 &2 applied to Currituck County.

² S.L. 2005-433, s. 3(b).

³ S.L. 2006-150, s. 2.

⁴ S.L. 2007-58, s. 1.

⁵ S.L. 2009-117, s. 1.

⁶ S.L. 2010-30, s. 3.

⁷ The Register of Deeds in Duplin County must also receive a certification that no municipal taxes or any other taxes the collector is charged with collecting are a lien on the property before a deed transferring the property may be recorded.

House Bill 296

Page 2

The following four counties have a similar requirement but under different authorizing legislation:

Avery County	Chapter 305 of the 1963 Session Laws, as amended by S.L. 1997-410 and S.L. 1998-73 ⁸
Ashe County	S.L. 1993-657, as amended by S.L. 1997-410 and S.L. 2005-433 ⁹
Alleghany County	S.L. 1997-410
Mitchell County	S.L. 1987-537, as amended by S.L. 1997-410 and S.L. 1999-326 ¹⁰

These local acts provide that the Register of Deeds shall not record any deed unless it is accompanied by a certification that all delinquent taxes have been paid. These local acts are in contrast to G.S. 161-31, which gives certain counties the discretion to pass a resolution to that effect.

BILL ANALYSIS:

Sections 1(a) and (b) of House Bill 296 authorize Sampson County to enact an ordinance prohibiting issuance of a special use permit or conditional use permit to a person who owes delinquent property taxes.

Section 2 of House Bill 296 amends G.S. 153A-357 to authorize Sampson County to enact an ordinance to prohibit the issuance of a building permit to a delinquent taxpayer.

Section 3 of House Bill 296 amends G.S. 161-31(b) to add Sampson County to the list of counties in which the board of commissioners is permitted to pass a resolution requiring the register of deeds not to accept any deed transferring real property unless the county tax collector certifies that the taxes listed in the statute are not delinquent and are not a lien on the property. (The taxes listed in G.S. 161-31(a) are ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged.)

EFFECTIVE DATE: House Bill 296 would become effective when it becomes law.

Theresa Matula, counsel to Government; Cindy Avrette and Trina Griffin, counsel to Finance; substantially contributed to this summary.

H296-SMTM-4(e2) v2

⁸ The Town of Newland was added in 1997; the Town of Banner Elk was added in 1998.

⁹ S.L. 2005-433 provides that in addition to receiving a certification from the county tax collector, the Register of Deeds must also receive a certification from any municipal tax collector, where applicable, verifying that all delinquent taxes on the property have been paid.

¹⁰ This local act also provides that if the property is located in the Town of Spruce Pine or the Town of Bakersville, the deed must also be accompanied by a certification from the town tax collector that all municipal taxes have been paid with respect to the property.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 796

Short Title: Study Property Tax Valuation Process. (Public)

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

Referred to: Finance.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY THE
METHODOLOGY OF VALUATION OF PROPERTY FOR PROPERTY TAX
PURPOSES TO ENSURE THE PROCESS IS BOTH UNIFORM AND FAIR.

The General Assembly of North Carolina enacts:

SECTION 1. Study. – The Revenue Laws Study Committee shall study the process of property valuation for the property tax purposes. The study shall include the current exemptions and deferral programs that affect property tax liability, the use of true value as a standard for valuation, current bases for altering a determined property tax value, and differences that exist or are permitted to exist between county procedures that affect property taxation. The Committee shall make a report on this issue, including any recommendations or legislative proposals, to the 2012 Regular Session of the 2011 General Assembly upon its convening.

SECTION 2. In conducting the study described in Section 1 of this act, the Revenue Laws Study Committee cochairs are authorized to appoint an advisory subcommittee and to ask the Local Government Commission to designate an individual to participate in the subcommittee's deliberations in an ex officio, nonvoting capacity. The subcommittee may consist of no more than 10 members and may include no more than four individuals who are not members of the Committee or of the General Assembly.

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





HOUSE BILL 796: Study Property Tax Valuation Process

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Moffitt
Analysis of: First Edition

Date: April 13, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *House Bill 796 directs the Revenue Laws Study Committee to study the process that values property for the property tax and report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly.*

CURRENT LAW: G.S. § 120-70.105 creates the Revenue Laws Study Committee. G.S. § 120-70.108 requires the Revenue Laws Study Committee to establish a Property Tax Subcommittee. The Subcommittee studies and recommends changes to the property tax system. The Subcommittee meets upon the call of the Subcommittee chairs.

BILL ANALYSIS: Section 1 of House Bill 796 would direct the Revenue Laws Study Committee to review the valuation process for county assessments of property tax. The review must consider current exemptions and deferral programs. The findings and any recommendations are reported to the 2012 Regular Session of the 2011 General Assembly.

Section 2 of House Bill 796 authorizes the chairs of the Revenue Laws Study Committee to appoint an advisory subcommittee. The subcommittee may include an ex officio, nonvoting participant designated by the Local Government Commission. The subcommittee is limited to a maximum of 10 members including a maximum of four individuals who are not members of the Revenue Laws Study Committee or the General Assembly.

EFFECTIVE DATE: House Bill 796 is effective when it becomes law.

H796-SMTM-5(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 288

Short Title: Atlantic Beach/Beaufort/Parking. (Local)

Sponsors: Senator Preston.

Referred to: State and Local Government.

March 10, 2011

A BILL TO BE ENTITLED

AN ACT EXPANDING THE PURPOSES FOR WHICH THE TOWNS OF ATLANTIC BEACH AND BEAUFORT MAY USE THE PROCEEDS FROM ON-STREET PARKING METERS, PROVIDING THAT PARKING METERS IN THE TOWNS MAY BE ACTIVATED BY COMMERCIALY AVAILABLE MEANS OF PREPAYMENT CREDIT, AND AUTHORIZING THE TOWNS TO USE CERTAIN CIVIL PENALTIES COLLECTED FOR VIOLATING PARKING ORDINANCES IN THE SAME MANNER IN WHICH PROCEEDS FROM ON-STREET AND OFF-STREET PARKING FACILITIES ARE USED.

The General Assembly of North Carolina enacts:

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

"§ 160A-301. Parking.

(a) On-Street Parking. – A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city. When parking is permitted for a specified period of time at a particular location, a city may install a parking meter at that location and require any person parking a vehicle therein to place the meter in operation for the entire time that the vehicle remains in that location, up to the maximum time allowed for parking there. Parking meters may be activated by ~~coins or tokens~~ coins, tokens, or any other commercially available means of providing prepayment credit. Proceeds from the use of parking meters on public streets ~~must~~ may be used to defray the cost of enforcing and administering traffic and parking ordinances and ~~regulations~~ regulations and may be used in the same manner in which proceeds from off-street parking facilities are permitted under subsection (b) of this section.

...

(b1) If a city ordinance for on-street or off-street parking provides that a violation of the ordinance shall subject the offender only to a civil penalty to be recovered by the city in a civil action in the nature of a debt, the city may retain the civil penalties collected in the civil action and use the funds in the same manner in which proceeds from on-street and off-street parking facilities are permitted under subsections (a) and (b) of this section.

...."

SECTION 2. This act applies to the Towns of Atlantic Beach and Beaufort only.

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





SENATE BILL 288: Atlantic Beach/Beaufort/Parking

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Preston
Analysis of: First Edition

Date: April 12, 2011
Prepared by: Cindy Avrette
Committee Counsel

SUMMARY: *Senate Bill 288 allows the Towns of Atlantic Beach and Beaufort to allow parking meters to be activated by commercially available prepayment credit and provides that the Towns may use the proceeds from parking meters for the same purposes that revenue from off street parking facilities are used. The bill also provides that the towns may keep the proceeds of penalties from parking ordinance violations if the town ordinances provide that a violation will subject the offender only to a civil penalty to be recovered by the towns in a civil action in the nature of debt.*

The bill received a favorable report from the House Committee on Government on April 7, 2011.

CURRENT LAW: G.S. 160A-301 allows cities to regulate by ordinance on-street and off-street parking including installation of parking meters and operation of off-street parking facilities. Proceeds from parking meters are to be used only to defray the cost of enforcing and administering traffic and parking ordinances and regulations. Cities may charge fees for use of off-street parking facilities and may make it unlawful to park in these facilities without paying. Revenues from off-street facilities may be pledged to amortize bonds issued to finance such facilities or used for any public purpose.

G.S. 160A-175 provides for the enforcement of municipal ordinances. Unless a city provides otherwise, violation of an ordinance is a misdemeanor or infraction. G.S. 160A-175(b). As an alternative, a city may provide in an ordinance that a violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if not paid within a certain time period. G.S. 160A-175(c).

Section 7 of Article IX of the North Carolina Constitution provides in part that "*the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.*" Penalties for violations of city ordinances that are misdemeanors or infractions are considered penalties that must go to the county public school system. However, when a city provides otherwise under G.S. 160A-175(c) and the violation subjects the offender to a civil penalty, the city may keep the proceeds recovered for its own purposes.¹

BILL ANALYSIS: Senate Bill 288 amends G.S. 160A-301 to:

- Allow for the activation of parking meters by commercially available means of providing prepayment credit.
- Authorize the proceeds from the use of parking meters to be pledged to amortize bonds issued to finance parking facilities or any public purpose.
- Authorize the towns to retain the civil penalties from violations of the parking ordinances and use them for the purposes allowed in G.S. 160A-301, if the ordinance subjects the violator only to a civil penalty that may be recovered in a civil action in the nature of debt.

The act applies only to the Towns of Atlantic Beach and Beaufort and is effective when it becomes law.

Giles Perry, counsel to the House Government Committee, substantially contributed to this summary.

¹ See, *Caudle v. City of Asheville*, 301 N.C. 340 (1981)

Senate Bill 288

Page 2

S288-SMRB-30(e1) v1

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

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

DAY & DATE: Thursday, April 14, 2011

TIME: 8:30 am

LOCATION: 544 LOB

FINANCE IS CANCELLED FOR THURSDAY

Respectfully,
Representative Howard, Chair
Representative Folwell, Chair
Representative Setzer, Chair
Representative Starnes, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **April 13, 2011**.

- Principal Clerk
- Reading Clerk – House Chamber

Renee Weaver (Committee Assistant)

AGENDA
House Finance Committee

Thursday, April 14, 2011

8:30 am

Room 544 LOB

Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 845 Reform Annexations Laws

Representatives LaRoque, Dollar

Adjournment



North Carolina General Assembly
House Committee on Finance

Minutes

~
April 20, 2011

The House Committee on Finance met on Wednesday, April 20, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chair Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Ross, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Billy MacRae. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Starnes called the meeting to order at 8:32 am and recognized the five (5) pages present: (1) Clay Heath of Mecklenburg County sponsored by Representative Killian; (2) Carolina Morelock of Mecklenburg County sponsored by Representative Brown; (3) Mark Parent of Guilford County sponsored by Representative Faircloth; (4) Micaiah Rawlings of Wake County sponsored by Representative Hall; and (5) Ashley Saltzman of Wake County sponsored by Representative Murry.

Chairman Starnes stated that **HB 204 Egecombe Co. Tourism Development Authority** and **HB 545 Amend Moore County Occupancy Tax** were both reported favorable by the Subcommittee on Occupancy Tax and was referred to the Committee on Finance.

The first bill considered by the Committee was **HB 204 Edgecombe Co. Tourism Development Authority** (see **attachment 3**). The Chair recognized Representative Tolson to explain the bill. The Chair recognized Representative Carney who moved that HB 204 be given a favorable report. The motion carried.

The next bill considered by the Committee was **HB 537 Wilkes Fire Tax Dist. Boundaries** (see **attachment 4**). Chairman Starnes recognized Representative Randleman to explain the bill. The Chair then recognized Representative Brawley who moved that HB 537 be given a favorable report. The motion carried.

The next bill before the Committee was **HB 224 Foxfire Village Assessment Validated** (see **attachment 5**). The Chair recognized Representative Boles to explain the bill. Representative Boles requested that Michael Brough, Town Attorney be able to speak. The Chair recognized Mr.

Brought to speak on behalf of the bill. Chairman Starnes recognized Representative McCormick who moved that HB 224 be given a favorable report. The motion carried.

Next before the Committee was **HB 545 Amend Moore County Occupancy Tax** (see attachment 6). The Chair again recognized Representative Boles to explain the bill. Representative Collins was recognized and moved to adopt the proposed committee substitute for discussion purposes. The Chair then recognized Representative McCormick who moved that HB 545 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill to be heard by the Committee was **HB 266 Wake Local Energy Efficiency** (see attachment 7). Representative Weiss was recognized to explain the bill. Chairman Starnes recognized Representative Womble who moved that HB 266 be given a favorable report. The motion was set aside for further discussion. The Chair recognized Jack Cozort, who represents the Town of Cary, to speak on behalf of the bill. Being no further discussion or debate, the Chair recognized Representative Womble who restated his motion that HB 266 be given a favorable report. The motion carried.

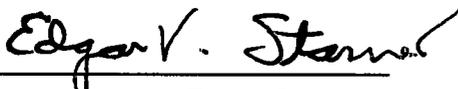
The last bill on the agenda was **SB 281 Municipal Service/Districts Streets** (see attachment 8). Chairman Starnes recognized Senator Stein to explain the bill. Representative Ross was then recognized and she moved that SB 281 be given a favorable report. The motion carried.

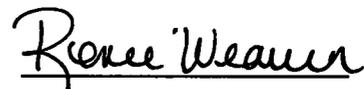
Chairman Starnes re-referred **HB 469 Additional Lumberton Occupancy Tax** and **HB 518 Authorize Add'l Person County Occupancy Tax** to the subcommittee on Occupancy Tax.

Chairman Starnes announced the members of the new subcommittee to consider **SB 288 Atlantic Beach/Beaufort Parking**. The new members named were: Representative Samuelson, Chair and Representatives Weiss and Rhyne.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 9:06 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 204 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE EDGECOMBE COUNTY
TOURISM DEVELOPMENT AUTHORITY.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 224 A BILL TO BE ENTITLED AN ACT TO VALIDATE A SPECIAL ASSESSMENT
LEVIED BY FOXFIRE VILLAGE.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 266 A BILL TO BE ENTITLED AN ACT TO ALLOW WAKE COUNTY AND THE TOWNS OF APEX, CARY, FUQUAY-VARINA, GARNER, HOLLY SPRINGS, KNIGHTDALE, MORRISVILLE, ROLESVILLE, WAKE FOREST, WENDELL, AND ZEBULON TO ENTER INTO LEASES FOR THE SITING AND OPERATION OF A RENEWABLE ENERGY FACILITY FOR UP TO TWENTY YEARS WITHOUT TREATING IT AS A SALE AND WITHOUT GIVING NOTICE BY PUBLICATION, AND EXEMPTING THOSE LOCAL GOVERNMENTS UNTIL JUNE 30, 2015, FROM COMPETITIVE BIDDING REQUIREMENTS WHEN LETTING CONTRACTS FOR USE AS PART OF LOCAL PILOT PROGRAMS AIMED AT INCREASING ENERGY EFFICIENCY.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 537 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE BOUNDARY BETWEEN
THE BROADWAY AND MORAVIAN FALLS FIRE TAX DISTRICTS IN WILKES COUNTY.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 545 A BILL TO BE ENTITLED AN ACT TO MODIFY THE MOORE COUNTY OCCUPANCY TAX.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 281 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CITIES TO ESTABLISH A MUNICIPAL SERVICE DISTRICT FOR THE PURPOSE OF CONVERTING PRIVATE RESIDENTIAL STREETS TO PUBLIC STREETS AND TO AUTHORIZE RELATED COMMUNITY ASSOCIATIONS TO TRANSFER PLANNED COMMUNITY PROPERTY TO CITIES.

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 _____.

1

AGENDA
House Finance Committee

Wednesday, April 20, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 204 Edgecombe Co. Tourism Development Authority
Representative Tolson

HB 224 Foxfire Village Assessment Validated
Representative Boles

HB 266 Wake Local Energy Efficiency
Representatives Weiss, Dollar, Jackson, Martin

HB 537 Wilkes Fire Tax Dist. Boundaries
Representative Randleman

HB 545 Amend Moore County Occupancy Tax
Representative Boles

SB 281 Municipal Service District/Streets
Senator Stein

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: APRIL 20, 11 Room: 544

*Name: Clay Heath

County: Mecklenburg

Sponsor: Killiah

*Name: Caroline Morelock

County: Mecklenburg

Sponsor: Brown

*Name: Mark Parent

County: Guilford

Sponsor: John Faircloth

*Name: Micaiah Rawlings

County: Wake

Sponsor: Hall

*Name: Ashley Saltzman

County: Wake

Sponsor: Murry

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: BILLY MACRAE

2. Name: JOHN BRANDON

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

April 20, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
MIKE BROUGH	ATTORNEY, FOXFIRE VILLAGE
Will Culpeper	MVA
JACK COZZO	NSS
Em A Malcolm	Rep. Darrell G Malcolm 2d
Paul Meyer	NCLM
Lisa Martin	NC Home Builders Assoc
Cady Thomas	NCAR
Jessi Doye	NCABA
Fred Baggett	NC Assoc of Chiefs of Police
Heather Barnett	Williams Muller

3

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

H

1

HOUSE BILL 204

Short Title: Edgemcombe Co. Tourism Development Authority. (Local)

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

Referred to: Government, if favorable, Finance.

March 2, 2011

**A BILL TO BE ENTITLED
AN ACT TO ESTABLISH THE EDGECOMBE COUNTY TOURISM DEVELOPMENT
AUTHORITY.**

The General Assembly of North Carolina enacts:

SECTION 1. Tourism Development Authority. – (a) The Board of Commissioners of Edgemcombe County may by resolution create the Edgemcombe County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses in the county, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the county. The resolution shall provide that the Authority shall be composed of the following nine members:

- (1) An Edgemcombe County Commissioner appointed by the board of commissioners.
- (2) A member of the Tarboro Town Council appointed by the town council.
- (3) Three owners or operators of motels, hotels, or other taxable accommodations in Edgemcombe County, one of whom shall be appointed by the Tarboro Town Council, one by the Edgemcombe County Board of Commissioners, and one by the Edgemcombe County Chamber of Commerce.
- (4) Two individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Tarboro Town Council and one by the Edgemcombe County Board of Commissioners.
- (5) An individual who is interested in the tourism business, has demonstrated an interest in tourism development, and is appointed by the Edgemcombe County Board of Commissioners.
- (6) An individual who is interested in the tourism business, has demonstrated an interest in tourism development, and is appointed by the Tarboro Town Council.

The Edgemcombe County Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.



1 The Authority shall meet at the call of the chair and shall adopt rules of procedure to
2 govern its meetings. The Finance Officer for Edgecombe County shall be the ex officio finance
3 officer of the Authority.

4 **SECTION 1.(b) Duties.** – The Authority shall promote travel, tourism, and
5 conventions in the county, sponsor tourist-related events and activities in the county, and
6 finance tourist-related capital projects in the county.

7 **SECTION 1.(c) Reports.** – The Authority shall report quarterly and at the close of
8 the fiscal year to the board of county commissioners on its receipts and expenditures for the
9 preceding quarter and for the year in such detail as the board may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 204 (First Edition)

SHORT TITLE: Edgecombe Co. Tourism Development Authority.

SPONSOR(S): Representative Tolson

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES

No Fiscal Impact

EXPENDITURES

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Edgecombe County Tourism Development Authority

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

BILL SUMMARY:

House Bill 204 authorizes the Edgecombe County Board of Commissioners to create a nine-member Edgecombe County Tourism Development Authority to promote travel, tourism and conventions in that county. It specifies how the membership of the Authority is to be determined and sets forth duties and reporting requirements for the Authority.

ASSUMPTIONS AND METHODOLOGY:

House Bill 204 has no fiscal impact.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: April 18, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 204: Edgecombe Co. Tourism Development Authority

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Tolson
Analysis of: First Edition

Date: April 20, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 204 authorizes the creation of the Edgecombe County Tourism Development Authority (TDA) to promote travel, tourism, and conventions, sponsor tourist-related events and activities, and finance tourist-related capital projects within the county. The composition of the TDA as set out in the bill conforms to the Occupancy Tax Guidelines established by the House Finance Committee. The Subcommittee on Occupancy Tax gave the bill a favorable recommendation on April 19, 2011.*

BILL ANALYSIS: House Bill 204 would authorize the Edgecombe County Board of Commissioners to create the Edgecombe County Tourism Development Authority for the purposes outlined above. The resolution creating the Authority must designate one member as chair and determine the compensation, if any, to be paid to Authority members. The Authority will meet at the call of the chair, adopt rules to govern meetings, will be a public authority under the Local Government Budget and Fiscal Control Act (Article 3, Chapter 159), and the Edgecombe County Finance Officer will serve as the ex officio finance officer of the Authority. The resolution creating the Edgecombe County Tourism Development Authority must specify terms of office, filling of vacancies, and the following nine member composition:

- One member that is an Edgecombe County Commissioner (appointed by the board of commissioners).
- One member of the Tarboro Town Council (appointed by the town council).
- Three members that are owners or operators of motels, hotels, or other taxable accommodations in Edgecombe County (one appointed by the Tarboro Town Council, one by the Edgecombe County Board of Commissioners, and one by the Edgecombe County Chamber of Commerce).
- Two members that are involved in the tourist business, have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations (one appointed by the Tarboro Town Council and one by the Edgecombe County Board of Commissioners).
- One member interested in the tourism business that has demonstrated an interest in tourism development (appointed by the Edgecombe County Board of Commissioners).
- One member interested in the tourism business that has demonstrated an interest in tourism development (appointed by the Tarboro Town Council).

At least one-third of the members must be individuals affiliated with businesses in the county and at least one-half of the members must be currently active in the promotion of travel and tourism in the county.

The Authority must report to the board of county commissioners on a quarterly basis and at the close of the fiscal year. The reports must include receipts and expenditures for the preceding quarter and the year in the detail prescribed by the board.

EFFECTIVE DATE: This bill would become effective when it becomes law

BACKGROUND: Approximately $\frac{3}{4}$ of the counties in NC have Tourism Development Authorities or a tourism initiative run by a government entity or by some other entity. Approximately $\frac{1}{4}$ of the counties, including Edgecombe, do not have an officially designated tourism development entity.

The Edgecombe County Sustainable Tourism Plan (2008) recommended creation of a Tourism Development Authority. Edgecombe County is not currently authorized to levy an occupancy tax.

Theresa Matula, analyst for House Government, substantially contributed to this summary.

H204-SMSV-25(e1) v1

Research Division

O. Walker Reagan, Director

(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 537
Committee Substitute Favorable 4/14/11

Short Title: Wilkes Fire Tax Dist. Boundaries.

(Local)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED.

AN ACT TO ESTABLISH THE BOUNDARY BETWEEN THE BROADWAY AND MORAVIAN FALLS FIRE TAX DISTRICTS IN WILKES COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Broadway. – The newly agreed boundary line for the Broadway Fire Tax District in the area from Jessie Reins Road and Brushy Mountain Road to Fox Run Subdivision and Country Club Road Extension shall be as follows:

BEGINNING at the dead end of S. R. 2463 (Sleepy Avenue West), including property on S. R. 1001 (Brushy Mountain Road) between this and the preceding point; thence in a southeasterly direction to a point on S. R. 1001 (Brushy Mountain Road) 0.1 miles south of its intersection with S. R. 2515 (Jessie Reins Road), including the following parcels on either side of said line which were formerly in the Moravian Falls Fire Tax District as described in the records of the Wilkes County Tax Mapping Office: Parcel I.D. Nos. 2200328, 2200332, 2200553, 2200568, 2200665, 2200671, 2200673, 2200722, 2200778, 2200941, 2201407, 2201463, 2201550, 2201551, 2201622, 2201623, 2201737, 2201805, 2201807, 2202370, 2202425, 2202426, 2202430, 2202432, 2202706, 2202839, 2202897, 2202935, 2203079, 2203233, 2203788, 2204661, 2204883, 2205049, 2205052, 2205053, 2205205, 2205783, 2205784, 2206101, 2206180, 2206181, 2206601, 2206618, 2206758, 2207121, 2207151, 2207152, and 2207254; thence in a southeasterly direction to a point on S. R. 2462 (Country Club Road Extension) 0.6 miles northeast of its intersection with S. R. 1001 (Brushy Mountain Road), excluding all property on the approved plat for Fox Run Subdivision as recorded at Map Book 7, Page 58, Wilkes County Register of Deeds Office, and further excluding the following parcels on either side of said line as described in the records of the Wilkes County Tax Mapping Office: Parcel I.D. Nos. 2203599, 2206845, 2205441, 2206443, and 2205612; thence in a southeasterly direction to a point on S. R. 2473 (Quarry Road) 0.2 miles southwest of its intersection with NC Highway 115, including the following parcels on either side of said line which were formerly in the Moravian Falls Fire Tax District as described on the records of the Wilkes County Tax Mapping Office: Parcel I.D. Nos. 2204828 and 2207214. The following description for said boundary shall not be affected or altered in any way by the subsequent division of any of the parcels or property described therein nor by a change in or reassignment of any of said Parcel I.D. Nos. on the records of the Wilkes County Tax Mapping Office.

SECTION 2. Moravian Falls. – The newly agreed boundary line for the Moravian Falls Fire Tax District in the area from Jessie Reins Road and Brushy Mountain Road to Fox Run Subdivision and Country Club Road Extension shall be as follows:

BEGINNING at a point on S. R. 1001 (Brushy Mountain Road) 0.4 miles northeast of its intersection with S. R. 2472 (Dixie Rock Road); thence in a northerly direction to a point on S. R. 2462 (Country Club Road Extension) 0.6 miles northeast of its intersection with S. R. 1001



1 (Brushy Mountain Road), excluding the following parcels on either side of said line which
2 were formerly in the Moravian Falls Fire Tax District as described on the records of the Wilkes
3 County Tax Mapping Office: Parcel I.D. Nos. 2204828 and 2207214; thence in a
4 northwesterly direction to a point on S. R. 1001 (Brushy Mountain Road) 0.1 miles south of its
5 intersection with S. R. 2515 (Jessie Reins Road), including all property on the approved plat for
6 Fox Run Subdivision as recorded at Map Book 7, Page 58, Wilkes County Register of Deeds
7 Office, and further including the following parcels on either side of said line as described in the
8 records of the Wilkes County Tax Mapping Office: Parcel I.D. Nos. 2203599, 2206845,
9 2205441, 2206443, and 2205612; thence in a westerly direction to a point on NC Highways 16
10 and 18 at the Wilkesboro city limits, excluding the following parcels on either side of said line
11 which were formerly in the Moravian Falls Fire Tax Districts as described in the records of the
12 Wilkes County Tax Mapping Office: Parcel I.D. Nos. 2200328, 2200332, 2200553, 2200568,
13 2200665, 2200671, 2200673, 2200722, 2200778, 2200941, 2201407, 2201463, 2201550,
14 2201551, 2201622, 2201623, 2201737, 2201805, 2201807, 2202370, 2202425, 2202426,
15 2202430, 2202432, 2202706, 2202839, 2202897, 2202935, 2203079, 2203233, 2203788,
16 2204661, 2204883, 2205049, 2205052, 2205053, 2205205, 2205783, 2205784, 2206101,
17 2206180, 2206181, 2206601, 2206618, 2206758, 2207121, 2207151, 2207152, and 2207254;
18 and further excluding the following parcels not within any fire tax district, as described in the
19 records of the Wilkes County Tax Mapping Office: Parcel I.D. Nos. 2204131, 2204132, and
20 2202434. The foregoing description for said boundary shall not be affected or altered in any
21 way by the subsequent division of any of the parcels or property described therein nor by a
22 change in or reassignment of any of said Parcel I.D. Nos. on the records of the Wilkes County
23 Tax Mapping Office.

24 **SECTION 3.** Subject to the new boundary line as provided in this act, the 1975
25 extension of the Broadway Fire Tax District and the 2002 extension of the Moravian Falls Fire
26 Tax District are valid and lawful. All prior collections of fire tax revenues by Wilkes County in
27 the areas subject to the extensions are valid and lawful, without regard to which fire tax district
28 (and corresponding fire tax rate) those revenues were collected from, and without regard to
29 which volunteer fire department those revenues were allocated to.

30 **SECTION 4.** No provision of this act shall be construed to prohibit a subsequent
31 change in the Broadway Fire Tax District or the Moravian Falls Fire Tax District, including any
32 portion of the boundary established hereunder, pursuant to Chapter 69 of the North Carolina
33 General Statutes or other applicable law.

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



HOUSE BILL 537: Wilkes Fire Tax Dist. Boundaries

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Randleman
Analysis of: Second Edition

Date: April 20, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *House Bill 537 establishes an agreed upon boundary line between the Broadway Fire District and the Moravian Falls Fire District, both in Wilkes County, and provides that the extensions of those districts in 1975 and 2002 are valid. All prior fire tax collections by the County in the areas subject to the extensions are also valid.*

CURRENT LAW: G.S. 69-25.11 governs the changes in the area of a fire protection district. Where there are adjoining districts having the same fire tax rate, the County Commissioners, on petition of the fire protection commissioners and the boards of directors of the fire departments, may relocate the boundary between the districts in accordance with the petition. Before adjusting the boundary, the county commissioners must hold a public hearing. The new boundaries take effect at the beginning of the next fiscal year. G.S. 69-25.11(3).

If the tax rates between the two districts are different, the County Commissioners may relocate the boundaries upon petition of 2/3 of the owners of the territory involved and after receiving a favorable recommendation from the fire protection commissioners and the board of directors of the fire departments. A public hearing must be held, and any relocation of boundaries takes effect at the beginning of the next fiscal year. G.S. 69-25.11(4).

BILL ANALYSIS: House Bill 537 would set the newly agreed upon boundary for the Broadway Fire District and the Moravian Falls Fire District in Wilkes County. The extensions of the fire districts in 1975 and 2002 are valid. All prior collections of fire tax revenues by the County are also valid without regard to the district where the revenue was collected or the fire department allocated the revenue.

The act shall not be construed to prohibit subsequent changes in either fire tax district.

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

Barbara Riley, counsel to House Government, substantially contributed to this summary.

H537-SMTM-7(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 224

Short Title: Foxfire Village Assessment Validated. (Local)

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

Referred to: Government, if favorable, Finance.

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO VALIDATE A SPECIAL ASSESSMENT LEVIED BY FOXFIRE VILLAGE.

The General Assembly of North Carolina enacts:

SECTION 1. Any and all acts and proceedings heretofore done, and any and all procedures heretofore followed by Foxfire Village in assessing the cost of the Woodland Circle Extension project (involving the construction of a two-lane, paved road and the installation of electric power and water utility lines to serve properties that previously had no road access or utility service) pursuant to Article 10 of Chapter 160A of the General Statutes, are hereby in all respects validated, legalized, and confirmed. Any and all special assessments relating to this project levied by Foxfire Village at a rate of \$0.20782 per square foot of the area of the lots or tracts abutting the project are hereby in all respects validated, legalized, and confirmed.

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





HOUSE BILL 224: Foxfire Village Assessment Validated

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Boles
Analysis of: First Edition

Date: April 20, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 224 is a local bill that would validate the assessment actions taken by Foxfire Village for the Woodland Circle Extension project.*

BILL ANALYSIS: House Bill 224 would cure any procedural defects that occurred as part of Foxfire Village's special assessment for the Woodland Circle Extension project by validating all acts and procedures followed by the town. The project involved the construction of a two-lane paved road and the installation of electric power and water utility lines. The bill would also validate any and all special assessments relating to the project and levied by the Village.

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

CURRENT LAW: Under G.S. 160A-216, cities may levy special assessments to finance the following public improvements: streets, sidewalks, water systems, sewer systems, storm sewer and drainage systems, and beach erosion control and hurricane flood-protection works. The amount of each assessment must bear some relationship to the amount of benefit that accrues to the assessed property. The most common basis of assessment is front footage: each property is assessed on a uniform rate per foot of property that abuts on the project. Other bases include the size of the area benefited or the value added to the property because of the improvement. For street and sidewalk improvements, the city must receive a petition requesting the assessment from a majority of the property owners to be assessed who represent over half of the front footage of the property to be improved.

BACKGROUND¹: When the town initially undertook the improvement project in 2006, it failed to follow all of the statutory procedural requirements for making an assessment. Among the defects, the original petition did not contain the signatures of the majority of property owners to be assessed² and although the town informed all of the affected property owners by letter and held a meeting, it did not hold a public hearing. After the town opened the project to bids, the town obtained a proper petition and held a public hearing. However, the public hearing was not held until after the contract was awarded.

In addition to these procedural issues, one of the property owners contested the method used to determine the amount of the assessment for the project. The owner's share of the assessment was 76% of the total cost, which he believed did not accurately represent the extent to which his property would benefit from the improvement.³ Since the town did not change its methodology, the owner decided to donate the property to the town rather than pay the \$1.4 assessment. The town approved the donation at its last meeting. The change in ownership of the tract does not change the amount of the assessments imposed on the remaining property owners. At some point, the town plans to sell the property.

Theresa Matula, counsel to House Government, substantially contributed to this summary.

H224-SMSV-19(e1) v2

¹ This information was obtained from the minutes of the Foxfire Village Council meetings, the Mayor, and the town attorney.

² The original petition did, however, contain signatures of property owners representing a majority of the lineal feet of frontage to be improved.

³ The contesting owner's property represented about 156 acres or 75% of the total acreage; however, he only owned 30% of the platted lots, and according to a wetlands survey, approximately 20% of the property is unusable.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 545
PROPOSED COMMITTEE SUBSTITUTE H545-CSRE-1 [v.1]

4/19/2011 2:34:53 PM

Short Title: Amend Moore County Occupancy Tax.

(Local)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MOORE COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 188 of the 1987 Session Laws, as amended by S.L. 2007-527, is rewritten and recodified as Sections 2 and 3 of this act. This act does not affect the rights or liabilities of the county, a taxpayer, or another person arising under the law rewritten and recodified by this act before the effective date of this act, nor does it affect the right to any refund or credit of a tax that accrued under the law rewritten and recodified by this act before the effective date of this act.

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

SECTION 2.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

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

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Moore County Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the



1 county or to attract tourists or business travelers to the county. The term
2 includes tourism-related capital expenditures.

3 **SECTION 2.(d) Distribution and Use of Tax Revenue.** – Moore County shall, on a
4 quarterly basis, remit to the Moore County Tourism Development Authority the net proceeds of
5 the occupancy tax. The Authority shall use at least two-thirds of the funds remitted to it under
6 this subsection to promote travel and tourism in Moore County and shall use the remainder for
7 tourism-related expenditures.

8 **SECTION 3. Tourism Development Authority.** – (a) Appointment and
9 Membership. – When the Board of Commissioners adopts a resolution levying a room
10 occupancy tax under this act, it shall also adopt a resolution creating the Moore County
11 Tourism Development Authority, which shall be a public authority under the Local
12 Government Budget and Fiscal Control Act and shall be composed of the following members:

- 13 (1) A county commissioner appointed by the Board of County Commissioners.
- 14 (2) Five owners or operators of hotels, motels, or other taxable tourist
15 accommodations, two of which own or operate the largest hotels, motels, or
16 other accommodations in the county by rental unit count and three of which
17 own or operate other hotels, motels, or other accommodations by rental unit
18 count, who shall be appointed by the Board of County Commissioners,
- 19 (3) The President and CEO of the Moore County Chamber of Commerce.
- 20 (4) Two individuals interested in the tourist business who have demonstrated an
21 interest in tourist development but do not own or operate a hotel, motel, or
22 other taxable tourist accommodation, who shall be appointed by the Board of
23 County Commissioners.

24 All members of the Authority shall serve without compensation. Vacancies in the
25 Authority shall be filled in the same manner as the initial appointments. Members appointed to
26 fill vacancies shall serve for the remainder of the unexpired term for which they are appointed
27 to fill. Members shall serve terms as provided in the rules of procedure and bylaws of the
28 Authority.

29 The Board of Commissioners shall designate one member of the Authority as chair.
30 The Authority shall meet at the call of the chair and shall adopt rules of procedure and bylaws
31 to govern its meetings. The Finance Officer for Moore County shall be the ex officio finance
32 officer of the Authority.

33 **SECTION 3.(b) Duties.** – The Authority shall expend the net proceeds of the tax
34 levied under this act for the purposes provided in Section 2 of this act. The Authority shall
35 promote travel, tourism, and conventions in the county, sponsor tourist-related events and
36 activities in the county, and finance tourist-related capital projects in the county.

37 **SECTION 3.(c) Reports.** – The Authority shall report quarterly and at the close of
38 the fiscal year to the Moore County Board of Commissioners on its receipts and expenditures
39 for the preceding quarter and for the year in such detail as the Board of Commissioners may
40 require.

41 **SECTION 4. Administrative provisions.** – G.S. 153A-155(g) reads as rewritten:

42 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
43 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
44 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
45 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
46 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
47 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell,
48 Montgomery, Moore, Nash, New Hanover, New Hanover County District U, Northampton,
49 Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan,
50 Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson
51 Counties, to Surry County District S, to Watauga County District U, to Wilkes County District

1 K, to Yadkin County District Y, and to the Township of Averagesboro in Harnett County and the
2 Ocracoke Township Taxing District."

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

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 545 (First Edition)

SHORT TITLE: Amend Moore County Occupancy Tax.

SPONSOR(S): Representative Boles

FISCAL IMPACT					
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	**No Fiscal Impact**				
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Moore County				
EFFECTIVE DATE:	This act is effective when it becomes law				

BILL SUMMARY:

House Bill 545 recodifies the existing law authorizing a room occupancy tax in Moore County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," promote travel and tourism" and tourism-related expenditures". The bill also makes the Moore County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

By conforming to the House Finance occupancy tax guidelines, Moore County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

ASSUMPTIONS AND METHODOLOGY:

There is no fiscal impact due to these changes.

SOURCES OF DATA: Committee Counsel's Bill Summary

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: April 19, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 545: Amend Moore County Occupancy Tax

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Boles
Analysis of: First Edition

Date: April 20, 2011
Prepared by: Judy Collier
Research Assistant

SUMMARY: *House Bill 545¹ recodifies the previously authorized Moore County Occupancy Tax to make it consistent with the current House Finance Occupancy Tax Guidelines. This change would allow the county to use up to one-third of the net proceeds for tourism-related expenditures.*

The Proposed Committee Substitute makes a technical change in Section 3 to the title of the member representing the Chamber of Commerce and to the name of the Chamber of Commerce.

CURRENT LAW: In 1987, the General Assembly authorized Moore County to levy a room occupancy tax of 3% of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp or other similar place within the county that is subject to the sales tax imposed under G.S. 105-164. The net proceeds must be remitted to the county Tourism Development Authority and must be used to further the development of travel and tourism through advertising and promotion.

The Moore County Tourism Development Authority is made up of 9 members:

- A county commissioner.
- 5 hotel operators, 2 of which operate the largest hotels by rental unit count.
- The Executive Vice President of the Sandhills Area Chamber of Commerce.
- 2 individuals interested in the tourist business but who do not operate a hotel.

BILL ANALYSIS: House Bill 545 recodifies the existing law authorizing a room occupancy tax in Moore County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," "promote travel and tourism" and "tourism-related expenditures". The bill also makes the Moore County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

By conforming to the House Finance occupancy tax guidelines, Moore County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

The PCS makes a technical correction regarding the TDA membership by changing the "Executive Vice President of the Sandhills Area Chamber of Commerce" to the "President & CEO of the Moore County Chamber of Commerce," which is the accurate title.

EFFECTIVE DATE: House Bill 545 would become effective when it becomes law.

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

H545-SMRE-2(e1) v3

¹ House Bill 545 received a Favorable Recommendation from the House Finance Subcommittee on Occupancy Tax on April 19, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 266*
Committee Substitute Favorable 4/7/11

Short Title: Wake Local Energy Efficiency. (Local)

Sponsors:

Referred to:

March 9, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW WAKE COUNTY AND THE TOWNS OF APEX, CARY, FUQUAY-VARINA, GARNER, HOLLY SPRINGS, KNIGHTDALE, MORRISVILLE, ROLESVILLE, WAKE FOREST, WENDELL, AND ZEBULON TO ENTER INTO LEASES FOR THE SITING AND OPERATION OF A RENEWABLE ENERGY FACILITY FOR UP TO TWENTY YEARS WITHOUT TREATING IT AS A SALE AND WITHOUT GIVING NOTICE BY PUBLICATION, AND EXEMPTING THOSE LOCAL GOVERNMENTS UNTIL JUNE 30, 2015, FROM COMPETITIVE BIDDING REQUIREMENTS WHEN LETTING CONTRACTS FOR USE AS PART OF LOCAL PILOT PROGRAMS AIMED AT INCREASING ENERGY EFFICIENCY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2009-149, as rewritten by S.L. 2010-57 and S.L. 2010-63, reads as rewritten:

"SECTION 3. Section 2 of this act applies to the Cities of Asheville, Raleigh and Winston-Salem and the Towns of Chapel Hill and Carrboro only. This act also applies to Catawba and Wake County. Counties and the Towns of Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon only."

SECTION 2. Section 1 of S.L. 2007-333, as rewritten by Section 1 of S.L. 2009-149, and by S.L. 2010-57, reads as rewritten:

"SECTION 1.(a) A municipality or county may contract for apparatus, supplies, materials, or equipment that will be used as part of any pilot program authorized by its governing board aimed at increasing energy efficiency without being subject to the requirements of G.S. 143-129, 143-131, and 143-132. Notwithstanding any provision of law, a municipality or county may award a contract under this section in its sole discretion.

"SECTION 1.(b) This section applies to the Cities of Asheville and Raleigh and the Towns of Apex, Chapel Hill and Carrboro Carrboro, Cary, Chapel Hill, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon only. This section also applies to Wake County."

SECTION 3. This act is effective when it becomes law, but Section 2 of this act expires at the same time that Section 1 of S.L. 2010-57 expires.





HOUSE BILL 266: Wake Local Energy Efficiency

2011-2012 General Assembly

Committee:	House Finance	Date:	April 20, 2011
Introduced by:	Reps. Weiss, Dollar, Jackson, Martin	Prepared by:	Greg Roney
Analysis of:	Second Edition		Committee Counsel

SUMMARY: *House Bill 266 exempts Wake County and eleven towns from competitive bidding requirements for materials used in pilot programs aimed at increasing energy efficiency and from certain requirements for long-term leases for renewable energy facilities.*

CURRENT LAW:

Exemption from Competitive Bidding for Local Energy Efficiency Pilot Programs: G.S. 143-129, 143-131, and 143-132 set out the competitive bidding requirements for construction contracts and contracts for the purchase of apparatus, supplies, equipment, and materials. Various Session Laws¹ exempted certain municipalities or counties from the requirements of G.S. 143-129, 143-131, and 143-132 when contracting for materials used as part of any pilot program authorized by the governing board aimed at increasing energy efficiency. This authority currently applies to the Cities of Asheville and Raleigh, and the Towns of Chapel Hill and Carrboro and expires June 30, 2015. Catawba County received a broader exemption for the purchase of materials for any program aimed at increasing energy efficiency.²

Exemption for Long-Term Lease for the Siting and Operation of a Renewable Energy Facility: G.S. 160A-272 requires a lease in excess of ten years to be treated as a sale of real property. Various Session Laws³ have amended G.S. 160A-272 to allow local governments to approve a lease for the siting and operation of a renewable energy facility, for a term up to 20 years without treating the lease as a sale of property and without giving notice by publication of the intended lease. This authorization currently applies to Catawba County, the Cities of Asheville, Raleigh, and Winston-Salem and the Towns of Chapel Hill and Carrboro.

Renewable energy facility is defined by G.S. 62-133.8(a)(7) as a facility, other than a hydroelectric power facility with a generation capacity of more than 10 megawatts, that either: (1) generates electric power by the use of a renewable energy resource; (2) generates useful, measurable combined heat and power derived from a renewable energy resource; or (3) is a solar thermal energy facility.

BILL ANALYSIS: House Bill 266 would add Wake County and the Towns of Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon to the list of units of local governments exempt from competitive bidding requirements for local pilot programs aimed at increasing energy efficiency and also exempt from the requirements of G.S. 160A-272 (treating a long-term lease as a sale) for the siting and operation of a renewable energy facility.

BACKGROUND: The Town of Cary plans to use this authority to participate in a pilot project to use underutilized land at a water plant to install solar panels to generate renewable energy. The Town intends to use a public private partnership using the flexibility in contracting to work with the private partner to negotiate bids on materials.

¹ Section 1 of S.L. 2007-333, as rewritten by S.L. 2009-149, and S.L. 2010-57.

² Section 1 of S.L. 2010-63.

³ Section 3 of S.L. 2009-149, as rewritten by S.L. 2010-57, and S.L. 2010-63.

House Bill 266

Page 2

EFFECTIVE DATE: House Bill 266 would become effective when it becomes law, and the exemption to competitive bidding requirements for local pilot programs aimed at increasing energy efficiency sunsets June 30, 2015.

Theresa Matula, counsel to House Government, substantially contributed to this summary.

H266-SMTM-6(e2) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 281
Finance Committee Substitute Adopted 3/29/11

Short Title: Municipal Service District/Streets.

(Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES TO ESTABLISH A MUNICIPAL SERVICE DISTRICT FOR THE PURPOSE OF CONVERTING PRIVATE RESIDENTIAL STREETS TO PUBLIC STREETS AND TO AUTHORIZE RELATED COMMUNITY ASSOCIATIONS TO TRANSFER PLANNED COMMUNITY PROPERTY TO CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-536(a) is amended by adding a new subdivision to read:

"(a) Purposes. – The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

...
(6) Conversion of private residential streets to public streets as provided in subsection (e) of this section."

SECTION 2. G.S. 160A-536 is amended by adding a new subsection to read:

"(e) Converting Private Residential Streets to Public Streets. – A city may establish a municipal service district for the purpose of converting private residential streets to public streets if the conditions of this subsection are met. The property tax levied in a municipal service district created for this purpose may be used only to pay the costs related to the transfer of ownership of the streets, evaluation of the condition of the private streets, and the design and construction costs related to improving the private streets to meet public street standards as approved by the governing board. Notwithstanding G.S. 160A-542, the property tax rate in a district created for this purpose may not be in excess of thirty percent (30%) of the ad valorem tax rate in effect in the city in the fiscal year prior to the establishment of the district. After the private streets have been upgraded to meet public street standards and all costs have been recovered from the tax in the district, no further tax may be levied in the district, and the city council must abolish the municipal service district as provided by G.S. 160A-541.

Notwithstanding G.S. 160A-299, if a city abandons the streets and associated rights-of-way acquired pursuant to this subsection, the street-related common elements must be returned to the owners' association from which the city acquired them in a manner that makes the owners' association's holdings in common elements as they were prior to the establishment of the municipal service district.

For a city to create a municipal service district for the purpose of converting private residential streets to public streets, all of the following conditions must be met:

- (1) The private residential road must be nongated.
- (2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a



1 municipal service district for the purpose of paying the costs related to
2 converting private residential streets to public streets. The executive board of
3 an owners' association for which the city has received a petition under this
4 subsection may transfer street-related common elements to the city,
5 notwithstanding the provisions of the North Carolina Planned Community
6 Act in Chapter 47F of the General Statutes, related articles of declaration,
7 deed covenants, or any other similar document recorded with the Register of
8 Deeds.

9 (3) The city must agree to accept the converted streets for perpetual public
10 maintenance.

11 (4) The city must meet one of the following requirements:

12 a. Located primarily in a county that has a population of 750,000 or
13 more according to the most recent decennial federal census, and also
14 located in an adjacent county with a population of 250,000 or more
15 according to the most recent decennial federal census.

16 b. Located primarily in a county with a population of 250,000 or more
17 according to the most recent decennial federal census, and also
18 located in an adjacent county with a population of 750,000 or more
19 according to the most recent decennial federal census."

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



SENATE BILL 281: Municipal Service District/Streets

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Stein
Analysis of: Second Edition

Date: April 20, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *Senate Bill 281 would expand the purposes for which a city could create a municipal service district, subject to certain limitations, to include the conversion of private streets to public streets. The city may impose a higher property tax rate on the taxpayers within a defined service district to pay for the additional services received in that district.*

CURRENT LAW: Article V, Sec. 2(4) of the North Carolina Constitution allows the General Assembly to enact *general* laws authorizing the governing board of a local governmental unit to define territorial areas and to levy additional taxes within those areas to finance a service that is provided to a greater extent in that area than is provided to the entire area of the governmental unit.

Article 23 of Chapter 160A authorizes a city to establish a municipal service district for the following purposes: beach erosion control and flood and hurricane protection works; any service which the municipality may by law provide, such as placing utility wiring underground; downtown revitalization projects; transit-oriented development projects; drainage projects; sewage collection and disposal systems; lighting at interstate highway interchange ramps; off-street parking facilities; and watershed improvement projects. A city may levy a property tax in that district that is in addition to those levied through the city. A city may incur debt, as allowed under general law, to finance services within a service district. When there is no longer a need for the service district, the district may be abolished.

To create a district, a city must hold a public hearing on a proposed resolution. The resolution must define the service district and find that the area defined is in need of one or more of the services for which a district may be created to a demonstrably greater extent than the remainder of the city. The resolution may become effective at the beginning of a fiscal year. Once a district is created, the city must provide or let contracts for the service for which the residents of the district are being taxed within one year of the effective date of the district.

BILL ANALYSIS: Senate Bill 281 would expand the purposes for which a city may create a municipal service district to include the conversion of private streets to public streets. However, by limiting the reach of the bill to cities within counties of a certain size, the bill is effectively limited to the following municipalities: Durham, Morrisville, and Raleigh.¹

The bill also creates the following limitations upon the creation of a district for this purpose:

- The private road must be non-gated.
- A city must receive a petition signed by 60% of the lot owners of the area to be included within the special district requesting the city to establish the district.
- A city must be willing to accept the converted streets for perpetual public maintenance.

¹ Although both Wake and Mecklenburg Counties have populations that exceed 750,000, the only county that is 250,000 and over that abuts either of these two counties is Durham County.

Senate Bill 281

Page 2

- The additional tax rate levied in the special district may not exceed 30% of the property tax rate currently imposed in that district in the fiscal year prior to the establishment of the district.
- After the private streets have been upgraded to meet public street standards and all of the costs have been recovered, the district must be abolished.

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

BACKGROUND: There are 14 residential developments in the Town of Morrisville that were constructed with private streets. These 14 developments comprise about one-third of Morrisville's homes. The private streets were constructed to a lesser standard than public streets. The Town no longer approves residential developments with private streets.

Of these 14 neighborhoods, five have submitted petitions to the Town Council signed by more than 60% of the residents requesting the town to upgrade and convert the streets to publicly maintained streets. Three neighborhoods are continuing to collect petitions; the remaining seven have indicated no interest in pursuing the issue. The Town's website offers additional information on the issue and the number of petitions received for and against the creation of a municipal service district for this purpose.²

The Town does not have the authority to expend public funds for private streets.³ To address the issue brought to the Town by the residents, the Town is seeking the authority to create a municipal service district for the purpose of converting the private streets to public streets. The conversion would include the transfer of ownership of the streets, an evaluation of the condition of the streets, and the design and construction costs related to improving the private streets to meet public streets standards. The maximum tax rate proposed to accomplish this purpose is 10¢ per \$100 valuation. The Town estimates that it would take 15.2 years to recover the conversion costs for the 1.88 miles of roadway for the five neighborhoods requesting the service. If the remaining three neighborhoods are included, the Town estimates that it would take 14.3 years to recover the conversion costs for the 3.87 miles of roadway. The municipal service district would be abolished once all streets were brought up to standard and all associated costs recovered.

Cindy Avrette, counsel to Senate Finance, substantially contributed to this summary.

S281-SMSV-26(e2) v1

² <https://nc-morrisville.civicplus.com/index.aspx?NID=542>

³ G.S. 153A-205 gives counties the authority to expend funds for the cost of improvements needed to bring residential streets up to State standards so they may become part of the State-maintained system. An argument may be made that cities have authority under Article 10A of Chapter 160A of the General Statutes to impose a special assessment for this purpose, but it is not clear.



North Carolina General Assembly
House Committee on Finance

Minutes

April 21, 2011

The House Committee on Finance met on Thursday, April 21, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chair Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Faison, Hackney, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Ross, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, Brian Silvka, Jonathan Tart, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Starnes called the meeting to order at 8:33 am and recognized the five (5) pages present: (1) Callie Pruett of Haywood County sponsored by Representative Rapp; (2) Caroline Morelock of Mecklenburg County sponsored by Representative Brown; (3) Ashley Saltzman of Wake County sponsored by Representative Murry; (4) Maleah Murray of Columbus County sponsored by Representative Hill; and (5) Ian Ratcliff of Wake County sponsored by Representative Dollar.

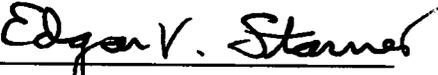
The first bill considered by the Committee was **SB 137 Establish Forgivable Loan Fund** (see **attachment 3**). The Chair recognized Senator Stevens to explain the bill. The Chair recognized Representative Moffitt who sent forth amendment 1 that moved to amend the bill on page 1, line 20 by rewriting that line and on page 5, line 7 by deleting the word "Education." and substituting the word "Education." (see **attachment 4**). Being no further discussion or debate, the Chair called for the ayes and noes on amendment 1. The motion to adopt amendment 1 passed. The motion carried. Chairman Starnes recognized Representative Ross who moved that SB 137, as amended and rolled into a proposed committee substitute, be given a favorable report, unfavorable report to the original bill. The motion carried.

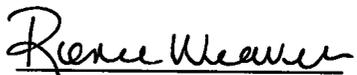
The next bill to be heard by the Committee was **HB 160 Check-Off Donation: Breast Cancer Screening** (see **attachment 5**). The Chair recognized Representatives Dollar and Stevens to explain the bill. Chairman Starnes then recognized Canaan Huie, General Counsel for the North Carolina Department of Revenue who spoke in opposition of the bill. Representative Howard was recognized and she moved that HB 160 be given a favorable report and requested a show of hands. The motion was set aside for further discussion. The Chair then recognized Linda Rascoe, Program Director of the North Carolina Cancer and Prevention Control program with the Department of

Health and Human Services, who spoke in favor of the bill. Being no further debate or discussion, Chairman Starnes recognized Representative Howard to restate her motion that HB 160 be given a favorable report. The Chair called for a show of hands for the motion. The vote being 17 affirmative and 1 against, the motion carried.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 9:46 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 160 A BILL TO BE ENTITLED AN ACT TO PROVIDE SPACE ON THE INCOME TAX RETURN FOR INDIVIDUALS TO MAKE DONATIONS FOR EARLY DETECTION OF BREAST AND CERVICAL CANCER AS PROVIDED BY THE BREAST AND CERVICAL CANCER CONTROL PROGRAM.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

House Committee Substitute # 1 for

SB 137 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE FORGIVABLE EDUCATION LOANS FOR SERVICE PROGRAM AND THE FORGIVABLE EDUCATION LOANS FOR SERVICE FUND AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON STATE FUNDED STUDENT FINANCIAL AID.

With a favorable report as to House committee substitute bill 2, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

AGENDA
House Finance Committee

Thursday, April 21, 2011

8:30 am

Room 544 LOB

Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 160 Check-Off Donation: Breast Cancer Screening

Representatives Dollar, Justice, Howard, Stevens

SB 137 Establish Forgivable Loan Fund

Senators Stevens, Vaughan

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: APRIL 21, 2011

Room: 544

*Name: Callie Pruett

County: HAYWOOD

Sponsor: RAY RAPP

*Name: Caroline Morelock

County: Mecklenburg

Sponsor: Rayne Brown

*Name: Ashley Saltzman

County: Wake

Sponsor: MURRY

*Name: Maleah Murray

County: Columbus

Sponsor: D. Hill

*Name: Jan Ratcliff

County: Wake

Sponsor: N. Dollar

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: KEN KIRBY

2. Name: JOHN BRANDON

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

April 21, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Canaan Hove	NC DOR
Lawa Parkinson	American Cancer Society
Debbie Adams	Division of Public Health
Lida Rascoe	nc Div. of Public Health
Jus Hayes	NCMBN
J Goodman	NC CHAMBER
Lachelle Pulliam	Dmd Wainwright's office
Enica Nelson	NCCLP
Larry Baldwin	Neuse Riverkeeper Foundation

VISITOR REGISTRATION SHEET

House Finance

April 21, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rick Zechini	Progress Energy
Lakeisha Johnson	Division of Public Health
Holly Hawthorne	Division of Public Health
Christine Weason	American Cancer Society
Jannal Jno	NCHA
Bo Heath	MWC
Alan Briggs	NC Food Banks
Sydney Zee	NCAHID

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

3

SENATE BILL 137*
Second Edition Engrossed 3/22/11
House Committee Substitute Favorable 4/6/11

Short Title: Establish Forgivable Loan Fund.

(Public)

Sponsors:

Referred to:

February 28, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE FORGIVABLE EDUCATION LOANS FOR SERVICE
3 PROGRAM AND THE FORGIVABLE EDUCATION LOANS FOR SERVICE FUND
4 AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON STATE-FUNDED
5 STUDENT FINANCIAL AID.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Effective July 1, 2011, Part 1 of Article 23 of Chapter 116 of the
8 General Statutes is amended by adding a new section to read:

9 **"§ 116-209.45. Forgivable Education Loans for Service Program and Fund.**

10 (a) Policy. – The General Assembly finds that it is in the public interest to provide
11 financial assistance in the form of forgivable loans for service to qualified students who are
12 committed to working in the State in order to respond to critical employment shortages.

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

14 (1) Eligible Institution. – Notwithstanding G.S. 116-201(b)(5) and
15 G.S. 116-201(b)(6) and for purposes of this section only, an institution of
16 higher education that is any of the following:

17 a. A postsecondary constituent institution of The University of North
18 Carolina as defined in G.S. 116-2(4).

19 b. A community college as defined in G.S. 115D-2(2).

20 c. A nonprofit postsecondary institution as defined in G.S. 116-22(1).

21 d. A postsecondary institution owned or operated by a hospital
22 authority as defined in G.S. 131E-16(14).

23 e. A school of nursing affiliated with a nonprofit postsecondary
24 institution as defined in G.S. 116-22(1).

25 f. Another public or nonprofit postsecondary institution offering a
26 program of study not otherwise available in North Carolina that is
27 deemed to be eligible under rules promulgated by the Authority.

28 (2) Fund. – The Forgivable Education Loans for Service Fund.

29 (3) Loan. – A forgivable loan made under the Program.

30 (4) Program. – The Forgivable Education Loans for Service Program.

31 (c) Establish Forgivable Education Loans for Service Program. – There is established
32 the Forgivable Education Loans for Service Program to be administered by the Authority. The
33 purpose of the Program is to facilitate and promote the making, insuring, and collection of
34 loans from the Forgivable Education Loans for Service Fund. The Program shall initially target
35 future teachers, nurses, and allied health professionals.



1 (d) Establish Forgivable Loans for Service Fund. – There is established the Forgivable
2 Education Loans for Service Fund to be administered by the Authority. The purpose of the
3 Fund is to provide financial assistance to qualified students to enable them to obtain the
4 requisite education beyond the high school level to work in North Carolina in certain high-need
5 professions as identified by the General Assembly and to respond to current as well as future
6 employment shortages in North Carolina.

7 (e) Eligibility for Loans. – The Authority shall establish the criteria for initial and
8 continuing eligibility to participate in the Program. All loan recipients shall be residents of
9 North Carolina and shall attend an eligible institution.

10 The Authority shall adopt standards deemed appropriate by the Authority to ensure that
11 only qualified, potential recipients receive a loan under the Program. The standards may
12 include minimum grade point average and satisfactory academic progress.

13 (f) Loan Terms and Conditions. – The following terms and conditions shall apply to
14 each loan made pursuant to this section:

15 (1) Promissory note. – All loans shall be evidenced by promissory notes made
16 payable to the Authority.

17 (2) Interest. – All promissory notes shall bear an interest rate established by the
18 Authority that does not exceed ten percent (10%) and is in relation to the
19 current interest rate for nonneed-based federal loans made pursuant to Title
20 IV of the Higher Education Act of 1965, as amended. Interest shall accrue
21 from the date of disbursement of the loan funds.

22 (3) Loan amount. – The Authority shall establish the amount of the loan based
23 on funds available and factors such as the recipient's educational program,
24 enrollment status, and field of study.

25 (4) Repayment. – The Authority shall establish the criteria for loan forgiveness
26 for employment in a designated field in North Carolina. These criteria may
27 provide for accelerated repayment and less than full-time employment
28 options. The Authority shall collect cash repayments when service
29 repayment is not completed. The Authority shall establish the terms for cash
30 repayment, including a minimum monthly repayment amount and maximum
31 period of time to complete repayment.

32 (5) Death and disability. – The Authority may forgive all or part of a loan if it
33 determines that it is impossible for the recipient to repay the loan in cash or
34 service because of the death or disability of the recipient.

35 (6) Hardship. – The Authority may grant a forbearance, a deferment, or both in
36 hardship circumstances when a good faith effort has been made to repay the
37 loan in a timely manner.

38 (7) Other. – The Authority may establish other terms and conditions that are
39 necessary or convenient to effectuate the Program.

40 (g) Advisory Group. – The Authority shall appoint an advisory group composed of, at
41 minimum, appropriate representatives from higher education institutions and health and labor
42 departments, agencies, or commissions to make recommendations to the Authority regarding
43 the Authority's future apportionment and distribution of Program loans based on projected labor
44 market shortages, higher education enrollment projections, and other relevant information.

45 (h) Use of Fund Monies. – All funds appropriated to or otherwise received by the
46 Authority to provide loans through the Program, all funds received as repayment of loans, and
47 all interest earned on these funds shall be placed in the Fund. The Fund shall be used only for
48 loans made pursuant to this section and for administrative costs of the Authority.

49 (i) Rule-making Authority. – The Authority may adopt rules necessary to implement,
50 administer, and enforce the provisions of this section.

1 (j) Report to the General Assembly. – The Authority shall report no later than
2 December 1, 2013, and annually thereafter to the Joint Legislative Education Oversight
3 Committee regarding the Fund and loans awarded from the Fund."

4 **SECTION 2.(a)** G.S. 90-171.100 and G.S. 90-171.101 are repealed.

5 **SECTION 2.(b)** All financial obligations to any student awarded a scholarship
6 loan from the Graduate Nurse Scholarship Program for Faculty Production Fund before July 1,
7 2012, shall be fulfilled with funds from the Forgivable Education Loans for Service Fund
8 established under G.S. 116-209.45 provided the student remains eligible under the provisions
9 of the Graduate Nurse Scholarship Program for Faculty Production Fund. All contractual
10 agreements between a student awarded a scholarship loan from the Graduate Nurse Scholarship
11 Program for Faculty Production Fund before July 1, 2012, and the State Education Assistance
12 Authority remain enforceable and the provisions of G.S. 90-171.100 and G.S. 90-171.101 that
13 would be applicable but for this section shall remain applicable with regard to any scholarship
14 loan awarded before July 1, 2012.

15 **SECTION 2.(c)** All assets and liabilities in the Graduate Nurse Scholarship
16 Program for Faculty Production Fund shall be transferred to the Forgivable Education Loans
17 for Service Fund established under G.S. 116-209.45.

18 **SECTION 3.(a)** G.S. 90-171.60, 90-171.61, and 90-171.62 are repealed.

19 **SECTION 3.(b)** All financial obligations to any student awarded a scholarship
20 loan from the Nursing Scholars Program Fund and the Masters Nursing Scholars Program Fund
21 before July 1, 2012, shall be fulfilled with funds from the Forgivable Education Loans for
22 Service Fund established under G.S. 116-209.45 provided the student remains eligible under
23 the provisions of the Nursing Scholars Program Fund and the Masters Nursing Scholars
24 Program Fund. All contractual agreements between a student awarded a scholarship loan from
25 the Nursing Scholars Program Fund and the Masters Nursing Scholars Program Fund before
26 July 1, 2012, and the State Education Assistance Authority remain enforceable and the
27 provisions of G.S. 90-171.60, 90-171.61, and 90-171.62 that would be applicable but for this
28 section shall remain applicable with regard to any scholarship loan awarded before July 1,
29 2012.

30 **SECTION 3.(c)** All assets and liabilities in the Nursing Scholars Program Fund
31 and the Masters Nursing Scholars Program Fund shall be transferred to the Forgivable
32 Education Loans for Service Fund established under G.S. 116-209.45.

33 **SECTION 4.(a)** G.S. 90-171.65 is repealed.

34 **SECTION 4.(b)** All financial obligations to any student awarded a scholarship
35 loan from the Nurse Education Scholarship Loan Fund before July 1, 2012, shall be fulfilled
36 with funds from the Forgivable Education Loans for Service Fund established under
37 G.S. 116-209.45 provided the student remains eligible under the provisions of the Nurse
38 Education Scholarship Loan Fund. All contractual agreements between a student awarded a
39 scholarship loan from the Nurse Education Scholarship Loan Fund before July 1, 2012, and
40 the State Education Assistance Authority remain enforceable and the provisions of
41 G.S. 90-171.65 that would be applicable but for this section shall remain applicable with regard
42 to any scholarship loan awarded before July 1, 2012.

43 **SECTION 4.(c)** All assets and liabilities in the Nurse Education Scholarship Loan
44 Fund shall be transferred to the Forgivable Education Loans for Service Fund established under
45 G.S. 116-209.45.

46 **SECTION 5.(a)** G.S. 116-40.10 is repealed.

47 **SECTION 5.(b)** All financial obligations to any student awarded a scholarship
48 loan from the Board of Governors' Dental Scholarship Loan Fund before July 1, 2012, shall be
49 fulfilled with funds from the Forgivable Education Loans for Service Fund established under
50 G.S. 116-209.45 provided the student remains eligible under the provisions of the Board of
51 Governors' Dental Scholarship Loan Fund. All contractual agreements between a student

1 awarded a scholarship loan from the Board of Governors' Dental Scholarship Loan Fund before
2 July 1, 2012, and the State Education Assistance Authority remain enforceable and the
3 provisions of G.S. 116-40.10 that would be applicable but for this section shall remain
4 applicable with regard to any scholarship loan awarded before July 1, 2012.

5 **SECTION 5.(c)** All assets and liabilities in the Board of Governors' Dental
6 Scholarship Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund
7 established under G.S. 116-209.45.

8 **SECTION 6.(a)** G.S. 116-40.9 is repealed.

9 **SECTION 6.(b)** All financial obligations to any student awarded a scholarship
10 loan from the Board of Governors' Medical Scholarship Loan Fund before July 1, 2012, shall
11 be fulfilled with funds from the Forgivable Education Loans for Service Fund established under
12 G.S. 116-209.45 provided the student remains eligible under the provisions of the Board of
13 Governors' Medical Scholarship Loan Fund. All contractual agreements between a student
14 awarded a scholarship loan from the Board of Governors' Medical Scholarship Loan Fund
15 before July 1, 2012, and the State Education Assistance Authority remain enforceable and the
16 provisions of G.S. 116-40.9 that would be applicable but for this section shall remain
17 applicable with regard to any scholarship loan awarded before July 1, 2012.

18 **SECTION 6.(c)** All assets and liabilities in the Board of Governors' Medical
19 Scholarship Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund
20 established under G.S. 116-209.45.

21 **SECTION 7.(a)** G.S. 116-209.33 and G.S. 116-209.34 are repealed.

22 **SECTION 7.(b)** All financial obligations to any student awarded a scholarship
23 loan from the Prospective Teachers Scholarship Loan Fund before July 1, 2012, shall be
24 fulfilled with funds from the Forgivable Education Loans for Service Fund established under
25 G.S. 116-209.45 provided the student remains eligible under the provisions of the Prospective
26 Teachers Scholarship Loan Fund. All contractual agreements between a student awarded a
27 scholarship loan from the Prospective Teachers Scholarship Loan Fund before July 1, 2012,
28 and the State Education Assistance Authority remain enforceable and the provisions of
29 G.S. 116-209.33 and G.S. 116-209.34 that would be applicable but for this section shall remain
30 applicable with regard to any scholarship loan awarded before July 1, 2012.

31 **SECTION 7.(c)** All assets and liabilities in the Prospective Teachers Scholarship
32 Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund established
33 under G.S. 116-209.45.

34 **SECTION 8.** G.S. 116-209.35 is repealed.

35 **SECTION 9.(a)** G.S. 116-209.30 is repealed.

36 **SECTION 9.(b)** All contractual agreements between a student awarded a
37 scholarship loan from the Social Workers' Education Loan Fund before July 1, 2012, and the
38 State Education Assistance Authority remain enforceable and the provisions of
39 G.S. 116-209.30 that would be applicable but for this section shall remain applicable with
40 regard to any scholarship loan awarded before July 1, 2012.

41 **SECTION 9.(c)** All assets and liabilities in the Social Workers' Education Loan
42 Fund shall be transferred to the Forgivable Education Loans for Service Fund established under
43 G.S. 116-209.45.

44 **SECTION 10.(a)** All financial obligations to any student awarded a scholarship
45 loan from the Student Loan Program for Health, Science and Mathematics Fund before July 1,
46 2012, shall be fulfilled with funds from the Forgivable Education Loans for Service Fund
47 established under G.S. 116-209.45 provided the student remains eligible under the provisions
48 of the Student Loan Program for Health, Science and Mathematics Fund. All contractual
49 agreements between a student awarded a scholarship loan from the Student Loan Program for
50 Health, Science and Mathematics Fund before July 1, 2012, and the State Education Assistance
51 Authority regarding the loan remain enforceable.

1 **SECTION 10.(b)** All assets and liabilities in the Student Loan Program for Health,
2 Science and Mathematics Fund shall be transferred to the Forgivable Education Loans for
3 Service Fund established under G.S. 116-209.45.

4 **SECTION 11.** All assets and liabilities in the Future Teachers of North Carolina
5 Fund shall be transferred to the Forgivable Education Loans for Service Fund established under
6 G.S. 116-209.45.

7 **SECTION 12.** All assets and liabilities in the Physical Education. – Coaching
8 Scholarship Loan Fund shall be transferred to the Forgivable Education Loans for Service Fund
9 established under G.S. 116-209.45.

10 **SECTION 13.** All assets and liabilities in the Optometry Scholarship Loan Fund
11 shall be transferred to the Forgivable Education Loans for Service Fund established under
12 G.S. 116-209.45.

13 **SECTION 14.** Except as otherwise provided herein, this act becomes effective July
14 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: April 20, 2011

TO: Rep. Starnes
Rep. Howard
Rep. Setzer

FROM: Andrea Poole
Fiscal Research Division

RE: Senate Bill 137 (Third Edition)

FISCAL IMPACT

Yes () No (x) No Estimate Available ()

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES:

EXPENDITURES:

POSITIONS
(cumulative):

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: See bill summary.

BILL SUMMARY:

Senate Bill 137 consolidates twelve scholarship-loan and scholarship programs to establish the new Forgivable Education Loans for Service Program (FELS) and Fund. Of the twelve funds consolidated, eight are currently operating programs and the remaining four are for programs no longer in operation, but still receiving repayments from past recipients. The existing programs are funded from both General Fund and Escheat Fund money, and target students in health, science, mathematics, and teaching careers. The State Education Assistance Authority (SEAA) administers the twelve funds.

The new FELS would provide financial assistance in the form of forgivable loans to qualified students for certain high-need professions. Loans could be forgiven through employment in a designated field in North Carolina. The program would be able to respond to current and future employment needs in the State, and would initially target future teachers, nurses, and allied health professionals. The State Education Assistance Authority (SEAA) would administer the Program and Fund. The bill requires SEAA to make a report on loans from the Fund no later than December 1, 2013 and annually thereafter to the Joint Legislative Education Oversight Committee.

The new program is established as of July 1, 2011. The twelve existing programs are consolidated into the new FELS program as of July 1, 2012.

ASSUMPTIONS AND METHODOLOGY:

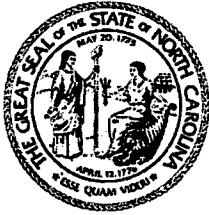
The bill transfers all assets and liabilities of the twelve funds into the Forgivable Education Loans for Service Fund, but does not change the total amount of funding available for the programs. Therefore, there is no fiscal impact.

It is important to note, however, that SEAA's administrative expenses for these programs have historically been paid from federal receipts generated from new loan originations under the Federal Family Education Loan program. This federal program has ended, and those receipts will no longer be available for purposes of administration of State programs, including those that Senate Bill 137 would combine into FELS. The bill does permit the SEAA to use the Fund for administrative costs as well as for loans, as is done for other SEAA-administered State programs. If SEAA does use a portion of the funds for administration, it would reduce the amount available for scholarship-loans, but would not change the total program funding.

SOURCES OF DATA:

State Education Assistance Authority

TECHNICAL CONSIDERATIONS: None



SENATE BILL 137: Establish Forgivable Loan Fund

2011-2012 General Assembly

Committee: House Finance

Introduced by: Sens. Stevens, Vaughan

Analysis of: Third Edition

Date: April 12, 2011

Prepared by: Cindy Avrette

Committee Counsel

SUMMARY: *Senate Bill 137¹ would consolidate specific existing financial aid programs to establish the new Forgivable Education Loans for Service Program and Fund. The State Education Assistance Authority (SEAA) would administer the Program and Fund. The SEAA would make a report on loans from the Fund no later than December 1, 2013 and annually thereafter to the Joint Legislative Education Oversight Committee. The purpose of the Fund would be twofold:*

- *To provide financial assistance to qualified students for certain high-need professions*
- *To respond to current and future employment needs in the State.*

The bill received a favorable report from the House Committee on Education on April 6, 2011.

BILL ANALYSIS: Senate Bill 137 is a recommendation of the Joint Select Committee on State Funded Student Financial Aid that consolidates the following funds into the newly created Forgivable Education Loans for Service Fund:

- | | |
|--|--|
| * Graduate Nurse Scholarship Program for Faculty Production Fund | *Teacher Assistant Scholarship Fund |
| *Nurse Education Scholarship Loan Fund | *Social Workers' Education Loan Fund |
| *Nursing Scholars Program Fund | *Student Loan Program for Health, Science and Mathematics Fund |
| *Board of Governors' Dental Scholarship Loan Fund | *Future Teachers of North Carolina Fund |
| *Board of Governors' Medical Scholarship Loan Fund | *Physical Education-Coaching Scholarship Loan Fund |
| *Prospective Teachers Scholarship Loan Fund | *Optometry Scholarship Loan Fund |

Section 1 would create the Forgivable Education Loan for Service Program and Fund to provide financial assistance to qualified students to prepare them for certain high-need professions, initially targeting future teachers, nurses and other allied health professionals. The State Education Assistance Authority would be responsible for: 1) administering the program, 2) adopting the eligibility criteria to participate in the Program, 3) establishing the interest rate, loan amount and repayment terms for the loans, 4) appointing an advisory group to make recommendations on the future distribution of loans, 5) making an annual report to the Joint Legislative Education Oversight Committee beginning December 1, 2013, and 6) adopting the rules necessary to implement and administer the Program.

Sections 2 through 7 and Section 9 would terminate the existing funds, repeal the statutes that created the existing funds, transfer the assets and liabilities to the Forgivable Education Loans for Service Fund, provide that financial obligations to students who received loans from the terminated funds will be honored under the new Program, and that all contractual agreements between a student with an award from a terminated program and the Authority would remain enforceable. The affected existing programs are: Graduate Nurse Scholarship Program for Faculty Production Fund, Nursing Scholars Program Fund and Masters Nursing Scholars Program Fund, Nurse Education Scholarship Loan Fund,

¹ As introduced, this bill is identical to House Bill 120, introduced by Representatives Rapp, Bell, and Glazier.

Senate Bill 137

Page 2

Board of Governors' Dental Scholarship Loan Fund, Board of Governors' Medical Scholarship Loan Fund, the Prospective Teachers Scholarship Loan Fund, and the Social Workers' Education Loan Fund.

Section 8 would repeal the Teacher Assistant Scholarship Fund.

Section 10 would transfer the assets and liabilities in the Student Loan Program for Health, Science and Mathematics to the Forgivable Education Loans for Service Fund, and provide that financial obligations to students who received loans from the terminated fund will be honored under the new Program.

Sections 11 through 13 would transfer the assets and liabilities in the Future Teachers of North Carolina Fund, Physical Education-Coaching Scholarship Loan, and the Optometry Scholarship Loan Fund to the Forgivable Education Loans for Service Fund.

EFFECTIVE DATE: Section 1 of the bill would become effective July 1, 2011 and the remaining sections of the bill would become effective July 1, 2012.

BACKGROUND: In October 2009, the Joint Select Committee on State Funded Student Financial Aid was created, in part, to study the feasibility of consolidating existing scholarship, loan, and grant programs, especially those programs available for teacher education students. In April 2010, the Committee heard a presentation to consolidate eight existing career-based financial aid programs into one program of "forgivable loans for service" that was supported by UNC President Erskine Bowles and Community Colleges President Scott Ralls.

The Committee's interim report to the 2010 Session of the General Assembly included recommended legislation to create a Work Group to design the forgivable loans for service program. The Work Group included representatives of the State Education Assistance Authority, The University of North Carolina System, the North Carolina Community College System, the NC Independent Colleges and Universities and the NC General Assembly Fiscal Research Division. The Work Group was directed to design a "forgivable loans for service" program that combined at least the following existing programs: the Nurse Educators of Tomorrow; Nurse Scholars Program; Nurse Education Scholarship Loan Program; Board of Governors Medical Scholarship Loans; Board of Governors Dental Scholarship Loans; Health, Science, and Mathematics Student Loan Program; Prospective Teacher Scholarship Loan Program; and the Teacher Assistant Scholarship Loan Program. The consolidated program is to initially focus on the high needs areas of teaching and health professions (including nursing, allied health, and medical, dental and pharmacy careers. The Work Group recommends that loan offers to students would begin in Spring 2012 for academic terms beginning after July 1, 2012 and full implementation would begin in the 2012-13 academic year.

Dr. Steve Brooks, Executive Director, State Education Assistance Authority, presented the Work Group's recommended legislative proposal to the Committee on October 19, 2010. The Committee adopted the Work Group's legislative proposal which became Senate Bill 137.

Sara Kamprath, counsel to the Senate Education/Higher Education Committee, substantially contributed to this summary.

S137-SMRB-29(e3) v1

#4



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 137*

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S137-ARB-13 [v.1]

Page 1 of 1

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

Date 4.21, 2011

Representative ~~Starr~~ MOFFITT

1 moves to amend the bill on page 1, line 20 by rewriting the line to read:
2

3 "c. A nonprofit postsecondary institution as defined in G.S. 116-22(1) or
4 G.S. 116-43.5.";
5

6 And on page 5, line 7 by deleting the word "Education." and substituting the word "Education".

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



* S 1 3 7 - A R B - 1 3 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 160

Short Title: Check-Off Donation: Breast Cancer Screening. (Public)

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

Referred to: Health and Human Services, if favorable, Finance.

February 23, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SPACE ON THE INCOME TAX RETURN FOR INDIVIDUALS TO
MAKE DONATIONS FOR EARLY DETECTION OF BREAST AND CERVICAL
CANCER AS PROVIDED BY THE BREAST AND CERVICAL CANCER CONTROL
PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 105 of the General Statutes is amended by
adding a new section to read:

"§ 105-269.7. Contribution by individual for early detection of breast and cervical cancer.

An individual entitled to a refund of income taxes under Part 2 of Article 4 of this Chapter may elect to contribute all or part of the refund to be used for early detection of breast and cervical cancer at the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The Secretary shall include in the income tax instructions an explanation that the contributions will be used for early detection of breast and cervical cancer only. The election becomes irrevocable upon filing the individual's income tax return for the taxable year.

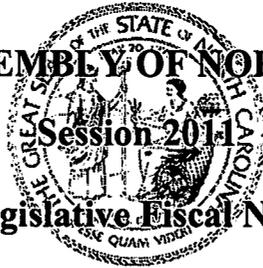
The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer to be distributed for early detection of breast and cervical cancer. The State Treasurer shall distribute the contributions to the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services. Funds distributed pursuant to this section shall be used only for early detection of breast and cervical cancer and shall be used in accordance with North Carolina's Breast and Cervical Cancer Control Program's policies and procedures."

SECTION 2. The General Assembly finds that the funds generated by this act are intended to be additional funding for early detection of breast and cervical cancer and are not intended to replace current appropriations for early detection of breast and cervical cancer.

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2011.



GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 160 (First Edition)

SHORT TITLE: Check-Off Donation: Breast Cancer Screening.

SPONSOR(S): Representatives Howard, Justice, Dollar, and Stevens

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES

General Fund

* Unknown revenue increase, – current Wildlife Fund check-off generates approximately \$400,000 annually.*

EXPENDITURES

Department of Revenue

See Assumptions & Methodology

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 2011

BILL SUMMARY:

SOURCE: BILL DIGEST H.B. 160 (02/22/0201)

Section 1: Enacts new GS 105-269.7 to allow an individual entitled to an income tax refund to elect to contribute all or part of the refund to the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services (Branch) to support early detection of breast and cervical cancer. Requires that an explanation stating that the contributions will be used for early detection of breast and cervical cancer only be included in the income tax instructions. Directs the Secretary of Revenue to transmit all contributions to the State Treasurer, who will then distribute the funds to the Branch.

Section 2: Clarifies that the funds generated by the income tax return election will supplement, and not replace, current appropriations for early detection of breast and cervical cancer.

Section 3: Effective for taxable years beginning on or after January 1, 2011.

ASSUMPTIONS AND METHODOLOGY:

Revenues

The bill would allow taxpayers the option to donate all or a portion of their income tax refund to the Division of Public Health to support the early detection of breast and cervical cancer. Because it is not known how many taxpayers would elect to donate, or what amounts would be donated, it is not possible to determine a reliable estimate of additional revenue. There is currently a check-off for the Nongame and Endangered Wildlife Fund. In 2008, 22,595 taxpayers contributed a total of \$485,117 to the Fund.

Expenditures

The Department of Revenue (the Department) estimates that any additional processing necessary to implement the draft bill can be absorbed into current operations. Additional processing would include revising the existing Individual Income Tax Return form (D-400) as follows:

- Business Systems Analyst - 20 hours for analysis
- Business and Technology Applications Analyst - 80 hours for design, development and testing
- Revenue Tax Auditor - 80 hours for acceptance testing (business)

Currently taxpayers can elect to apply all or part of their refund to the NC Nongame and Endangered Wildlife Fund on the form D-400. In addition, each taxpayer can elect to apply \$3 of their tax liability to the NC Public Campaign Fund and/or the NC Political Parties Financing Fund on the form D-400. According to the Department, there will be two lines available on the current form D-400 if the income tax surcharge expires for taxable years beginning on or after January 1, 2011 as currently set forth in G.S. 105-130.3B. There would be no additional cost to revise the form D-400.

This analysis only takes into consideration taxpayer designations as they are allowed by current State statute. If the income tax surcharge does not sunset or if additional taxpayer designations are authorized by the General Assembly, the D-400 may need to increase from two to three pages. If this occurs, based on the 265,000 Form D-400's printed for the tax year 2010, the Department will incur additional printing costs of \$4,526. This estimate does not assume that a new tax form for tax check-offs would be required. This analysis also does not include costs associated with a larger number of check-offs.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 160 (First Edition)

SHORT TITLE: Check-Off Donation: Breast Cancer Screening.

SPONSOR(S): Representatives Howard, Justice, Dollar, and Stevens

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES
General Fund

* Unknown revenue increase – current Wildlife Fund check-off generates approximately \$400,000 annually.*

EXPENDITURES

Department of Revenue

See Assumptions & Methodology

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 2011

BILL SUMMARY:

SOURCE: BILL DIGEST H.B. 160 (02/22/0201)

Section 1: Enacts new GS 105-269.7 to allow an individual entitled to an income tax refund to elect to contribute all or part of the refund to the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services (Branch) to support early detection of breast and cervical cancer. Requires that an explanation stating that the contributions will be used for early detection of breast and cervical cancer only be included in the income tax instructions. Directs the Secretary of Revenue to transmit all contributions to the State Treasurer, who will then distribute the funds to the Branch.

Section 2: Clarifies that the funds generated by the income tax return election will supplement, and not replace, current appropriations for early detection of breast and cervical cancer.

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Revenues

The bill would allow taxpayers the option to donate all or a portion of their income tax refund to the Division of Public Health to support the early detection of breast and cervical cancer. Because it is not known how many taxpayers would elect to donate, or what amounts would be donated, it is not possible to determine a reliable estimate of additional revenue. There is currently a check-off for the Nongame and Endangered Wildlife Fund. In 2008, 22,595 taxpayers contributed a total of \$485,117 to the Fund.

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Currently taxpayers can elect to apply all or part of their refund to the NC Nongame and Endangered Wildlife Fund on the form D-400. In addition, each taxpayer can elect to apply \$3 of their tax liability to the NC Public Campaign Fund and/or the NC Political Parties Financing Fund on the form D-400. According to the Department, there will be two lines available on the current form D-400 if the income tax surcharge expires for taxable years beginning on or after January 1, 2011 as currently set forth in G.S. 105-130.3B. There would be no additional cost to revise the form D-400.

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SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Bondo and Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: April 25, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 160: Check-Off Donation: Breast Cancer Screening

2011-2012 General Assembly

Committee:	House Finance	Date:	April 21, 2011
Introduced by:	Reps. Dollar, Justice, Howard, Stevens	Prepared by:	Greg Roney
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 160 directs the Secretary of Revenue to allow individuals due a State income tax refund to contribute all or part of their tax refund to the North Carolina Breast and Cervical Cancer Control Program (NC BCCCP) within the Division of Public Health of the Department of Health and Human Services.*

CURRENT LAW: G.S. 105-269.5 directs the Secretary of Revenue to allow individuals due a State income tax refund to contribute all or part of their tax refund to the Wildlife Conservation Account established under G.S. 143-247.2 to be used for the management, protection, and preservation of wildlife.

North Carolinians calculate State income tax on a two-page form¹ where one line allows taxpayers to specify an amount donated to the Wildlife Fund. Each additional program eligible for voluntary contributions requires one additional line on the tax form. Future tax law changes may also require additional lines on the tax form. If the capacity of the two-page form is exceeded, then the tax calculation may expand to three pages or require an additional form.

BILL ANALYSIS: House Bill 160 would create a second State program eligible to receive elective contributions from individual taxpayers. Individual taxpayers due a State tax refund would be able to make a donation of some or all of their refund to the NC BCCCP, to the Wildlife Fund, or both. Contributions to the NC BCCCP may only be used for the early detection of breast and cervical cancer.

Section 1 adds a new section to Article 9 of Chapter 105 directing the Secretary of Revenue to provide appropriate language and space on the individual income tax form to make an elective contribution to the NC BCCCP. The instructions to the individual income tax form must explain that the contribution will only be used for early detection of breast and cervical cancer. The election is irrevocable.

The section further directs the Secretary to transmit the contributions to the State Treasurer to be distributed to the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services.

The section provides these funds shall be used only for early detection of breast and cervical cancer.

Section 2 states the intent of the General Assembly that voluntary contributions are additional funding for NC BCCCP and are not to be substituted for current appropriations to NC BCCCP.

BACKGROUND: Every state with a broad-based income tax has at least one program eligible for voluntary contributions from taxpayers. For all states, the voluntary contributions are donations from a taxpayer's refund (except checkoffs for political campaigns which are often made from a taxpayer's liability). The number of programs eligible for voluntary contribution has increased rapidly among

¹ Pages 1 and 2 of the North Carolina Income Tax Return calculate State income tax. A copy of the Return is attached to this summary. Pages 3 and 4 of the tax form are adjustments to State taxable income that are totaled and entered on pages 1 and 2. Page 4 also contains the signature block.

House Bill 160

Page 2

states with 103 programs in 1989, 179 programs in 2000, and 220 programs in 2003. Currently, Virginia has the most voluntary contribution programs with 154 programs.

Twelve states have procedures to remove programs from the list of entities eligible for voluntary contributions. The most popular method is requiring a minimum amount of total contributions to remain on the income tax form. At least two states set a maximum number of programs that can be listed on the tax return which conserves the lines available on the tax form. Finally, three states sunset the legislation that added the program to the list of eligible programs.

EFFECTIVE DATE: This act becomes effective for taxable years beginning on or after January 1, 2011.

Shawn Parker, counsel to House Health and Human Services, substantially contributed to this summary.

H160-SMTM-2(e1) v8

D-400

Web
11-10

Print in Black or
Blue Ink Only. No
Pencil or Red Ink.

Individual Income Tax Return 2010

North Carolina Department of Revenue
IMPORTANT: Do not send a photocopy of this form.

Staple All Pages of Your Return Here ↑

For calendar year 2010, or fiscal year beginning (MM-DD) ____ - ____ - 10 and ending (MM-DD-YY) ____ - ____ - ____

Your Social Security Number

Spouse's Social Security Number

← You must enter your social security number(s) →

Your First Name (USE CAPITAL LETTERS FOR YOUR NAME AND ADDRESS) M.I. Your Last Name

____ M.I. _____

If a Joint Return, Spouse's First Name M.I. Spouse's Last Name

____ M.I. _____

Address _____ Apartment Number _____

City _____ State _____ Zip Code _____ Country (If not U.S.) _____ County (Enter first five letters) _____

- ← Fill in circle if you or your spouse were out of the country on April 15 and a U.S. citizen or resident.
- Fill in circle if this is an AMENDED 2010 return. Important: You must also complete Form D-400X-WS, Worksheet for Amending 2010 Individual Income Tax Return, and attach it to the front of your amended return. (Note: This form cannot be used for tax years other than 2010.)

Deceased Taxpayer Information	N.C. Public Campaign Fund	N.C. Political Parties Financing Fund
<input type="radio"/> Fill in circle if return is filed and signed by Executor, Administrator or Court-Appointed Personal Representative. Taxpayer (MM-DD-YY) _____ Spouse (MM-DD-YY) _____ If return is for a deceased taxpayer or deceased spouse, enter date of death.	Mark 'Yes' if you want to designate \$3 of taxes to this special Fund for voter education materials and for candidates who accept spending limits. Marking 'Yes' does not change your tax or refund. Fill in appropriate circle You: <input type="radio"/> Yes <input type="radio"/> No Your Spouse: <input type="radio"/> Yes <input type="radio"/> No	Fill in appropriate circle if you want to designate \$3 to this fund. Your tax remains the same whether or not you make a designation. You: <input type="radio"/> Democratic <input type="radio"/> Republican <input type="radio"/> Libertarian <input type="radio"/> Unspecified Your Spouse: <input type="radio"/> Democratic <input type="radio"/> Republican <input type="radio"/> Libertarian <input type="radio"/> Unspecified

Federal Adjusted Gross Income
Enter federal adjusted gross income from your federal return (Form 1040, Line 37; Form 1040A, Line 21; or Form 1040EZ, Line 4) Fill in circle if negative _____ .00

Residency Status Were you a resident of N.C. for the entire year of 2010? Yes No
Was your spouse a resident for the entire year? Yes No
If No, complete Lines 1 through 11. Then go to Page 4 of Form D-400. Fill in residency information and complete Lines 54 through 56.

Filing Status Same as federal. Fill in one circle only. If your spouse was a nonresident and had no North Carolina taxable income in 2010, see the Line Instructions for Lines 1 through 5. If you do not indicate your filing status by filling in one of the circles, any refund due will be delayed.

- Single
- Married Filing Jointly
- Married Filing Separately → (Enter your spouse's full name and Social Security Number) Name _____ SSN _____
- Head of Household
- Qualifying Widow(er) with Dependent Child (Year spouse died: _____)

Enter the Number of Exemptions claimed on your federal income tax return _____

Enter Whole U.S. Dollars Only

- Taxable Income from Your Federal Income Tax Return (Form 1040, Line 43; Form 1040A, Line 27; or Form 1040EZ, Line 6) (If zero, see the Line Instructions) 6. _____ .00
- Additions to Federal Taxable Income All taxpayers must complete Lines 33 through 43 on Page 3 and enter amount from Line 43 7. _____ .00
- Add Lines 6 and 7 8. _____ .00
- Deductions from Federal Taxable Income If applicable, complete Lines 44 through 53 on Page 3 and enter amount from Line 53 9. _____ .00
- Line 8 minus Line 9 10. _____ .00

Example: if amount on Line 6, 8, 10, 11, or 13 is negative, fill in circle.



Staple W-2s Here ↑

Be sure to sign and date your return on Page 4.

11. Enter amount from Line 10	<input type="radio"/>	11.	_____	.00
12. Part-year residents and nonresidents Complete Lines 54 through 56 on Page 4 and enter decimal amount from Line 56		12.	_____	
13. North Carolina Taxable Income Full-year residents enter the amount from Line 11 Part-year residents and nonresidents multiply amount on Line 11 by the decimal amount on Line 12	<input type="radio"/>	13.	_____	.00
14. North Carolina Income Tax - If the amount on Line 13 is less than \$68,000, use the Tax Table beginning on Page 21 of the instructions to determine your tax. If the amount on Line 13 is \$68,000 or more, use the Tax Rate Schedule on Page 29 to calculate your tax.		14.	_____	.00
15. Surtax - If North Carolina Taxable Income, Line 13, exceeds \$50,000, see instructions on Page 32 to determine the amount to enter here.	▶	15.	_____	.00
16. Total North Carolina Income Tax (Add Lines 14 and 15)		16.	_____	.00
17. Tax Credits (From Form D-400TC, Part 4, Line 36 - You must attach Form D-400TC if you enter an amount on this line)	▶	17.	_____	.00
18. Subtract Line 17 from Line 16		18.	_____	.00
19. Consumer Use Tax (See instructions on Page 8)	▶	19.	_____	.00
20. Add Lines 18 and 19		20.	_____	.00
21. North Carolina Income Tax Withheld (Staple original or copy of the original State wage and tax statement(s) in lower left-hand corner of the return)				
a. Your tax withheld	▶	21a.	_____	.00
b. Spouse's tax withheld	▶	21b.	_____	.00
22. Other Tax Payments				
a. 2010 Estimated Tax	▶	22a.	_____	.00
b. Paid with Extension	▶	22b.	_____	.00
c. Partnership	▶	22c.	_____	.00
d. S Corporation	▶	22d.	_____	.00
23. North Carolina Earned Income Tax Credit (From Form D-400TC, Part 5)	▶	23.	_____	.00
24. Tax Credit for Small Businesses That Pay N.C. Unemployment Insurance (From Form D-400TC, Part 6)	▶	24.	_____	.00
25. Add Lines 21a through 24 and enter the total on Line 25		25.	_____	.00
26. a. Tax Due - If Line 20 is more than Line 25, subtract and enter the result	▶	26a.	_____	.00
b. Penalties	▶		_____ .00	
c. Interest	▶		_____ .00	
d. Add Lines 26b and 26c and enter the total on Line 26d		26d.	_____	.00
e. Interest on the underpayment of estimated income tax (See Line instructions and enter letter in box, if applicable)	▶	26e.	_____	.00
27. Add Lines 26a, 26d, and 26e and enter the total - Pay This Amount You can now pay online. Go to our website and click on <u>Electronic Services</u> for details.		27.	\$ _____	.00
28. Overpayment - If Line 20 is less than Line 25, subtract and enter the result		28.	_____	.00
29. Amount of Line 28 to be applied to 2011 Estimated Income Tax	▶	29.	_____	.00
30. Contribution to the N.C. Nongame and Endangered Wildlife Fund	▶	30.	_____	.00
31. Add Lines 29 and 30		31.	_____	.00
32. Subtract Line 31 from Line 28 and enter the Amount To Be Refunded For a faster refund, file electronically. Go to our website and click on <u>efile</u> .	▶	32.	_____	.00

If amount on Line 11 or 13 is negative, fill in circle.
Example:





Please Vote YES on H160 – Breast & Cervical Cancer Check-off Donation

March 23, 2011

Members of the House Committee on Finance
North Carolina General Assembly
State of North Carolina
16 West Jones Street
Raleigh, NC 27601

Re: Please Support H160 Breast & Cervical Cancer Check-off Donation

Dear Honorable Representatives:

The American Cancer Society and Cervical Cancer-Free North Carolina respectfully request your support for H160, Breast & Cervical Cancer Check-off Donation. Our organizations are dedicated to fighting cancer and ensuring vital preventive cancer screening is available to all North Carolinians. H160 would allow taxpayers the opportunity to donate all or part of their tax refund to the NC Breast and Cervical Cancer Early Detection Program (BCCCP).

We commend your insight and courage in hearing H160 and for looking for innovative approaches to continuing to provide vital breast and cervical cancer screening services to uninsured and underinsured residents of North Carolina. Since this body established BCCCP in our state nearly twenty years ago, it has served a valuable role in detecting breast and cervical cancers in women who could otherwise not afford these cancer screening services. When women who have been screened through this program are diagnosed with breast or cervical cancer they are enrolled in the federal Medicaid Breast and Cervical Treatment Program. Together, these programs allow physicians to detect cancer early and treat it, which results in lower medical costs for all involved. This federal Medicaid treatment program is not available to uninsured or underinsured women who receive a diagnosis of breast or cervical cancer outside of the BCCCP program.

In 2010, about 1,340 women in NC lost their battle with breast cancer and 120 women lost their fight with cervical cancer - H160 will save lives. Currently, due to insufficient funding, only 1 of every 7 eligible NC women receives screening through BCCCP. H160 would provide supplemental funding to ensure that more of these eligible women get preventive cancer screening services.



**BlueCross BlueShield
of North Carolina**

An Independent Licensee of the
Blue Cross and Blue Shield Association

PO Box 2291
Durham NC 27702-2291
919-489-7431

**Don W. Bradley, MD
SVP Healthcare & CMO**

March 21, 2011

Honorable Nelson Dollar
North Carolina House of Representatives
300 N. Salisbury Street, Room 307B1
Raleigh, North Carolina 27603-5925

Dear Representative Dollar,

Thank you for your leadership in proposing HB 160 – Check-Off Donation: Breast Cancer Screening. I am pleased to see a piece of legislation that allows an individual to allocate a portion of his/her income tax refund to the state's Breast and Cervical Cancer Control Program (BCCCP) to support early detection of breast and cervical cancer.

As the Chief Medical Officer for Blue Cross and Blue Shield of North Carolina, I know the importance of early detection and treatment of breast cancer and cervical cancer. BCBSNC covers screenings and treatments for our members and provides funding to many organizations to promote health and wellness, including cancer detection. I am encouraged that people may soon have another avenue for supporting early detection.

According to the American Cancer Society's (ACS) *Cancer Facts and Figures-2010*, 6,500 new cases of breast cancer and 360 new cases of cervical cancer occurred in North Carolina. The BCCCP provides an important service to low-income woman by offering free or low-cost breast and cervical cancer screenings and follow-up. According to the BCCCP, 116,523 women qualified for its program, but funding allowed only 17,626 women to be screened. Of those screened, 18% were found to have abnormal results with 241 cases of cancer diagnosed.

I am hopeful that additional funding provided by HB 160 will help more North Carolina women receive life-saving screenings for breast and cervical cancers. Thank you for your work and dedication on this critical health need.

Sincerely,

**Don W. Bradley, M.D., MHS-CL
SVP Healthcare & CMO**

April 8, 2011



The Honorable Governor Beverly Perdue
Office of the Governor
20301 Mail Service Center
Raleigh, NC 27601

Dear Governor Perdue:

The American Cancer Society respectfully requests your **SUPPORT FOR H160, Breast & Cervical Cancer Check-off Donation**. On behalf of our 240,000 volunteers in North Carolina, we are dedicated to fighting cancer and ensuring vital preventive cancer screening is available to all North Carolinians. H160 allows taxpayers the opportunity to donate all or part of their tax refund to the NC Breast and Cervical Cancer Control Program (BCCCP). Eleven other states have implemented this check-off donation and we ask that you help spearhead this legislation to move North Carolina forward to supplement the funding for this life-saving program.

We commend your support for the NC BCCCP and we encourage you to collaborate with your Administration and the sponsors of this legislation in devising innovative approaches to continuing these vital breast and cervical cancer screening services to uninsured and underinsured residents of North Carolina. BCCCP has operated in our state for nearly twenty years. It has saved thousands of lives by its early detection of breast and cervical cancers in women who could otherwise not afford these cancer screening services. Women must be diagnosed through the BCCCP screening program to qualify for the federally funded Medicaid Breast and Cervical Treatment Program. Together, these programs allow physicians to detect and treat cancer early while lowering overall medical costs.

In 2010, approximately 1,340 women in North Carolina died from breast cancer and 120 women died from cervical cancer. Due to insufficient funding, **only 1 of every 7 eligible NC women received screening through BCCCP**. H160 provides supplemental funding to ensure that more of these eligible women get preventive cancer screening services. In fact, just an additional \$500,000 in funding could provide 2000 more screenings for individuals. Two thousand lives could be saved through this new donation option.

Your Administration's support and collaboration with the sponsors of H160, will help ensure that we provide essential breast and cervical cancer screening to more women. We will detect more early stage cancers, which will spare North Carolina high medical costs of advanced stage cancer treatment and ultimately save more lives.

Sincerely,

A handwritten signature in black ink that reads "Nadine Malpass".

Nadine Malpass
State Vice President
American Cancer Society

American Cancer Society South Atlantic Division, Inc.
Serving DE, GA, MD, NC, SC, VA, WV, and Washington, D.C.

8300 Health Park Suite 10 Raleigh, NC 27615 t) 919-334-5218 f) 919-841-1422
Cancer Information 800.ACS.2345 www.cancer.org



Support House Bill 160: Breast and Cervical Cancer Check Off Donation

- This bill allows individuals who are entitled to a state income tax refund to donate all or part of their refund to the North Carolina Breast and Cervical Cancer Control Program (BCCCP)
- This program was established nearly 20 years ago and supports screening and diagnostic testing for early detection of breast and cervical cancer
- Current funding for BCCCP is insufficient to screen all eligible participants. House Bill 160 ensures that more eligible women will receive breast and cervical cancer preventive screenings
- This bill will generate additional funds for the program and it specifies that these donations will supplement, not replace, current appropriations for early detection of breast and cervical cancer

North Carolina Needs Cancer Screenings Provided by the BCCCP Program

- Women who receive a cancer diagnosis through BCCCP are automatically enrolled in the federal Medicaid program to access treatment
- If an uninsured or underinsured woman is screened for cancer outside BCCCP, she is **NOT** eligible for the federally funded treatment program
- The additional cost of late stage cancer treatment for uninsured and/or underinsured individuals is ultimately passed on to the taxpayer and paid for by higher priced insurance premiums.

Breast and Cervical Cancer Control Program Saves Lives and Reduces State Healthcare Costs

- Early diagnosis and treatment of breast and cervical cancer is more cost effective than late stage cancer treatment
- The Breast and Cervical Cancer Control Program provides free pap tests to women aged 18-64 and mammograms to women aged 40-64 who are uninsured and underinsured
- From 2004-09, over 28,000 women in North Carolina were screened by this program, which detected 552 breast cancers and 714 cervical cancers or cancer precursor lesions
- Over 420,000 uninsured women aged 18-64 with a Federal Poverty Level (FPL) less than 250%, and 177,700 women aged 40-64 with a FPL less than 250% resided in North Carolina.
- Over 45% of the women served were racial/ethnic minorities

For more information contact: Christine Weason, Government Relations Director/Lobbyist for the American Cancer Society, (919) 270-4428 or
Jon Carr, Contract Lobbyist for the American Cancer Society, 919.831.4473

- Due to insufficient funding, only 1 out of every 7 eligible NC women is actually screened for breast and cervical cancer through NC Breast and Cervical Cancer Control Program.
- The nominal cost for BCCCP breast and cervical screening and diagnostic tests is \$255 per individual

Cancer is Deadly and Costly to North Carolina

- Breast cancer is the most frequently diagnosed cancer in women and the second leading cause of death among women in the United States
- Last year in North Carolina 6,500 women were diagnosed with breast cancer and 360 women were diagnosed with cervical cancer
- Last year in North Carolina 1,340 women lost their battle with breast cancer and 120 women lost their fight with cervical cancer
- In 2010, breast and cervical cancer accounted for 15% of new cancer cases in North Carolina
- Death rates for breast cancer have steadily decreased in women since 1990. The decrease in breast cancer death rates represents progress due to earlier detection and improved treatment.

Early Detection is Critical

- When breast cancer is detected early the survival rate is 98% - when diagnosed at a late state only 27% of women survive
- Mammography is a very accurate screening tool which can detect breast cancer at an early stage, when treatment is more effective and a cure is more likely
- Mammography will detect about 80-90% of breast cancers in women without symptoms
- Numerous studies have shown that early detection saves lives, increases treatment options, and decreases treatment costs



North Carolina General Assembly
House Committee on Finance

Minutes

~
April 26, 2011

The House Committee on Finance met on Tuesday, April 26, 2011 at 8:00 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, Ken Kirby Larry Elliott, and Young Bae. Staff persons present included Cindy Avrette, Bryce Ball, Rodney Bizzell, Ryan Blackledge, Mark Bondo, Dan Ettefagh, Heather Fennell, Trina Griffin, Claire Hester, Doug Holbrook, Sandra Johnson, Lanier McRee, Michelle Nelson, Karlynn O'Shaughnessy, Greg Roney, Brian Silvka, Jonathan Tart, and Kristin Walker. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairwoman Howard called the meeting to order at 8:00 am and recognized the six (6) pages present: (1) Kirk O'Steen of Wake County sponsored by Representative Jackson; (2) Ethan Dancy of Alexander County sponsored by Representative Hollo; (3) Garrett Stanley of Chowan County sponsored by Representative Spear; (4) Nell Herring of Iredell County sponsored by Representative Mills; (5) Adrian Thompson of Wayne County sponsored by Representative Sager; and (6) Carly Smith of Stanly County sponsored by Representative Tillis.

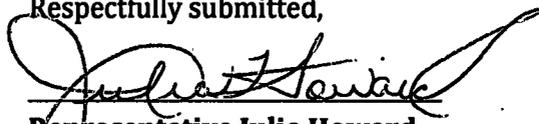
Chairwoman Howard re-referred the following bills to the Subcommittee on Occupancy Tax: HB 96 Additional Alleghany Occupancy Tax; HB 414 Amend Rutherford County Occupancy Tax; and SB 269 Hillsborough Occupancy Tax.

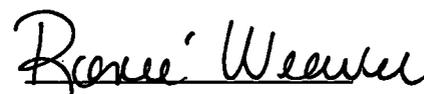
The first bill considered by the Committee was **HB 200 Appropriations Act of 2011** (see **attachment 3**). The Chair recognized Representative Brubaker to explain the bill. Representative Hackney moved to hear the proposed committee substitute for discussion purposes, the motion carried. Representative Brubaker made opening remarks and reminded the Committee the bill before them was not the complete Appropriation Budget but only the fees that are in the Appropriation Budget. Representative Brubaker referred the members to the Fee Adjustments Chart in their folder (see **attachment 4**). Representative Brubaker requested that the Appropriation Subcommittee Chair(s) of Education, Natural & Economic Resources, Justice and Public Safety, General Government and Transportation present and explain their sections of the bill. The Chair acknowledged Representative Blackwell to explain the Education portion of the bill.

Representative West was then recognized to explain the Natural Economic Resources section of the bill with the assistance of staff members Claire Hester and Lanier McRee of Fiscal Research. Chairwoman Howard then recognized Representatives Daughtry, Guice and Randleman to review the Justice and Public Safety section of the bill. Staff member Doug Holbrook of Fiscal Research assisted in answering questions from members. The Chair then recognized staff member Michele Nelson who explained the General Government section on behalf of Representatives Cleveland and Folwell. Staff member Karlynn O'Shaughnessy of Fiscal Research assisted in answering questions from members. The Chair then recognized Representative Killian who reviewed the Transportation piece of the bill. Staff member Bryce Ball of Fiscal Research assisted in answering questions. The Chair recognized Representative Luebke who sent forth amendment 1 that moved to amend the bill on page 19, line 40 (see **attachment 5**). Representative Luebke was recognized to explain his amendment and moved for a favorable vote on amendment 1. Staff member, Brian Slivka of Fiscal Research assisted in answering questions from members. Being no further discussion or debate, the Chair called for ayes and noes on amendment 1. The motion to adopt amendment 1 failed the voice vote. Chairwoman Howard recognized Representative Weiss who sent forth amendment 2 that moved to amend the bill on page 5, line 13 (see **attachment 6**). Representative Weiss explained the amendment. Being no further discussion or debate, the Chair called for a show of hands for amendment 2. The vote being 13 affirmative and 16 against, the amendment failed. The Chair recognized Representative Weiss who sent forth amendment 3 that moved to amend the bill on page 19, line 40 (see **attachment 7**). Representative Weiss explained the amendment. Being no further discussion or debate, the Chair called for ayes and noes on amendment 3. The motion to adopt amendment 3 failed the voice vote. The Chair recognized Representative McComas who sent for amendment 4 that moved to amend the bill on page 9, line 46 and on page 10, line 25 (see **attachment 8**). Representative McComas explained the amendment. Being no further discussion or debate, the Chair called for ayes and noes on amendment 4. The motion to adopt amendment 4 passed the voice vote. The Chair recognized Representative McComas who sent forth amendment 5 that moved to amend the bill on page 15, lines 13 through 15 (see **attachment 9**). Representative McComas explained the amendment. Representative Randleman and staff member Doug Holbrook answered questions from members. Being no further discussion, the Chair called for ayes and noes on amendment 5. The motion to adopt amendment 5 passed the voice vote. Chairwoman Howard recognized Representative Stam who moved that HB 200, as amended and rolled into a proposed committee substitute, be given a favorable report, unfavorable report to the original bill. Representative Luebke requested roll call vote. The clerk called the roll. The vote being 17 affirmative and 14 against, the motion carried (see **attachment 10**).

There being no further business presently before the Committee, Chairwoman Howard adjourned the meeting at 9:54 am.

Respectfully submitted,


Representative Julia Howard
Presiding Senior Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 200 A BILL TO BE ENTITLED AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

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 APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

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

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

#1

AGENDA
House Finance Committee

Tuesday, April 26, 2011

8:00 am

Room 544 LOB

Chaired by: Representative Julia Howard

Call to Order

Introduction of Pages

Bills:

HB 200 Appropriations Act of 2011

Representative Brubaker

HB 318 State Treasurer's Investments

Representatives McGee, Folwell

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Finance

DATE: 4/26/11 Room: 544

*Name: Kirk O'Steen

County: USA - North Carolina - Wake County

Sponsor: _____

*Name: Ethan Dancy

County: Alexander

Sponsor: Mark Hollo

*Name: Garrett Stanley

County: Chowan

Sponsor: Tim Spear

*Name: Nell Herring

County: Iredell

Sponsor: Grey Mills

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1 Name: Fred Hines

4 Name: Ken Kirby

2 Name: John Brandon

5 Name: Larry Elliott

3 Name: Earl Coker

6 Name: Jung Bae

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Finance

DATE: 4-26-11 Room: 544

✓ *Name: Kirk Osteen #6- Carly Smith

County: Wake County Stark

Sponsor: Darren Jackson Tillis

*Name: Ethan Dancy

✓ County: Alexander County

Sponsor: Mark Hollo

✓ *Name: Nell Herring

County: Iredell

Sponsor: Grey Mills

*Name: Garrett Stanley

✓ County: Chowan

Sponsor: Tim Spear

✓ *Name: Adrian Thompson

County: Wayne

Sponsor: Efton Sager

House Sgt-At Arms:

1. Name: _____

4. Name: _____

2. Name: _____

5. Name: _____

3. Name: _____

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

April 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Alexandra Sirota	NC Budget & Tax Center
Carl Dean	OSP
Margaret Matroka	NCHFA
Ha Nguyen	NCCOB
Emily Grimm	MWC
Beverly Gray	g&A
BJ Miller	MOSES CORP
Caroline Valand	LG
Jimmy Broughton	Womble Carlyle
Jonathan Pruitt	UNC - GA
Charles Perone	UNC GA
Terry Ferravich	UNC GA

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House Finance

April 26, 2011

Name of Committee

Date

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NAME	FIRM OR AGENCY AND ADDRESS
Dianna Downey	PSNMC
Ed Finley	NLUU
LYONS GRAY	UNC FA
Alex Miller	KLG
Annette Newkirk	NC CCC
Chris Aguer	DOA
Melanie Soles	DCR
Cathy Hardy	DEDR
Dick Barnes	OSA
Joy Atkin	NEDA
Chloe Gossage	NCAOC

VISITOR REGISTRATION SHEET

House Finance

April 26, 2011

Name of Committee

Date

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NAME	FIRM OR AGENCY AND ADDRESS
JAIME KING	NCEL
MIKE WATERS	NCRPA
Kevin Howell	NCSU
	MISC
Eddie Caldwell	NC Sheriffs' Assn.
	MISC
Dean Plunkitt	PS
Dave Fenton	City of Charlotte
Abbece Truitt	NCAAC
Edwin McLenaghan	NC Justice Center
Beatrice Williams	CUCA

VISITOR REGISTRATION SHEET

House Finance

April 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Caroline Gregory	DOT
Kay Emanuel	Legislative Reporting Services
Mary Bethel	AARP - NC
Perry Newsom	SEC
John [unclear]	State
David [unclear]	NEARC
Jennifer Epperson	NC DOJ
Chip Kilbin	Nelson Mullin
Becki Facteau	NCASA
Marge Foreman	NC AE
Louisa Warner	NCJC

VISITOR REGISTRATION SHEET

House Finance

April 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carl Howell	DST
Ch. ROHLING	AUSTIN & Co.
Fulborn	Bone & Asso.
Elizabeth Robinson	NCRMA
John A. Jones	Public School Forum
Matt Howell	NCSBA
Katherine W. Joyce	NCASA
Mitch Leonard	SEANC
Gene Causby	NCSCA
Burham	TA NCNA
Johnnie McLean	St. Bd. of Elections
Tom Ruston	Asst

VISITOR REGISTRATION SHEET

House Finance

April 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Pynette Jolson

NCAALHO

Julia Adams

The Arc of NC

Doug Miskew

PSG

Kevin Leonard

NCACC

Heather Barrett

Williams Muller

VISITOR REGISTRATION SHEET

House Finance

April 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Bufaff	N.C.B.A.
Amy Whited	NC Medical Society
Ann McCall	SBE
Robert G. Ad	Public Affairs
Amy McConkey	NC Bev Assn
Lesley Gates	WNC
James Stevens	NCNA / Stevens lobby
Paul Toftum	Infow
Canaan Huie	NC DOR
Kristin	IDHLS
Mimi Cooper	Randolph Co. NC Assoc. of Local Health Directors

VISITOR REGISTRATION SHEET

Appropriations Subcommittee on Education
Name of Committee

April 20, 2011 ~~PM~~ AM
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tom Maloney	NCICU
Gene Garity	NCSCA
Matt Farrell	NCSPA
Jay Schalin	Pope Center
M. Hubbard	NCCIU
Rebecca Fuetema	NCASA
Bryan Conrad	OSBM
Elizabeth Grovenstein	OSBM
Tom Seaman	OSBM
Chris Harris	TA/NCAN
LTC Keith Pearce	NCNG

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 200
PROPOSED COMMITTEE SUBSTITUTE H200-CSMCx-5 [v.9]

4/25/2011 1:50:04 PM

Short Title: Appropriations Act of 2011.

(Public)

Sponsors:

Referred to:

March 2, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE REVENUE MODIFICATIONS TO SUPPORT BASE BUDGET
APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS,
INSTITUTIONS, AND AGENCIES.

The General Assembly of North Carolina enacts:

PARTS I-XXIX: RESERVED

PART XXX: CAPITAL PROJECTS

UNC NON-GENERAL FUND CAPITAL PROJECTS

SECTION 30.7.(a) The purpose of this section is (i) to authorize the planning or construction by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in this section for the respective institutions and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, hospital receipts from patient care, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund of the State.

SECTION 30.7.(b) The capital improvements projects, and their respective costs, authorized by this section to be constructed and financed as provided in subsection (a) of this section, including by revenue bonds, by special obligation bonds as authorized in subsection (e) of this section, or by both, are as follows:

Appalachian State University	
Winkler Residence Hall Renovation	\$ 11,805,000
East Carolina University	
Athletic Facilities Expansion and Improvement – Phase 4	
Auxiliary Practice Gymnasium	15,000,000
Fayetteville State University	
Rudolph Jones Student Center Expansion and Renovation	23,289,021
North Carolina A&T State University	



1	New Health Center	10,000,000
2		
3	North Carolina Central University	
4	Chidley Residence Hall Expansion and Renovation	41,193,000
5		
6	North Carolina State University	
7	Centennial Campus Housing Complex	129,000,000
8	Lee Residence Hall and Sullivan Residence Hall	6,000,000
9		
10	The University of North Carolina at Chapel Hill	
11	Carolina Inn Renovation – Phase 2	9,000,000
12	Woollen Gymnasium Renovation – Phase 2	2,650,000
13		
14	The University of North Carolina at Charlotte	
15	New Residence Hall – Phase X	31,045,802
16	New Residence Hall – Phase XI	40,837,005
17	Residence Dining Hall Replacement	29,176,738
18	Parking Deck J	27,418,000
19		
20	The University of North Carolina at Greensboro	
21	Student Recreation Center	91,000,000
22	Tower Village II Residence Hall Acquisition	34,500,000
23	Campus Police Building	10,030,000
24	Village Parking Deck	10,877,000
25		
26	The University of North Carolina at Pembroke	
27	Student Health Services Comprehensive Renovation and Addition	3,950,000
28		
29	Western Carolina University	
30	Walker Residence Hall Expansion and Renovation	17,289,000
31		

32 **SECTION 30.7.(c)** The capital improvements projects, and their respective costs,
33 authorized by this section to be planned and financed as provided in subsection (a) of this
34 section, including by revenue bonds, by special obligation bonds as authorized in subsection (e)
35 of this section, or by both, are as follows:

36		
37	The University of North Carolina at Chapel Hill	
38	Mary Ellen Jones Renovation – Phase 1	\$ 4,000,000
39	Research Building at Carolina North	6,000,000
40		
41	The University of North Carolina at Charlotte	
42	New Residence Hall – Phase XII	3,840,741
43	Cedar, Hickory, and Sycamore Residence Halls Renovation	750,000
44		

45 **SECTION 30.7.(d)** At the request of the Board of Governors of The University of
46 North Carolina and upon determining that it is in the best interest of the State to do so, the
47 Director of the Budget may authorize an increase or decrease in the cost of, or a change in the
48 method of, funding the projects authorized by this section. In determining whether to authorize
49 a change in cost or funding, the Director of the Budget may consult with the Joint Legislative
50 Commission on Governmental Operations.

1 **SECTION 30.7.(e)** Pursuant to G.S. 116D-26, the Board of Governors may issue,
2 subject to the approval of the Director of the Budget, at one time or from time to time, special
3 obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost
4 of acquiring, constructing, or providing for the projects authorized by subsections (b) and (c) of
5 this section. The maximum principal amount of bonds to be issued shall not exceed the
6 specified project costs in subsections (b) and (c) of this section plus five percent (5%) of such
7 amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other
8 related additional costs, plus any increase in the specific project costs authorized by the
9 Director of the Budget pursuant to subsection (d) of this section.

10 **SECTION 30.7.(f)** This section is effective when it becomes law.

11
12 **PART XXXI: FEES**

13
14 **EDUCATION/DRIVER EDUCATION REFORM**

15 **SECTION 31.1.(a)** Subsections (a), (b), and (b1) of G.S. 20-88.1 are recodified as
16 subsections (a), (d), and (e), respectively, of a new section G.S. 115C-215.1, in Article 14 of
17 Chapter 115C of the General Statutes to be entitled "Administration of driver education
18 program by the Department of Public Instruction."

19 **SECTION 31.1.(b)** G.S. 20-11(b) reads as rewritten:

20 "(b) Level 1. – A person who is at least 15 years old but younger than 18 years old may
21 obtain a limited learner's permit if the person meets all of the following requirements:

- 22 (1) Passes a course of driver education prescribed in ~~G.S. 20-88.1~~
23 G.S. 115C-215.1 or a course of driver instruction at a licensed commercial
24 driver training school.
25 (2) Passes a written test administered by the Division.
26 (3) Has a driving eligibility certificate or a high school diploma or its
27 equivalent."

28 **SECTION 31.1.(c)** G.S. 20-88.1, as amended by subsection (a) of this section,
29 reads as rewritten:

30 **"§ 20-88.1. Driver education.**

31 (a) through (b1) Recodified.

32 (c) ~~All expenses~~ Expenses incurred by the State in carrying out the provisions of ~~this~~
33 ~~section~~ the driver education program administered by the Department of Public Instruction in
34 accordance with G.S. 115C-215.1 shall be paid out of the Highway ~~Fund.~~ Fund based on an
35 annual appropriation by the General Assembly.

36 (d) The Division shall prepare a driver license handbook that explains the traffic laws of
37 the State and shall periodically revise the handbook to reflect changes in these laws. At the
38 request of the Department of ~~Education,~~ Public Instruction, the Division shall provide free
39 copies of the handbook to that Department for use in the program of driver education offered at
40 public high schools."

41 **SECTION 31.1.(d)** G.S. 20-322(b) reads as rewritten:

42 "(b) Regulations adopted by the Commissioner shall state the requirements for a school
43 license, including requirements concerning location, equipment, courses of instruction,
44 instructors, financial statements, schedule of fees and charges, character and reputation of the
45 operators, insurance, bond or other security in such sum and with such provisions as the
46 Commissioner deems necessary to protect adequately the interests of the public, and such other
47 matters as the Commissioner may prescribe. A driver education course offered to prepare an
48 individual for a limited learner's permit or another provisional license must meet the
49 requirements set in ~~G.S. 20-88.1~~ G.S. 115C-215.1 for the program of driver education offered
50 in the public schools."

51 **SECTION 31.1.(e)** G.S. 115C-215 is repealed.

1 SECTION 31.1.(f) G.S. 115C-215.1, as enacted by subsection (a) of this section,
2 reads as rewritten:

3 **"§ 115C-215.1. Administration of driver education program by the Department of Public
4 Instruction.**

5 (a) In accordance with criteria and standards approved by the State Board of Education,
6 the State Superintendent of Public Instruction shall organize and administer a standardized
7 program of driver education to be offered at the public high schools of this State for all
8 physically and mentally qualified persons who (i) are older than 14 years and six months, (ii)
9 are approved by the principal of the school, pursuant to rules adopted by the State Board of
10 Education, (iii) are enrolled in a public or private high school within the State, State or are
11 receiving instruction through a home school as provided in Part 3 of Article 39 of Chapter
12 115C of the General Statutes, and (iv) have not previously enrolled in the program. The State
13 Board of Education shall use for such purpose all funds appropriated to it for said purpose, and
14 may use all other funds that become available for its use for said purpose.

15 (b) The driver education program established pursuant to this section must include the
16 following:

- 17 (1) Instruction on the rights and privileges of the handicapped and the signs and
18 symbols used to assist the handicapped relative to motor vehicles, including
19 the "international symbol of accessibility" and other symbols and devices as
20 provided in Article 2A of ~~this Chapter~~. Chapter 20 of the General Statutes.
- 21 (2) At least six hours of instruction on the offense of driving while impaired and
22 related subjects.
- 23 (3) At least six hours of actual driving experience. To the extent practicable, this
24 experience may include at least one hour of instruction on the techniques of
25 defensive driving.
- 26 (4) At least one hour of motorcycle safety awareness training.

27 (c) The State Board of Education shall establish and implement a strategic plan for the
28 driver education program. At a minimum, the strategic plan shall consist of goals and
29 performance indicators, including the number of program participants as compared to the
30 number of persons projected to be eligible to participate in the program, the implementation of
31 a standard curriculum for the program, expenditures for the program, and the success rate of
32 program participants in receiving a drivers license as reported by the Division of Motor
33 Vehicles. The strategic plan shall also outline specific roles and duties of an advisory
34 committee consisting of employees of the Division of Motor Vehicles and the Department of
35 Public Instruction and other stakeholders in driver education.

36 (d) The State Board of Education shall adopt a salary range for driver education
37 instructors who are public school employees and who do not hold teacher certificates.

38 Driver education instructors who are public school employees and who hold teacher
39 certificates shall be paid on the teacher salary schedule. A day of employment for driver
40 education instructors who hold teacher certificates shall be the same number of hours required
41 of all regular classroom teachers as established by the local board of education.

42 (e) The State Board of Education shall adopt rules to permit local boards of education
43 to enter contracts with public or private entities to provide a program of driver education at
44 public high schools. All driver education instructors shall meet the requirements established by
45 the State Board of Education; provided, however, driver education instructors shall not be
46 required to hold teacher certificates."

47 SECTION 31.1.(g) G.S. 115C-216 reads as rewritten:

48 **"§ 115C-216. Boards of education required to provide courses in operation of motor
49 vehicles.**

50 (a) Course of Training and Instruction Required in Public High Schools. – ~~The State~~
51 ~~Board of Education and local~~ Local boards of education ~~are required to provide as a part of the~~

1 ~~program of the public high schools in this State a course of training and instruction in the~~
2 ~~operation of motor vehicles, in accordance with G.S. 20-88.1. shall offer noncredit driver~~
3 ~~education courses in high schools using the standardized curriculum provided by the~~
4 ~~Department of Public Instruction.~~

5 (b) Inclusion of Expense in Budget. – The local boards of education ~~of every local~~
6 ~~school administrative unit are hereby authorized to shall~~ include as an item of instructional
7 service and as a part of the current expense fund of the budget of the ~~several~~ high schools under
8 their supervision, the expense necessary ~~to install and maintain such a course of training and~~
9 ~~instructing eligible persons in such schools in the operation of motor vehicles. to offer the~~
10 ~~driver education course.~~

11 (c) to (f) Repealed by Session Laws 1991, c. 689, s. 32(c).

12 (g) Fee for Instruction. – The local boards of education may charge each student
13 participating in driver education a fee of up to seventy-five dollars (\$75.00) to offset the costs
14 of providing the training and instruction."

15 EDUCATION/STATE BOARD AUTHORITY TO ESTABLISH GED TESTING FEES

16 SECTION 31.2. G.S. 115D-5(s) reads as rewritten:

17 "(s) The State Board of Community Colleges may establish, retain and budget fees
18 charged to students taking the General Education Development (GED) ~~test. test, including fees~~
19 for retesting. Fees collected for this purpose shall be used only to (i) offset the costs of the GED
20 test, including the cost of scoring the test, (ii) offset the costs of printing GED certificates, and
21 (iii) meet federal and State reporting requirements related to the test."
22

23 EDUCATION/NORTH CAROLINA VIRTUAL PUBLIC SCHOOLS ALLOTMENT 24 FORMULA

25 SECTION 31.3.(a) The State Board of Education shall implement an allotment
26 formula for the North Carolina Virtual Public Schools (NCVPS) beginning with the 2011-2012
27 school year. In accordance with Section 7.16 of S.L. 2006-66, the allotment formula shall
28 create a sustainable source of funding that increases commensurate with student enrollment and
29 recognizes "the extent to which projected enrollment in e-learning courses affects funding
30 required for other allotments that are based on average daily membership."
31

32 SECTION 31.3.(b) The State Board shall use only funds provided through the
33 North Carolina Virtual Public Schools Allotment Formula to fund NCVPS.

34 SECTION 31.3.(c) The Department of Public Instruction shall take the following
35 steps to implement the North Carolina Virtual Public Schools Allotment Formula:

- 36 (1) Project NCVPS student enrollment by semester and year-long course types
37 for each local school administrative unit and charter school.
- 38 (2) Establish a per course fee for each course type.
- 39 (3) Multiply the projected NCVPS student enrollment by semester and
40 year-long course for each local school administrative unit and charter school
41 type by the per course fees to determine the total NCVPS cost for each local
42 school administrative unit and charter school.
- 43 (4) Transfer a dollar amount equal to the local school administrative unit's or
44 charter school's total NCVPS cost to NCVPS. For local school
45 administrative units, funds shall be transferred from the classroom teacher
46 allotment to NCVPS. For charter schools, the allotment of State funds will
47 be reduced and transferred to NCVPS.

48 SECTION 31.3.(d) NCVPS shall use the funds transferred to it to provide the
49 NCVPS program at no cost to all students in North Carolina who are enrolled in North
50 Carolina's public schools, Department of Defense schools, and schools operated by the Bureau
51 of Indian Affairs.

1 **SECTION 31.3.(e)** NCVPS shall provide only high school courses and shall not
2 provide any courses in physical education.

3 **SECTION 31.3.(f)** The State Board shall establish a separate per student fee
4 structure for out-of-state students, private school students, and home-schooled students. For the
5 2011-2012 school year, NCVPS shall provide specific instructions on its Web site, describing
6 the steps required for such students to enroll in NCVPS courses and all applicable fees.

7 Beginning with the 2012-2013 school year, NCVPS shall provide an online process
8 by which such students can enroll in NCVPS courses online.

9 **SECTION 31.3.(g)** The Board shall direct NCVPS to develop a plan to generate
10 revenue from the sale of courses to out-of-state educational entities. NCVPS shall submit its
11 plan to the Board by September 15, 2011.

12 **SECTION 31.3.(h)** The Director of NCVPS shall continue to ensure that:

13 (1) Course quality standards are established and met.

14 (2) All e-learning opportunities offered by State-funded entities, other than
15 charter schools, to public school students are consolidated under the North
16 Carolina Virtual Public School program, eliminating course duplication.

17 (3) All courses offered through NCVPS are aligned to the North Carolina
18 Standard Course of Study.

19 **SECTION 31.3.(i)** Funds for the administration of NCVPS shall be capped at a
20 maximum of fifteen percent (15%) per year of the funds transferred to NCVPS.

21 **NER/COMMERCE/SET REGULATORY FEE FOR UTILITIES COMMISSION**

22 **SECTION 31.4.(a)** The percentage rate to be used in calculating the public utility
23 regulatory fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each
24 public utility's North Carolina jurisdictional revenues earned during each quarter that begins on
25 or after July 1, 2011.

26 **SECTION 31.4.(b)** The electric membership corporation regulatory fee imposed
27 under G.S. 62-302(b1) for the 2011-2012 fiscal year is two hundred thousand dollars
28 (\$200,000).

29 **SECTION 31.4.(c)** This section becomes effective July 1, 2011.

30 **NER/AGRICULTURE/INCREASE FEES FOR PET SHOPS, AUCTIONS, KENNELS,** 31 **AND DEALERS**

32 **SECTION 31.5.(a)** G.S. 19A-27 reads as rewritten:

33 "**§ 19A-27. License required for operation of pet shop.**

34 No person shall operate a pet shop unless a license to operate such establishment shall have
35 been granted by the Director. Application for such license shall be made in the manner
36 provided by the Director. The license shall be for the fiscal year and the license fee shall be
37 ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00) for each license period or part thereof
38 beginning with the first day of the fiscal year."

39 **SECTION 31.5.(b)** G.S. 19A-28 reads as rewritten:

40 "**§ 19A-28. License required for public auction or boarding kennel.**

41 No person shall operate a public auction or a boarding kennel unless a license to operate
42 such establishment shall have been granted by the Director. Application for such license shall
43 be made in the manner provided by the Director. The license period shall be the fiscal year and
44 the license fee shall be ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00) for each license
45 period or part thereof beginning with the first day of the fiscal year."

46 **SECTION 31.5.(c)** G.S. 19A-29 reads as rewritten:

47 "**§ 19A-29. License required for dealer.**

48 No person shall be a dealer unless a license to deal shall have been granted by the Director
49 to such person. Application for such license shall be in the manner provided by the Director.
50
51

1 The license period shall be the fiscal year and the license fee shall be ~~fifty dollars~~
2 ~~(\$50.00)~~ seventy-five dollars (\$75.00) for each license period or part thereof, beginning with the
3 first day of the fiscal year."
4

5 **NER/AGRICULTURE/REPEAL BOARD OF AGRICULTURE REVIEW OF FEE**
6 **SCHEDULES**

7 **SECTION 31.6.** G.S. 106-6.1(b) is repealed.
8

9 **NER/AGRICULTURE/FEEES FOR OUT-OF-STATE SOIL TESTS AND EXPEDITED**
10 **SOIL TESTS**

11 **SECTION 31.7.** G.S. 106-22 reads as rewritten:

12 **"§ 106-22. Joint duties of Commissioner and Board.**

13 The Commissioner of Agriculture, by and with the consent and advice of the Board of
14 Agriculture shall:

15 ...

16 (17) Agronomic Testing. – Provide agronomic testing services and charge
17 reasonable fees for plant ~~analysis and analysis,~~ nematode ~~testing-testing,~~
18 out-of-state soil testing, and expedited soil testing. The Board shall charge at
19 least four dollars (\$4.00) for plant ~~analysis and analysis,~~ at least two dollars
20 (\$2.00) for nematode ~~testing-testing,~~ at least five dollars (\$5.00) for
21 out-of-state soil testing, and at least one hundred dollars (\$100.00) for
22 expedited soil testing."
23

24 **NER/AGRICULTURE/TECHNICAL CORRECTIONS REGARDING COMMERCIAL**
25 **FERTILIZER INSPECTION FEE AND PESTICIDE TECHNICIAN**
26 **IDENTIFICATION CARD RENEWAL FEE**

27 **SECTION 31.8.(a)** G.S. 106-671(b) reads as rewritten:

28 "(b) Reporting System. – Each manufacturer, importer, jobber, firm, corporation or
29 person who distributes commercial fertilizers in this State shall make application to the
30 Commissioner for a permit to report the tonnage of commercial fertilizer sold and shall pay to
31 the North Carolina Department of Agriculture and Consumer Services an inspection fee of
32 ~~twenty-five cents (25¢)~~ fifty cents (50¢) per ton. The Commissioner is authorized to require
33 each such distributor to keep such records as may be necessary to indicate accurately the
34 tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner.
35 Such records shall be available to the Commissioner, or his duly authorized representative, at
36 any and all reasonable hours for the purpose of making such examination as is necessary to
37 verify the tonnage statement and the inspection fees paid. Each registrant shall report monthly
38 the tonnage sold to non-registrants on forms furnished by the Commissioner. Such reports shall
39 be made and inspection fees shall be due and payable monthly on the fifteenth of each month
40 covering the tonnage and kind of commercial fertilizers sold during the past month. If the
41 report is not filed and the inspection fee paid by the last day of the month it is due, the amount
42 due shall bear a penalty of ten percent (10%), which shall be added to the inspection fee due. If
43 the report is not filed and the inspection fee paid within 60 days of the date due, or if the report
44 or tonnage be false, the Commissioner may revoke the permit."

45 **SECTION 31.8.(b)** G.S. 106-65.31(b1) reads as rewritten:

46 "(b1) Registration. – Within 75 days after the hiring of an employee who is either an
47 estimator, salesman, serviceman, or solicitor, the licensee shall apply to the Division for the
48 issuance of an identification card for such employee. The application must be accompanied by
49 a fee of forty dollars (\$40.00) for each card. The card shall be issued in the name of the
50 employee and shall bear the name of the employing licensee, the employer's license number
51 and phases, the name and address of the employer's business, and such other information as the

1 Committee may specify. The identification card shall be carried by the employee on his person
2 at all times while performing any phase of structural pest control work. The card must be
3 displayed upon demand by the Commissioner, the Committee, the Division, or any
4 representative thereof, or the person for whom any phase of structural pest control work is
5 being performed. A registered technician's identification card must be renewed annually on or
6 before June 30 by payment of a renewal fee of ~~twenty-five dollars (\$25.00)~~ forty dollars
7 (\$40.00). If a card is lost or destroyed the licensee may secure a duplicate for a fee of five
8 dollars (\$5.00). The licensee shall notify the Division of the termination or change in status of
9 any registered technician. All identification cards expire when a license expires."

10
11 **NER/AGRICULTURE/INCREASE AGRICULTURAL LIMING MATERIALS**
12 **TONNAGE FEES**

13 **SECTION 31.9.** G.S. 106-92.8 reads as rewritten:

14 **"§ 106-92.8. Tonnage fees: reporting system.**

15 For the purpose of defraying expenses connected with the registration, inspection and
16 analysis of the materials coming under this Article, each manufacturer or registrant shall pay to
17 the Department of Agriculture and Consumer Services tonnage fees in addition to registration
18 fees as follows: for agricultural liming material, ~~ten cents (10¢)~~ fifty cents (50¢) per ton; for
19 landplaster, ~~ten cents (10¢)~~ fifty cents (50¢) per ton; excepting that these fees shall not apply to
20 materials which are sold to fertilizer manufacturers for the sole purpose for use in the
21 manufacture of fertilizer or to materials when sold in packages of 10 pounds or less.

22 Any manufacturer, importer, jobber, firm, corporation or person who distributes materials
23 coming under this Article in this State shall make application for a permit to report the
24 materials sold and pay the tonnage fees as set forth in this section.

25 The Commissioner of Agriculture shall grant such permits on the following conditions: The
26 applicant's agreement that he will keep such records as may be necessary to indicate accurately
27 the tonnage of liming materials, etc., sold in the State and his agreement for the Commissioner
28 or this authorized representative to examine such records to verify the tonnage statement. The
29 registrant shall report quarterly and pay the applicable tonnage fees quarterly, on or before the
30 tenth day of October, January, April, and July of each year. The report and payment shall cover
31 the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be on
32 forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the
33 last day of the month in which it is due, or if the report be false, the amount due shall bear a
34 penalty of ten percent (10%) which shall be added to the tonnage fees due. If the report is not
35 filed and the tonnage fees paid within 60 days of the date due, or if the report or tonnage be
36 false, the Commissioner may revoke the permit and cancel the registration."

37
38 **NER/AGRICULTURE/INCREASE ANTIFREEZE DISTRIBUTION REGISTRATION**
39 **FEE**

40 **SECTION 31.10.** G.S. 106-579.4 reads as rewritten:

41 **"§ 106-579.4. Registrations.**

42 On or before the first day of July of each year, and before any antifreeze may be distributed
43 for the permit year beginning July 1, the manufacturer, packager, or person whose name
44 appears on the label shall make application to the Commissioner on forms provided by the
45 latter for registration for each brand of antifreeze which he desires to distribute. The application
46 shall be accompanied by specimens or facsimiles of labeling for all container sizes to be
47 distributed, when requested by the Commissioner; a license and inspection fee of ~~two hundred~~
48 ~~fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) for each brand of antifreeze and a
49 properly labeled sample of the antifreeze shall also be submitted at this time. The
50 Commissioner may inspect, test, or analyze the antifreeze and review the labeling. If the
51 antifreeze is not adulterated or misbranded, if it meets the standards established and

1 promulgated by the Board, and if the said antifreeze is not such a type or kind that is in
2 violation of this Article, the Commissioner shall thereafter issue a written license or permit
3 authorizing the sale of such antifreeze in this State for the fiscal year in which the license or
4 inspection fee is paid. If the antifreeze is adulterated or misbranded, if it fails to meet standards
5 promulgated by the Board, or is in violation of this Article or regulations thereunder, the
6 Commissioner shall refuse to register the antifreeze, and he shall return the application to the
7 applicant, stating how the antifreeze or labeling is not in conformity. If the Commissioner shall,
8 at a later date, find that a properly registered antifreeze product has been materially altered or
9 adulterated, or a change has been made in the name, brand or trademark under which the
10 antifreeze is sold, or that it violates the provisions of this Article, or that it violates regulations,
11 definitions or standards duly promulgated by the Board, he shall notify the applicant that the
12 license authorizing sale of the antifreeze is canceled. No antifreeze license shall be canceled
13 unless the registrant shall have been given an opportunity to be heard before the Commissioner
14 or his duly designated agent and to modify his application in order to comply with the
15 requirements of this Article and regulations, definitions, and standards promulgated by the
16 Board. All fees received by the Commissioner shall be placed in the Department of Agriculture
17 and Consumer Services fund for the purpose of supporting the antifreeze enforcement and
18 testing program."

19
20 **NER/ENVIRONMENT/REDUCE PORTION OF CERTIFICATE OF TITLE FEES**
21 **CREDITED TO MERCURY SWITCH REMOVAL ACCOUNT**

22 **SECTION 31.11.** G.S. 20-85(a1) reads as rewritten:

23 "(a1) One dollar (\$1.00) of the fee imposed for any transaction assessed a fee under
24 subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this section shall be credited to the
25 North Carolina Highway Fund. The Division shall use the fees derived from transactions with
26 the Division for technology improvements. The Division shall use the fees derived from
27 transactions with commission contract agents for the payment of compensation to commission
28 contract agents. An additional ~~one dollar (\$1.00)~~ fifty cents (50¢) of the fee imposed for any
29 transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the
30 Mercury Switch Removal Account in the Department of Environment and Natural Resources."

31
32 **NER/ENVIRONMENT/DIVERT SCRAP TIRE TAX PROCEEDS TO GENERAL**
33 **FUND**

34 **SECTION 31.12.** Notwithstanding the provisions of G.S. 105-187.19(b), effective
35 for taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit to the
36 General Fund the net tax proceeds that G.S. 105-187.19(b) directs the Secretary to credit to the
37 Scrap Tire Disposal Account.

38
39 **NER/ENVIRONMENT/DIVERT WHITE GOODS TAX PROCEEDS TO GENERAL**
40 **FUND**

41 **SECTION 31.13.** Notwithstanding the provisions of G.S. 105-187.24, effective for
42 taxes levied during the 2011-2012 fiscal year, the Secretary of Revenue shall credit to the
43 General Fund the net tax proceeds that G.S. 105-187.24 directs the Secretary to credit to the
44 White Goods Management Account.

45
46 **NER/ENVIRONMENT/LOCALS TO SET AND COLLECT FOOD AND LODGING**
47 **FEES AND RETAIN LARGER LOCAL PORTION OF THESE FEES**

48 **SECTION 31.14.(a)** G.S. 130A-248(d) reads as rewritten:

49 "(d) ~~The Department shall charge each~~ Each establishment subject to this section, except
50 nutrition programs for the elderly administered by the Division of Aging and Adult Services of
51 the Department of Health and Human Services, establishments that prepare and sell meat food

1 products or poultry products, and public school cafeterias, shall be required to pay a fee of
2 seventy-five dollars (\$75.00) not to exceed two hundred fifty dollars (\$250.00) for each permit
3 issued. This fee shall be reassessed annually for permits that do not expire. A grocery store that
4 elects to have separate inspections of its meat and seafood, delicatessen, produce, and bakery
5 operations shall not be assessed a total fee of more than five hundred dollars (\$500.00) for a
6 permit issued under this subsection. The Commission shall adopt rules to implement this
7 subsection. Fees collected under this subsection shall be used for State and local food, lodging,
8 and institution sanitation programs and activities. No more than ~~thirty-three and one-third~~
9 ~~percent (33-1/3%)~~ ten percent (10%) of the fees collected under this subsection may be used to
10 support State health programs and activities. The fees under this subsection shall be set and
11 collected by the local health department or the consolidated human services board, whichever
12 applies, and the local health department or the consolidated human services board, whichever
13 applies, shall send that portion of the fees to support State health programs and activities to the
14 Department of Health and Human Services."

15 **SECTION 31.14.(b)** G.S. 153A-77 is amended by adding a new subsection to
16 read:

17 "(d1) The consolidated human services board shall set fees for local food and lodging
18 permits consistent with the provisions of G.S. 130A-248(d)."

19 **SECTION 31.14.(c)** G.S. 130A-39 is amended by adding a new subsection to read:

20 "(h) A local board of health shall impose a fee for local food and lodging permits
21 consistent with the provisions of G.S. 130A-248(d). When the local health department is a
22 county health department, the county board of commissioners must approve any fee imposed
23 under this subsection. When the local health department is a district health department, the
24 county board of commissioners of each county within the district must approve any fee
25 imposed under this subsection."

26 27 **NER/ENVIRONMENT/ADDITIONAL USES OF HAZARDOUS WASTE FEES**

28 **SECTION 31.15.** G.S. 130A-294.1(b) reads as rewritten:

29 "(b) Funds collected pursuant to this section shall be used for personnel and other
30 resources necessary to:

- 31 (1) Provide a high level of technical assistance and waste minimization effort
32 for the hazardous waste management program;
- 33 (2) Provide timely review of permit applications;
- 34 (3) Insure that permit decisions are made on a sound technical basis and that
35 permit decisions incorporate all conditions necessary to accomplish the
36 purposes of this Part;
- 37 (4) Improve monitoring and compliance of the hazardous waste management
38 program;
- 39 (5) Increase the frequency of inspections;
- 40 (6) Provide chemical, biological, toxicological, and analytical support for the
41 hazardous waste management program; and
- 42 (7) Provide resources for emergency response to imminent hazards associated
43 with the hazardous waste management program.
- 44 (8) Implement and provide oversight of necessary response activities involving
45 inactive hazardous substance or waste disposal sites.
- 46 (9) Provide compliance and prevention activities within the solid waste program
47 to ensure that hazardous waste is not disposed in solid waste management
48 facilities.

49 50 **NER/LABOR/REPEAL STATUTE REQUIRING BIENNIAL REVIEW OF FEES BY** 51 **DEPARTMENT**

1 **SECTION 31.16.** G.S. 95-14.1 is repealed.

2
3 **NER/NATURAL RESOURCES/DIVERT PORTION OF DEED STAMP TAX**
4 **REVENUE SOURCE FOR NATURAL HERITAGE TRUST FUND**

5 **SECTION 31.17.** Notwithstanding the provisions of G.S. 105-228.30(b) and
6 G.S. 113-77.9, effective for taxes levied during the 2011-2012 fiscal year, the Secretary of
7 Revenue shall credit the sum of eight million dollars (\$8,000,000) to the General Fund of the
8 net tax proceeds that G.S. 105-228.30(b) directs the Secretary to credit to the Natural Heritage
9 Trust Fund.

10
11 **NER/NATURAL RESOURCES/PARKS AND RECREATION TRUST FUND;**
12 **ALLOCATION OF DEED STAMP TAX PROCEEDS CREDITED TO FUND**

13 **SECTION 31.18.(a)** Notwithstanding the provisions of G.S. 113-44.15(b),
14 effective for taxes levied during the 2011-2012 fiscal year, the net tax proceeds that are credited
15 to the Parks and Recreation Trust Fund by the Secretary of Revenue pursuant to
16 G.S. 105-228.30(b) shall be allocated as follows:

- 17 (1) Six million dollars (\$6,000,000) shall be used for the operating expenses of
18 the Division of Parks and Recreation of the Department of Environment and
19 Natural Resources;
- 20 (2) Up to eight million dollars (\$8,000,000) shall be used for the State Parks
21 System for capital projects, repairs and renovations of park facilities, land
22 acquisition, and to retire debt incurred for these purposes under Article 9 of
23 Chapter 142 of the General Statutes;
- 24 (3) Up to four million two hundred thirty thousand dollars (\$4,230,000) shall be
25 used for grants to local government units consistent with the match and other
26 requirements set forth in G.S. 113-44.14(b)(2); and
- 27 (4) Up to seven hundred five thousand dollars (\$705,000) shall be used for the
28 Coastal and Estuarine Water Beach Access Program.

29 **SECTION 31.18.(b)** Any funds that become available to the Parks and Recreation
30 Trust Fund during the 2011-2012 fiscal year that are in excess of the funds allocated under
31 subsection (a) of this section shall be used as provided in G.S. 113-44.15(b).

32
33 **NER/NATURAL RESOURCES/DIVERT PORTION OF DEED STAMP TAX**
34 **REVENUE SOURCE FOR PARKS AND RECREATION TRUST FUND**

35 **SECTION 31.19.** Notwithstanding the provisions of G.S. 105-228.30(b) and
36 G.S. 113-44.15, effective for taxes levied during the 2011-2012 fiscal year, the Secretary of
37 Revenue shall credit the sum of eight million four hundred thirty-five thousand dollars
38 (\$8,435,000) to the General Fund of the net tax proceeds that G.S. 105-228.30(b) directs the
39 Secretary to credit to the Parks and Recreation Trust Fund.

40
41 **NER/NATURAL RESOURCES/NEW FUNDING SOURCE FOR WILDLIFE**
42 **RESOURCE COMMISSION OPERATING BUDGET**

43 **SECTION 31.20.(a)** G.S. 105-164.44B is repealed.

44 **SECTION 31.20.(b)** The Office of State Budget and Management, the State
45 Controller, and the Wildlife Resources Commission shall jointly effectuate, beginning with the
46 Wildlife Resources Commission's operating budget for the 2011-2012 fiscal year, the transition
47 from the Wildlife Resources Commission receiving sales tax proceeds to fund its operating
48 budget to the Wildlife Resources Commission receiving an appropriation of eighteen million
49 five hundred thousand dollars (\$18,500,000) from the General Fund to fund its operating
50 budget.

NER/NATURAL RESOURCES/REPEAL DENR REVIEW OF FEE SCHEDULES

SECTION 31.21. G.S. 143B-279.2(4) is repealed.

NER/NATURAL RESOURCES/NO NEW FEES FOR PARKING IN STATE PARKS

SECTION 31.22. Notwithstanding any provision to the contrary, the funds appropriated to the Department of Environment and Natural Resources for State Parks for the 2011-2012 fiscal year and for the 2012-2013 fiscal year shall not be reduced or replaced with fees for parking at State Parks, unless these fees were charged prior to the 2011-2012 fiscal year. No fees shall be charged and no fees shall be collected for parking in a State Park during the 2011-2012 fiscal year and for the 2012-2013 fiscal year, unless these fees were charged prior to the 2011-2012 fiscal year.

JPS/AOC/INCREASE CERTAIN COURT COSTS

SECTION 31.23.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of one hundred twenty-four dollars and fifty cents (~~\$100.50~~)(\$124.50) in the district court, including cases before a magistrate, and the sum of one hundred ~~two~~ fifty-four dollars and fifty cents (~~\$102.50~~)(\$154.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of ~~two dollars and five cents (\$2.05)~~one dollar (\$1.00) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 31.23.(b) G.S. 7A-305 reads as rewritten:

"§ 7A-305. Costs in civil actions.

(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

...

(2) For support of the General Court of Justice, the sum of one hundred ~~twenty-five~~eighty dollars (~~\$125.00~~)(\$180.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional one thousand dollars (\$1,000) shall be paid upon its assignment, and the sum of ~~eighty-one~~ hundred thirty dollars (~~\$80.00~~)(\$130.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~fifty-five~~eighty dollars (~~\$55.00~~)(\$80.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~two dollars and five cents (\$2.05)~~one dollar (\$1.00) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee

collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

...

(a5) In every civil action in the superior or district court wherein a party files a pleading containing a counterclaim or cross-claim, except for counterclaim and cross-claim actions brought under Chapter 50B of the General Statutes for which costs are assessed pursuant to subsection (a1) of this section, the following shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in cases heard before a magistrate, and the sum of sixteen dollars (\$16.00) in district and superior court, to be remitted to the municipality providing the facilities in which the judgment is rendered. If a municipality does not provide the facilities in which the judgment is rendered, the sum is to be remitted to the county in which the judgment is rendered. Funds derived from the facilities' fees shall be used in the same manner, for the same purposes, and subject to the same restrictions as facilities' fees assessed in criminal actions.
- (2) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of four dollars (\$4.00), to be credited to the Court Information Technology Fund.
- (3) For support of the General Court of Justice, the sum of one hundred eighty dollars (\$180.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional one thousand dollars (\$1,000) shall be paid upon its assignment, and the sum of one hundred thirty dollars (\$130.00) in the district court, except that if the case is assigned to a magistrate, the sum shall be eighty dollars (\$80.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar (\$1.00) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

...

(f) For the support of the General Court of Justice, the sum of twenty dollars (\$20.00) shall accompany any motion not listed in G.S. 7A-308 that is filed with the clerk."

SECTION 31.23.(c) G.S. 7A-306 reads as rewritten:

"§ 7A-306. Costs in special proceedings.

(a) In every special proceeding in the superior court, the following costs shall be assessed:

...

- (2) For support of the General Court of Justice the sum of ~~seventy-five~~one hundred six dollars ~~(\$75.00)-(\$106.00)~~. In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars (\$100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars (\$100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars (\$200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~two dollars and~~

1 ~~five cents (\$2.05)~~one dollar (\$1.00) of each ~~seventy-five dollar (\$75.00)~~one
2 hundred six-dollar (\$106.00) General Court of Justice fee collected under
3 this subdivision to the North Carolina State Bar for the provision of services
4 described in G.S. 7A-474.4.

5 ...
6 (g) For the support of the General Court of Justice, the sum of twenty dollars (\$20.00)
7 shall accompany any motion not listed in G.S. 7A-308 that is filed with the clerk."

8 SECTION 31.23.(d) G.S. 7A-307(a) reads as rewritten:

9 "(a) In the administration of the estates of decedents, minors, incompetents, of missing
10 persons, and of trusts under wills and under powers of attorney, in trust proceedings under
11 G.S. 36C-2-203, and in collections of personal property by affidavit, the following costs shall
12 be assessed:

13 ...
14 (2) For support of the General Court of Justice, the sum of ~~seventy-five~~one
15 hundred six dollars ~~(\$75.00)~~(\$106.00), plus an additional forty cents (40¢)
16 per one hundred dollars (\$100.00), or major fraction thereof, of the gross
17 estate, not to exceed six thousand dollars (\$6,000). Gross estate shall include
18 the fair market value of all personalty when received, and all proceeds from
19 the sale of realty coming into the hands of the fiduciary, but shall not include
20 the value of realty. In collections of personal property by affidavit, the fee
21 based on the gross estate shall be computed from the information in the final
22 affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid
23 when that affidavit is filed. In all other cases, this fee shall be computed
24 from the information reported in the inventory and shall be paid when the
25 inventory is filed with the clerk. If additional gross estate, including income,
26 comes into the hands of the fiduciary after the filing of the inventory, the fee
27 for such additional value shall be assessed and paid upon the filing of any
28 account or report disclosing such additional value. For each filing the
29 minimum fee shall be fifteen dollars (\$15.00). Sums collected under this
30 subdivision shall be remitted to the State Treasurer. The State Treasurer shall
31 remit the sum of ~~two dollars and five cents (\$2.05)~~one dollar (\$1.00) of each
32 ~~seventy-five dollar (\$75.00)~~one hundred six-dollar (\$106.00) General Court
33 of Justice fee collected under this subdivision to the North Carolina State
34 Bar for the provision of services described in G.S. 7A-474.4.

35 ...
36 (4) For the support of the General Court of Justice, the sum of twenty dollars
37 (\$20.00) shall accompany any motion not listed in G.S. 7A-308 that is filed
38 with the clerk."

39 SECTION 31.23.(e) G.S. 7A-308(a) reads as rewritten:

40 "(a) The following miscellaneous fees and commissions shall be collected by the clerk of
41 superior court and remitted to the State for the support of the General Court of Justice:

42 (1) Foreclosure under power of sale in deed of trust or
43 mortgage.....~~\$150.00~~\$300.00
44 If the property is sold under the power of sale, an additional amount will be
45 charged, determined by the following formula: forty-five cents (.45) per one
46 hundred dollars (\$100.00), or major fraction thereof, of the final sale price. If
47 the amount determined by the formula is less than ten dollars (\$10.00), a
48 minimum ten dollar (\$10.00) fee will be collected. If the amount determined
49 by the formula is more than five hundred dollars (\$500.00), a maximum five
50 hundred-dollar (\$500.00) fee will be collected.

51 ...

(21) In civil matters, all alias and pluries summons issued and all endorsements issued on an original summons \$15.00."

SECTION 31.23.(f) G.S. 7A-34.1 is repealed.

JPS/AOC/COMMUNITY MEDIATION CENTERS/WORTHLESS CHECK PROGRAMS

SECTION 31.24.(a) G.S. 14-107.2 is amended by adding a new subsection to read:

"(b1) A community mediation center may establish and charge fees for its services in the collection of worthless checks as part of a program established under this section and may assist the Administrative Office of the Courts and district attorneys in the establishment of worthless check programs in any districts in which worthless check programs have not been established."

SECTION 31.24.(b) G.S. 7A-38.7 is amended by adding a new subsection to read:

"(a1) A community mediation center operating pursuant to this Article may establish and charge fees for its services."

JPS/AOC/INCREASE INTERSTATE COMPACT FEE

SECTION 31.25. G.S. 148-65.7(a) reads as rewritten:

"(a) Persons convicted in this State who make a request for transfer to another state pursuant to the compact shall pay a transfer application of ~~one~~two hundred fifty dollars (~~\$150.00~~)(\$250.00) for each transfer application submitted. The transfer application fee shall be paid to the Compact Commissioner upon submission of the transfer application. The Commissioner or the Commissioner's designee may waive the application fee if either the Commissioner or the Commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender.

All fees collected pursuant to this section shall be deposited in the Interstate Compact Fund and shall be used only to support administration of the Interstate Compact.

The Interstate Compact Fund is established within the Department of Correction as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert, and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Department of Correction pursuant to this subsection shall be remitted to the State Treasurer to be deposited and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Department of Correction for the administration of the Interstate Compact."

JPS/AOC/CONTINGENT COURT COST INCREASES FOR COUNTIES

SECTION 31.26.(a) If House Bill 642 or other substantially similar legislation that requires a misdemeanor with a period of confinement of six months or less to serve the period in a local confinement facility becomes law, then G.S. 7A-304(a)(2) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(2) For the use of the courtroom and related judicial facilities, the sum of ~~twelve~~thirty dollars (~~\$12.00~~)(\$30.00) in the district court, including cases before a magistrate, and the sum of thirty dollars (\$30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the

1 facilities fee shall be paid to the municipality. Funds derived from the
 2 facilities fees shall be used exclusively by the county or municipality for
 3 providing, maintaining, and constructing adequate courtroom and related
 4 judicial facilities, including: adequate space and furniture for judges, district
 5 attorneys, public defenders and other personnel of the Office of Indigent
 6 Defense Services, magistrates, juries, and other court related personnel;
 7 office space, furniture and vaults for the clerk; jail and juvenile detention
 8 facilities; free parking for jurors; and a law library (including books) if one
 9 has heretofore been established or if the governing body hereafter decides to
 10 establish one. In the event the funds derived from the facilities fees exceed
 11 what is needed for these purposes, the county or municipality may use any or
 12 all of the excess to retire outstanding indebtedness incurred in the
 13 construction of the facilities, or to reimburse the county or municipality for
 14 funds expended in constructing or renovating the facilities (without incurring
 15 any indebtedness) within a period of two years before or after the date a
 16 district court is established in such county, or to supplement the operations
 17 of the General Court of Justice in the county.

18"

19 **SECTION 31.26.(b)** If House Bill 642 or other substantially similar legislation that
 20 requires a misdemeanor with a period of confinement of six months or less to serve the period
 21 in a local confinement facility becomes law, then G.S. 7A-304(a) is amended by adding a new
 22 subdivision to read:

23 "(a) In every criminal case in the superior or district court, wherein the defendant is
 24 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the
 25 prosecuting witness, the following costs shall be assessed and collected, except that when the
 26 judgment imposes an active prison sentence, costs shall be assessed and collected only when
 27 the judgment specifically so provides, and that no costs may be assessed when a case is
 28 dismissed.

29 ...

30 **(4b)** To provide for contractual services to reduce county jail populations, the
 31 sum of fifty dollars (\$50.00) for all offenses arising under Chapter 20 of the
 32 General Statutes and resulting in a conviction of an improper equipment
 33 offense, to be remitted to the Department of Correction."

34 **SECTION 31.26.(c)** If House Bill 642 or other substantially similar legislation that
 35 requires a misdemeanor with a period of confinement of six months or less to serve the period
 36 in a local confinement facility becomes law, then G.S. 7A-311(a) reads as rewritten:

37 "(a) In a civil action or special proceeding, except for actions brought under Chapter 50B
 38 of the General Statutes, the following fees and commissions shall be assessed, collected, and
 39 remitted to the county:

- 40 (1) a. For each item of civil process served, including summons,
 41 subpoenas, notices, motions, orders, writs and pleadings, the sum of
 42 ~~fifteen-thirty~~ dollars ~~(\$15.00)-(\$30.00)~~. When two or more items of
 43 civil process are served simultaneously on one party, only one
 44 ~~fifteen-dollar (\$15.00)thirty-dollar (\$30.00)~~ fee shall be charged.

45"

46 **SECTION 31.26.(d)** If House Bill 642 or other substantially similar legislation that
 47 requires a misdemeanor with a period of confinement of six months or less to serve the period
 48 in a local confinement facility becomes law, then G.S. 7A-313 reads as rewritten:

49 "§ 7A-313. Uniform jail fees.

50 Persons who are lawfully confined in jail awaiting trial shall be liable to the county or
 51 municipality maintaining the jail in the sum of ~~five-ten~~ dollars ~~(\$5.00)(\$10.00)~~ for each 24

1 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for
 2 this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is
 3 arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.

4 Persons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable
 5 to the county or municipality maintaining the jail at the same per diem rate paid by the
 6 Department of Correction to local jails for maintaining a prisoner, as set by the General
 7 Assembly in its appropriations acts."

8 **SECTION 31.26.(e)** If House Bill 642 or other substantially similar legislation that
 9 requires a misdemeanor with a period of confinement of six months or less to serve the period
 10 in a local confinement facility becomes law, then G.S. 153A-225(a) reads as rewritten:

11 "(a) Each unit that operates a local confinement facility shall develop a plan for
 12 providing medical care for prisoners in the facility. The plan

- 13 (1) Shall be designed to protect the health and welfare of the prisoners and to
 14 avoid the spread of contagious disease;
- 15 (2) Shall provide for medical supervision of prisoners and emergency medical
 16 care for prisoners to the extent necessary for their health and welfare;
- 17 (3) Shall provide for the detection, examination and treatment of prisoners who
 18 are infected with tuberculosis or venereal diseases.

19 The unit shall develop the plan in consultation with appropriate local officials and
 20 organizations, including the sheriff, the county physician, the local or district health director,
 21 and the local medical society. The plan must be approved by the local or district health director
 22 after consultation with the area mental health, developmental disabilities, and substance abuse
 23 authority, if it is adequate to protect the health and welfare of the prisoners. Upon a
 24 determination that the plan is adequate to protect the health and welfare of the prisoners, the
 25 plan must be adopted by the governing body.

26 As a part of its plan, each unit may establish fees of not more than ~~ten dollars (\$10.00)~~
 27 twenty dollars (\$20.00) per incident for the provision of nonemergency medical care to
 28 prisoners. In establishing fees pursuant to this section, each unit shall establish a procedure for
 29 waiving fees for indigent prisoners."
 30

31 **GENGOV/INS/SET INSURANCE REGULATORY CHARGE**

32 **SECTION 31.27.(a)** The percentage rate to be used in calculating the insurance
 33 regulatory charge under G.S. 58-6-25 is six percent (6%) for the 2011 calendar year.

34 **SECTION 31.27.(b)** This section is effective when it becomes law.
 35

36 **IT/INFORMATION TECHNOLOGY FUND/AVAILABILITY**

37 **SECTION 31.28.(a)** The availability used to support appropriations made in this
 38 act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	FY 2011-2012	FY 2012-2013
39		
40		
41	\$4,458,142	\$6,158,142
42	\$ 100,000	\$ 100,000
43	\$2,454,934	\$1,227,467
44		
45	\$7,013,076	\$7,485,609
46		

47 Appropriations are made from the Information Technology Fund for the 2011-2013 fiscal
 48 biennium as follows:

49 **FY 2011-2012** **FY 2012-2013**

50
 51 Information Technology Operations

1	Center for Geographic Information and Analysis	\$ 599,347	\$ 599,347
2	Enterprise Security Risk Management	\$1,064,148	\$1,064,148
3	Enterprise Project Management Office	\$1,673,285	\$1,673,285
4	Architecture and Engineering	\$ 648,000	\$ 648,000
5	Criminal Justice Information Network	\$ 166,422	\$ 166,422
6	Statewide IT Procurement	\$0	\$0
7	ITS Overhead Reduction	(\$91,486)	(\$91,486)
8	Subtotal Information Technology Operations	\$4,059,716	\$4,059,716
9	Information Technology Projects		
10	State Portal	\$0	\$0
11	IT Consolidation	\$1,320,893	\$ 820,893
12	Transfer to OSC for Data Integration	\$ 100,000	\$ 100,000
13	Subtotal Information Technology Projects	\$1,420,893	\$ 920,893
14	Data Integration License Funding Transfer to State Agencies	\$ 200,000	\$2,400,000
15	Position Transfer to Office of State Budget and Management	\$ 105,000	\$ 105,000
16	Total	\$5,785,609	\$7,485,609

17
18 **SECTION 31.28.(b)** Statewide information technology procurement shall be
19 funded through a fee charged to agencies using their services. The Office of the State Chief
20 Information Officer shall provide a fee schedule to allow cost recovery to the Office of State
21 Budget and Management.

22 **SECTION 31.28.(c)** By September 1 of each year, data integration funding in the
23 Information Technology Fund for that State fiscal year shall be transferred to State agencies in
24 proportion to their use of data integration licenses at that point in time. The State Chief
25 Information Officer shall report to the Joint Legislative Oversight Committee on Information
26 Technology Operations and the Fiscal Research Division by September 2 of each year on the
27 status of the transfer.

28 Any licensing requirements after the 2011-2013 fiscal biennium shall be the responsibility
29 of the participating agency. The State Chief Information Officer shall notify affected agencies
30 of this requirement by September 1, 2011. The State Chief Information Officer shall ensure that
31 agencies choosing to participate after that date are notified prior to agreeing to participate in the
32 data integration license agreement. The State Chief Information Officer shall report to the Joint
33 Legislative Oversight Committee on Information Technology Operations and the Fiscal
34 Research Division by September 2, 2011, on agency notification of their responsibility to fund
35 any data integration license requirements after the 2011-2013 fiscal biennium.

36 **SECTION 31.28.(d)** This section is effective when it becomes law.
37

38 **TRANSPORTATION/DIVISION OF MOTOR VEHICLES BULK DATA**

39 **SECTION 31.29.(a)** G.S. 20-43.1 is amended by adding a new subsection to read:
40 "**§ 20-43.1. Disclosure of personal information in motor vehicle records.**

41 (a) The Division shall disclose personal information contained in motor vehicle records
42 in accordance with the federal Driver's Privacy Protection Act of 1994, as amended, 18 U.S.C.
43 §§ 2721, et seq.

44 (b) As authorized in 18 U.S.C. § 2721, the Division shall not disclose personal
45 information for the purposes specified in 18 U.S.C. § 2721(b)(11).

46 (c) The Division shall not disclose personal information for the purposes specified in 18
47 U.S.C. § 2721(b)(12) unless the Division receives prior written permission from the person
48 about whom the information is requested.

49 (d) As authorized in 18 U.S.C. § 2721, the Division may disclose personal information
50 to federally designated organ procurement organizations and eye banks operating in this State
51 for the purpose of identifying individuals who have indicated an intent to be an organ donor.

1 Personal information authorized under this subsection is limited to the individual's first, middle,
2 and last name, date of birth, address, sex, county of residence, and drivers license number.
3 Employees of the Division who provide access to or disclosure of information in good-faith
4 compliance with this subsection are not liable in damages for access to or disclosure of the
5 information.

6 (e) As authorized in 18 U.S.C. § 2721, the Division may also provide copies of partial
7 crash report data collected pursuant to G.S. 20-166.1, partial driver license data kept pursuant
8 to G.S. 20-26(a), and partial vehicle registration application data collected pursuant to
9 G.S. 20-52 in bulk form to persons, private companies, or other entities, for uses other than
10 official, upon payment of a fee of three cents (3¢) per individual record. The Division shall not
11 furnish such data except upon execution by the recipient of a written agreement to comply with
12 the Driver's Privacy Protection Act of 1994, as amended, 18 U.S.C. §§ 2721, et seq. The
13 information released to persons, private companies, or other entities, for uses other than
14 official, pursuant to this subsection, shall not be a public record pursuant to Chapter 132 of the
15 General Statutes."

18 TRANSPORTATION/FERRY DIVISION TOLLING ON ALL ROUTES

19 SECTION 31.30.(a) Effective April 1, 2012, G.S. 136-82 reads as rewritten:

20 "§ 136-82. Department of Transportation to establish and maintain ferries.

21 The Department of Transportation is vested with authority to provide for the establishment
22 and maintenance of ferries connecting the parts of the State highway system, whenever in its
23 discretion the public good may so require, and to prescribe and collect such tolls therefor as
24 may, in the discretion of the Department of Transportation, be expedient. All ferry routes shall
25 be tolled in an amount established by the Board of Transportation.

26 To accomplish the purpose of this section said Department of Transportation is authorized
27 to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or
28 other facilities required for the proper operation of such ferries or to enter into contracts with
29 persons, firms or corporations for the operation thereof and to pay therefor such reasonable
30 sums as may in the opinion of said Department of Transportation represent the fair value of the
31 public service rendered.

32 The Department of Transportation, notwithstanding any other provision of law, may
33 operate, or contract for the operation of, concessions on the ferries and at ferry facilities to
34 provide to passengers on the ferries food, drink, and other refreshments, personal comfort
35 items, and souvenirs publicizing the ferry system."

36 SECTION 31.30.(b) The Board of Transportation shall toll all ferry routes no later
37 than the effective date of subsection (a) of this section, but is encouraged to begin tolling on all
38 routes before that date. In establishing tolls for ferry routes under G.S. 136-82, as amended by
39 this section, the Board of Transportation shall consider the needs of commuters and other
40 frequent passengers.

42 PART XXXI-A: EFFECTIVE DATE

43
44 SECTION 31A.1. Unless otherwise provided herein, this act becomes effective
45 July 1, 2011.

PCS for HB 200: Fee Adjustments in the Appropriations Act of 2011

EDUCATION

Bill Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
Capital Projects								
Sec. 30.7 (CAP-H8)	UNC Nonappropriated Capital Projects	N/A	N/A	Provides for capital projects for The University of North Carolina System. This provision is the same as Senate Bill 444, UNC Nonappropriated Capital Projects. (There is no House companion bill to SB 444.) The projects authorized by the section would not be financed with funds appropriated from the State's General Fund; but may be financed with gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, other funds available to the constituent institutions, or a combination of any of those financing methods.		N/A	N/A	7/1/11
Education								
Sec. 31.1 (TRANS-H28)	Drivers Education Fee	New	Up to \$75	Local boards of education authorized to charge up to \$75 for participants of drivers education.	N/A	Unknown	Unknown	7/1/11
Sec. 31.2 (DOCC-H13)	GED Fee Increase	\$7.50 (with no fee for re-testing)	See Description	Allows State Board of Community College to set GED testing (and retesting) fee. The fee would likely be \$25 per test.	1987	At least sufficient to replace \$208,533 in GF, but total revenue projected at \$397,000	At least sufficient to replace \$208,533 in GF, but total revenue projected at \$397,000	7/1/11
Sec. 31.3 (DPI-H26)	North Carolina Virtual Public Schools Allotment Formula	N/A	See Description	Directs State Board of Education to establish a per student fee structure for out-of-state, private, and home schooled students enrolled in NC Virtual Public Schools. The State Board's policy has been to create a recommended fee schedule, so this provision clarifies that policy directive and places it into session law.	N/A	Unknown	Unknown	7/1/11

NATURAL AND ECONOMIC RESOURCES

Bill Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
Department of Commerce/Economic Development								
Sec. 31.4 (COMM-H2)	Set Regulatory Fee for Utilities Commission	0.12%	Same	The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. The rate has remained the same since 2003. This rate applies to each public utility's jurisdictional revenues earned during each quarter that begins on or after July 1, 2011.				7/1/11
Sec. 31.4 (COMM-H2)	Set Regulatory Fee for Electric Membership Corporation	\$200,000	Same	The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations. This fee has remained the same since it was first imposed in 1999.				7/1/11
Department of Agriculture & Consumer Services								
Sec. 31.5 (AGRIC-H7)	License Fees for kennels, pet stores, etc.	\$50	\$75	Increases the license fee for operators of pet shops, public auctions, or boarding kennels and for dealers.	1989	\$10,000	\$10,000	7/1/11
Sec. 31.6 (AGRIC-H4)	Repeal Board of Agriculture Review of Fee Schedules	N/A	N/A	Repeals statutory requirement that Department of Agriculture biennially review all fees under its authority. This requirement was added during the last biennium and has been found to be unnecessary.				7/1/11
Sec. 31.7 (AGRIC-H3)	Fee For Expedited Soil Test	New	\$100	New \$100 fee for expedited soil test.	N/A	\$50,000	\$50,000	7/1/11
Sec. 31.7 (AGRIC-H3)	Fee for Out-of-State Soil Tests	New	\$5.00	New \$5 fee for out-of-state soil test.	N/A	Minimal	Minimal	7/1/11
Sec. 31.8 (AGRIC-H1A)	Technical Corrections regarding Commercial Fertilizer Inspection Fee and Pesticide Technician ID Card Renewal Fee	\$0.25	\$.50	Technical correction for two fees. The General Assembly increased these fees in 2009. The legislation failed to make the conforming changes in these statutes.				7/1/11
Sec. 31.9 (AGRIC-H6)	Increase Agricultural Liming Materials Tonnage Fees	\$.10	\$.50	Increases the tonnage fee paid by manufacturers or registrants to Dept. of Agriculture and Consumer Services for agricultural liming material from \$.10 to \$.50.	1979	\$250,000	\$250,000	7/1/11
Sec. 31.10 (AGRIC-H5)	Increase Antifreeze Distribution Registration Fee	\$250	\$500	Increases license and inspection fee for manufacturers, packagers, or persons named on the label of antifreeze from \$250 to \$500.		\$75,000	\$75,000	7/1/11

Bill Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13
Environment							
Sec. 31.11 (ENV-H3)	Reduce Portion of Certificate of Title Fees Credited to Mercury Switch Removal Account	Varies	Varies	Reduces the portion of the fee assessed that is credited to the Mercury Switch Removal Account in DENR from \$1 to \$.50. The General Assembly enacted this fee for this purpose in 2005.		N/A	N/A 7/1/11
Sec. 31.12 (ENV-H11)	Divert Scrap Tire Tax Proceeds to General Fund	1% - 2% of sales price of each new tire	Same	Redirects proceeds of scrap tire disposal tax from various funds to the General Fund for fiscal year 2011-12. The proceeds would be distributed as follows: 8% to the Solid Waste Management Trust Fund, 17% to the Scrap Tire Disposal Account, 2.5% to the Inactive Hazardous Sites Cleanup Fund, 2.5% to the Bernard Allen Memorial Emergency Drinking Water Fund, and 70% to the counties.		N/A	N/A 7/1/11
Sec. 31.13 (ENV-H12)	Divert White Goods Tax Proceeds to General Fund	\$3 for each new white good purchased	Same	Redirects proceeds of white goods disposal tax from various funds to the General Fund for fiscal year 2011-12. The proceeds would be distributed as follows: 8% to the Solid Waste Management Trust Fund, 20% to the White Goods Management Account, and 72% to the counties.		N/A	N/A 7/1/11
Sec. 31.14 (ENV-H2F)	Locals to Set and Collect Food and Lodging Fees and Retain Larger Local Portion of These Fees	\$75	Up to \$250	Under current law, the fee amount is set at the State level and applies equally across the State. The fee may not exceed \$75. This provision would allow the fee amounts to be set at the local level; thus the fee amount could vary from one jurisdiction to another. The maximum fee amount would be increased from \$75 to \$250 and the amount of the fee that would be used to support the programs funded by the State would decrease from 33.3% to 10%.		Unknown	Unknown 7/1/11
Sec. 31.15 (ENV-H7)	Additional Uses of Hazardous Waste Fees	Varies	Same	Adds to the uses permitted for hazardous waste fees (i) to implement/provide oversight of necessary response activities involving inactive hazardous substances or waste disposal sites and (ii) to provide compliance/prevention activities within the solid waste program to ensure hazardous waste is not disposed in solid waste management facilities		N/A	N/A 7/1/11
Department of Labor							
Sec. 31.16 (LAB-H1)	Repeal Statute Requiring Biennial Review of Fees by Department	N/A	N/A	Repeals statutory requirement that Department of Labor biennially review all fees under its authority. This requirement was added during the last biennium and has been found to be unnecessary.		N/A	N/A 7/1/11

Bill Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13
Environment & Natural Resources							
Sec. 31.17 (NATRES-H24A)	Divert Portion of Deed Stamp Tax Revenue Source for Natural Heritage Trust Fund	\$1 per \$500 of value conveyed	Same	Under current law, 25% of the revenue remitted to the State from the deed stamp tax is credited to the Natural Heritage Trust Fund and used for various land purchases. This provision would redirect \$8 million of this amount to the General Fund for fiscal year 2011-12.		N/A	N/A 7/1/11
Sec. 31.18 (NATRES-H6D)	Parks & Recreation Trust Fund; Allocation of Deed Stamp Tax Proceeds Credited to Fund	\$1 per \$500 of value conveyed	Same	Under current law, 75% of the revenue remitted to the State from the deed stamp tax is credited to the Parks and Recreation Trust Fund and used for various capital projects. This provision would redirect this revenue as follows for fiscal year 2011-12: for operating expenses of Division of Parks & Recreation of DENR \$6M; for capital projects, repairs, renovations, debt service, and land acquisition by the State Parks System \$8M; for grants to local governments for matching requirements \$4,230,000; and for Coastal and Estuarine Water Beach Access Program \$705,000.		N/A	N/A 7/1/11
Sec. 31.19 (NATRES-H23)	Divert Portion of Deed Stamp Tax Revenue Source for Parks & Recreation Trust Fund	\$1 per \$500 of value conveyed	Same	Under current law, 75% of the revenue remitted to the State from the deed stamp tax is credited to the Parks and Recreation Trust Fund and used for various capital projects. This provision would redirect \$8,435,000 of this amount to the General Fund for fiscal year 2011-12.		N/A	N/A 7/1/11
Sec. 31.20 (NATRES-H12E)	New Funding Source for Wildlife Resource Commission Operating Budget	N/A	N/A	In 1983, the General Assembly transferred a portion of the State sales and use tax revenue derived from hunting and fishing supplies and equipment to the Wildlife Resources Fund. This provision would repeal this transfer and replace it with an appropriation of \$18.5M from the General Fund.		N/A	N/A 7/1/11
Sec. 31.21 (NATRES-H19)	Repeal DENR Review of Fee Schedules	N/A	N/A	Repeals statutory requirement that DENR biennially review all fees under its authority. This requirement was added during the last biennium and has been found to be unnecessary.		N/A	N/A 7/1/11
Sec. 31.22 (NATRES-H1)	No New Fees for Parking in State Parks	N/A	N/A	Prohibits State Parks from charging not-previously-charged parking fees.		N/A	N/A 7/1/11

JUSTICE AND PUBLIC SAFETY

Section	Name	Current Cost	Proposed Cost	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
JPS: Court Costs & Contingent Court Costs								
Sec. 31.23 AOC-H23	Superior Court – Civil	\$125.00	\$180.00	Raised cost (GF, for support of General Court of Justice)		\$1,492,315	\$1,492,315	7/1/11
Sec. 31.23 AOC-H23	Superior Court – Criminal	\$102.50	\$154.50	Raised cost (GF, for support of General Court of Justice)	2010	\$140,244	\$140,244	7/1/11
Sec. 31.23 AOC-H23	District Court – Civil	\$80.00	\$130.00	Raised cost (GF, for support of General Court of Justice)	2007	\$8,004,800	\$8,004,800	7/1/11
Sec. 31.23 AOC-H23	District Court – Criminal	\$100.50	\$124.50	Raised cost (GF, for support of General Court of Justice)	2010	\$23,663,976	\$23,663,976	7/1/11
Sec. 31.23 AOC-H23	Magistrate – Civil (Small Claims)	\$55.00	\$80.00	Raised cost (GF, for support of General Court of Justice)	2010	\$6,193,975	\$6,193,975	7/1/11
Sec. 31.23 AOC-H23	Special Proceedings	\$75.00	\$106.00	Raised cost (GF, for support of General Court of Justice)	2009	\$465,000	\$465,000	7/1/11
Sec. 31.23 AOC-H23	Estates	\$75.00	\$106.00	Raised cost (GF, for support of General Court of Justice)	2009	\$1,085,000	\$1,085,000	7/1/11
Sec. 31.23 AOC-H23	Additional Civil Motions	\$0.00	\$20.00	New cost for all motions other than motions addressed in G.S. 7A-308 (GF, for support of General Court of Justice)	2009	\$3,139,860	\$3,139,860	7/1/11
Sec. 31.23 AOC-H23	Reissuance of Summons	\$0.00	\$15.00	New cost for alias and pluries summons and all endorsements issues on an original summons, both under G.S. 7A-308 (GF, for support of General Court of Justice)	New	\$820,455	\$820,455	7/1/11
Sec. 31.23 AOC-H23	Foreclosure	\$150.00	\$300.00	Raised cost (GF, for support of General Court of Justice)	2009	\$8,875,350	\$8,875,350	7/1/11
Sec. 31.23 AOC-H23	Counterclaims and cross-claims (except 50B) – magistrate, district court and superior court	\$0.00	\$180 \$130 \$80 \$12 \$16 \$4	New costs imposed for counter and cross-claims in the amounts of \$180 (Superior Court) / \$130 (District Court / \$80 (Magistrate) (goes to GF, for support of General Court of Justice), \$12 for cases before magistrates or \$16 for cases in district or superior court (goes to the counties) and \$4 (goes to the Court Information Technology Fund)	New	\$1,880,970	\$1,880,970	7/1/11
Sec. 31.23 AOC-H23	Reduce access to CJ Pass-through	\$2.05	\$1	Reduces portion of General Court of Justice costs the State Treasurer remits to the North Carolina State Bar for legal services programs.		\$1,557,521	\$1,557,521	7/1/11
Sec. 31.24 AOC-H28	Community Mediation Centers Worthless Check Programs	\$60	\$60	A private, non-profit entity may charge fees for its services. This section codifies this ability for a community mediation center. The General Assembly began encouraging the work of these centers in 1999 as a means of reducing the caseload in the district court system.	New	No change	No changes	7/1/11
Sec. 31.25 AOC-H29	Increase Interstate Compact Transfer Fee	\$150	\$250	Increases transfer application fee for convicts in this State who make a request for transfer to another state pursuant to the Interstate Compact.	2008	Unknown	Unknown	7/1/11

Section	Name	Current Cost	Proposed Cost	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
JPS: Court Costs & Contingent Court Costs								
Sec. 31.26 AOC-H24	Contingent Court Cost Increases for Counties: District Court Facility Fee	\$12.00	\$30.00	Increases the cost for use of the courtroom and related judicial facilities. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanor with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	Prior to 2000	\$19,100,000 (proceeds go to counties)	\$19,100,000 (proceeds go to counties)	7/1/11
Sec. 31.26 AOC-H24	Increase Civil Process Fee	\$15.00	\$30.00	Increases the costs for the service of civil processes. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanor with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	2004	\$3,300,000 (proceeds go to counties)	\$3,300,000 (proceeds go to counties)	7/1/11
Sec. 31.26 AOC-H24	Daily Jail Fee	\$5.00	\$10.00	Increases the costs for daily jail confinement. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanor with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	Prior to 2000	Unknown (proceeds go to counties)	Unknown (proceeds go to counties)	7/1/11
Sec. 31.26 AOC-H24	Improper Equipment	\$0.00	\$50.00	Would impose an additional costs on a person convicted of an improper equipment violation. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanor with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	New	\$12,430,000 (proceeds go to counties)	\$12,430,000 (proceeds go to counties)	7/1/11
Sec. 31.26 AOC-H24	Medical Care for Prisoners	\$10	Not more than \$20	Would increase the cost for nonemergency medical care to prisoners. The proceeds would remain with the counties. The provision would only become effective if HB 642 (or other requirement that a misdemeanor with a period of confinement of ≤ 6 months serve in a local confinement facility) becomes effective.	Prior 2000	Unknown (proceeds go to counties)	Unknown (proceeds go to counties)	7/1/11

GENERAL GOVERNMENT

Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
Sec. 31.27 INS-H4	Insurance Regulatory Charge	6%	6%	First enacted in 1991 to defray the State's cost of regulating the insurance industry, the charge is a percentage of each insurance company's gross premiums tax liability. The General Assembly must set the rate for this charge each year.	2010			7/1/11
Sec. 31.28 IT-H16C	Information Technology Fund/Availability	N/C	N/C	Appropriates funds from the Information Technology Fund for the 2011-2013 bienniums.		\$550,000	\$550,000	When bill becomes law

TRANSPORTATION

Section	Name	Current Fee	Proposed Fee	Use/Description	Last Change	FY 11-12	FY 12-13	Eff. Date
Sec. 31.29 TRANS-H20	DMV Bulk (Partial) Data Records	Varies	\$.03/record	New per-individual-record fee for non-official license record data.	N/A	\$5,050,000	\$5,050,000	7/1/11
Sec. 31.30 TRANS-H11	Toll Ferries	Varies	Set by DOT	Requires that all ferry routes be tolled.	2002	\$5,000,000	\$7,500,000	4/1/12



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H200-AMCx-8 [v.2]

Page 1 of 2

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

Date 4.26, 2011

Representative Luebke

1 moves to amend the bill on page 19, line 40, by inserting after that line the following language
2 to read:

3 **"PART XXXA: TAX CHANGES**

4
5 **SECTION 30A.(a)** G.S. 105-134.2(a) reads as rewritten:

6 '(a) A tax is imposed upon the North Carolina taxable income of every individual. The
7 tax shall be levied, collected, and paid annually and shall be computed at the following
8 percentages of the taxpayer's North Carolina taxable income.

9 (1) For married individuals who file a joint return under G.S. 105-152 and for
10 surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	\$21,250	6%
\$21,250	\$100,000	7%
\$100,000	NA \$1,000,000	7.75%
<u>\$1,000,000</u>	<u>NA</u>	<u>8.5%</u>

17
18 (2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	\$17,000	6%
\$17,000	\$80,000	7%
\$80,000	NA \$800,000	7.75%
<u>\$800,000</u>	<u>NA</u>	<u>8.5%</u>

24
25
26 (3) For unmarried individuals other than surviving spouses and heads of
27 households:

Over	Up To	Rate
0	\$12,750	6%
\$12,750	\$60,000	7%
\$60,000	NA \$600,000	7.75%
<u>\$600,000</u>	<u>NA</u>	<u>8.5%</u>



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200**

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

H200-AMCx-8 [v.2]

Page 2 of 2

1
2
3
4
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9
10

(4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
0	\$10,625	6%
\$10,625	\$50,000	7%
\$50,000	NA \$500,000	7.75%
<u>\$500,000</u>	<u>NA</u>	<u>8.5%</u>

SECTION 30A.(b) This act is effective for taxable years beginning on or after January 1, 2011."

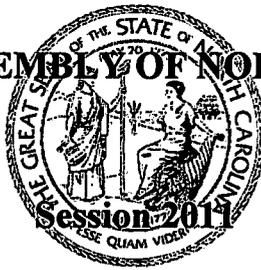
SIGNED _____

Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: April 25, 2011
 TO: Rep. Paul Luebke
 FROM: Brian Slivka ✓
 Fiscal Research Division
 RE: Amendment to HB 200.

500

FISCAL IMPACT (in millions)					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:	<u>\$90.6</u>	\$73.3	\$79.0	\$82.5	\$86.1
EXPENDITURES:					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue					
EFFECTIVE DATE: January 1, 2011					

*500
1/8 of 1 percent*

BILL SUMMARY:

The proposed amendment would add a new top tax bracket beginning at the following levels of North Carolina Taxable Income: \$1,000,000 for married individuals who file joint returns and surviving spouses; \$800,000 for heads of households; \$600,000 for unmarried individuals other than surviving spouses and heads of households; \$500,000 for married individuals who do not file a joint return. Any North Carolina Taxable Income above these levels would be taxed at an 8.5% rate. The change would be effective for taxable years beginning on or after January 1, 2011.

ASSUMPTIONS AND METHODOLOGY:

This analysis assumes that the following tax brackets and rates have been established for the 2011 tax year.

For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	\$21,250	6%
\$21,250	\$100,000	7%
\$100,000	\$1,000,000	7.75%
\$1,000,000	NA	8.5%

For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	\$17,000	6%
\$17,000	\$80,000	7%
\$80,000	\$800,000	7.75%
\$800,000	NA	8.5%

For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	\$12,750	6%
\$12,750	\$60,000	7%
\$60,000	\$600,000	7.75%
\$600,000	NA	8.5%

For married individuals who do not file a joint return under G.S. 105-152: 2:

Over	Up To	Rate
0	\$10,650	6%
\$10,650	\$50,000	7%
\$50,000	\$500,000	7.75%
\$500,000	NA	8.5%

Assuming a January 1, 2011 effective date for the implementation of the 8.5% rate, the addition of the proposed 8.5% bracket would yield approximately \$90.6 Million in FY 2011-12 and \$73.3 Million in FY 2012-13. The 2011-12 fiscal year includes 2011 tax collections, as well as a partial year of estimated payments for 2012. The change would impact approximately 5,000 returns, or 0.1% of all North Carolina tax returns filed. It should be noted that this tax base often has volatile sources of income that could be greatly impacted by changes in the economy.

SOURCES OF DATA: BearingPoint North Carolina Individual Income Tax Model; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

#6

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 200-CSMC,x-5

DATE 4/26/2011

S. B. No. _____

Amendment No. 2

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE

Rep.) Weiss
Sen.)

1 moves to amend the bill on page 5, line 13

2 () WHICH CHANGES THE TITLE

3 by _____

4 deleting "seventy-five dollars (\$75.00)"

5 _____

6 and substituting "fifteen dollars (\$15.00)"; and

7 _____

8 on page 19, line 10, by deleting "three cents (3¢)"

9 _____

10 and substituting "five cents (5¢)".

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Jennifer Weiss

13/16

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H200-ARBx-19 [v.4]

Page 1 of 2

Comm. Sub. [YES]
Amends Title [NO]
H200-CSMCx-5

Date 4.26, 2011

Representative Weiss

1 moves to amend the bill on page 19, line 40, by inserting after that line the following language
2 to read:

3 **"PART XXXA: TAX CHANGES**

4
5 **INCREASE TAX ON TOBACCO PRODUCTS**

6 **SECTION 30A.(a)** G.S. 105-113.5 reads as rewritten:

7 **'§ 105-113.5. Tax on cigarettes.**

8 A tax is levied on the sale or possession for sale in this State, by a distributor, of all
9 cigarettes at the rate of ~~two seven and one-fourth cents (2.25¢)~~ (7.25¢) per individual cigarette.'

10 **SECTION 30A.(b)** G.S. 105-113.35 reads as rewritten:

11 **'§ 105-113.35. Tax on tobacco products other than cigarettes.**

12 (a) Tax. – An excise tax is levied on tobacco products other than cigarettes at the rate of
13 ~~twelve and eight tenths percent (12.8%)~~ forty-one and one-quarter percent (41.25%) of the cost
14 price of the products. This tax does not apply to the following:

- 15 (1) A tobacco product sold outside the State.
- 16 (2) A tobacco product sold to the federal government.
- 17 (3) A sample tobacco product distributed without charge.'

18 **SECTION 30A.(c)** G.S. 105-113.40A reads as rewritten:

19 **'§ 105-113.40A. Use of tax proceeds.**

20 The Secretary must credit the net proceeds of the tax collected under this Part as follows:

- 21 (1) ~~An amount equal to three percent (3%) of the cost price of the products to~~
22 ~~the General Fund.~~ Seventy-six and one-quarter percent (76.25%) to the
23 General Fund.
- 24 (2) The remainder to the ~~University Cancer Research Fund established under~~
25 ~~G.S. 116-29.1.~~ Twenty-three and three-quarters percent (23.75%) to the
26 University Cancer Research Fund established under G.S. 116-29.1.'

27 **SECTION 30A.(d)** This section becomes effective January 1, 2012."



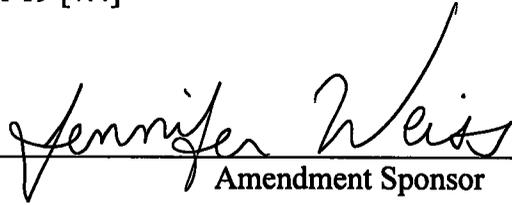
NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

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

H200-ARBx-19 [v.4]

Page 2 of 2

SIGNED


_____ Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____



TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 200. PCS

DATE 4.26.11

S. B. No. _____

Amendment No. 4

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. McComas
Sen.)

1 moves to amend the bill on page 9, line 46, line p. 10, line 25

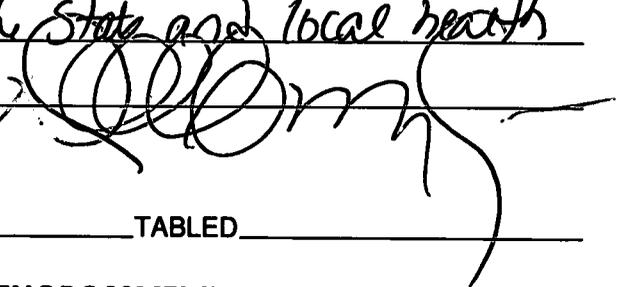
2 () WHICH CHANGES THE TITLE

3 by Revising those lines to read:
4 "NER / Environment / Study Food and Lodging Fees and
5 Their distribution bet the State Program and the Locals
6 Programs.

7 Section 31.14. The Fiscal Research Division of the
8 North Carolina General Assembly must study the
9 administration and financing of the State's food, lodging,
10 and institution sanitation programs and rules. The
11 Fiscal Research Division must report its findings to the chairs
12 of the NER Appropriations Subcommittee ~~Chair~~ and the Finance
13 Committee on or before May 1, 2012. The study must
14 include both of the following:

15 (1) The fee amount necessary to cover the cost of the
16 State program and the actual operating costs
17 of the local health departments.

18 (2) The most efficient manner to set, collect, and
19 remit the fee bet the State and local health
departments.

SIGNED 

ADOPTED FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

AMENDMENT NO. 5
(to be filled in by
Principal Clerk)

H200-ARB-21 [v.2]

Page 1 of 2

Comm. Sub. [YES]
Amends Title [NO]
H200-CSMCx-5

Date 4.26, 2011

Representative McComas

1 moves to amend the bill on page 15, lines 13 through 15, by rewriting the lines to read:

2 "SECTION 31.24.(b) G.S. 71-38.5(a) reads as rewritten:

3 '(a) The General Assembly finds that it is in the public interest to encourage the
4 establishment of community mediation centers, also known as dispute settlement centers or
5 dispute resolution centers, to support the work of these centers in facilitating communication,
6 understanding, reconciliation, and settlement of conflicts in communities, courts, and schools,
7 and to promote the widest possible use of these centers by the courts and law enforcement
8 officials across the State. A center may establish and charge fees for its services.'

9 SECTION 31.24.(c) G.S. 7A-38.6(a) reads as rewritten:

10 '(a) All community mediation centers ~~currently receiving State funds~~ shall report
11 annually to the Mediation Network of North Carolina on the program's funding and activities,
12 including:

- 13 (1) Types of dispute settlement services provided;
- 14 (2) Clients receiving each type of dispute settlement service;
- 15 (3) Number and type of referrals received, cases actually mediated (identified by
16 docket number), cases resolved in mediation, and total clients served in the
17 cases mediated;
- 18 (4) Total program funding and funding sources;
- 19 (5) Itemization of the use of funds, including operating expenses and personnel;
- 20 (6) Itemization of the use of State funds appropriated to the center;
- 21 (7) Level of volunteer activity; and
- 22 (8) Identification of future service demands and budget requirements.

23 (a1) The Mediation Network of North Carolina shall compile and summarize the
24 information provided pursuant to ~~this subsection~~ subsection (a) of this section and shall provide
25 the information to the Chairs of the House of Representatives and Senate Appropriations
26 Committees and the Chairs of the House of Representatives and Senate Appropriations
27 Subcommittees on Justice and Public Safety by February 1 of each year.

28 The Mediation Network of North Carolina shall also submit a copy of its report to the
29 Administrative Office of the Courts. The receipt and review of this report by the Administrative
30 Office of the Courts shall satisfy any program monitoring, evaluation, and contracting
31 requirements imposed on the Administrative Office of the Courts by Part 3 of Article 6 of
32 Chapter 143C of the General Statutes and any rules adopted under that Part.'

33 SECTION 31.24.(d) G.S. 7A-38.7 reads as rewritten:



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 200

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

H200-ARB-21 [v.2]

Page 2 of 2

§ 7A-38.7. Dispute resolution fee for cases resolved in mediation.

(a) In each criminal case filed in the General Court of Justice that is resolved through referral to a community mediation center, a dispute resolution fee shall be assessed in the sum of sixty dollars (\$60.00) per mediation ~~for the support of the General Court of Justice to support the services provided by the community mediation centers and the Mediation Network of North Carolina.~~ Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the ~~State Treasurer.~~ Mediation Network of North Carolina. The Mediation Network may retain up to three dollars (\$3.00) of this amount as an allowance for its administrative expenses. The Mediation Network must remit the remainder of this amount to the community mediation center that mediated the case.

(b) Before providing the district attorney with a dismissal form, the community mediation center shall require proof that the defendant has paid the dispute resolution fee as required by subsection (a) of this section and shall attach the receipt to the dismissal form."

SIGNED _____

Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____

ROLL CALL VOTE

17 14 = 31 (TOTAL)
YES NO

HB# 200
SB# _____

HOUSE STANDING COMMITTEE ON FINANCE

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Howard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moore
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Folwell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rhyne
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Setzer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ross
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Starnes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Samuelson
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lewis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stam
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McComas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Stone
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Wainwright	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Warren
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Alexander	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Weiss
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Brandon	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Womble
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brawley	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Carney	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Collins	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cotham	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Faison	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Gibson	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hackney	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hall	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hill	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jordan	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Luebke	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCormick	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGee	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	McGuirt	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moffitt	<input type="checkbox"/>	<input type="checkbox"/>	

(17) / 14



North Carolina General Assembly
House Committee on Finance

Minutes

~
May 4, 2011

The House Committee on Finance met on Wednesday, May 4, 2011 at 8:00 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chair Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Faison, Hackney, Hall, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Earl Coker, Fred Hines, and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Ryan Blackledge, Greg Roney, Brian Slivka, and Jonathan Tart. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Setzer called the meeting to order at 8:30 am and recognized the six (6) pages present: (1) William Mobley of Wayne County sponsored by Representative Bell; (2) Alexander Umstead of Forsyth County sponsored by Representative Womble; (3) Joseph Vuke of Wake County sponsored by Representative Stam; (4) Khari Bailey of Wake County sponsored by Representative Gill; (5) Alexis McDonald of Wake County sponsored by Representative Wainwright; and (6) Brandon Edds of Rowan County sponsored by Representative Harry Warren.

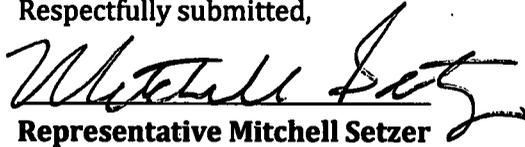
The first bill considered by the Committee was **HB 318 State Treasurer's Investments** (see **attachment 3**). The Chair recognized Representative Moffitt who made a motion to adopt the proposed committee substitute for purposes of discussion. Chairman Setzer then recognized Representative McGee to explain the proposed committee substitute. Representative McGee recognized Shawn Wischmeier, Chief Investment Officer with the State Treasurer's office, to give remarks and answer questions from the members. The Chair recognized Representative Moffitt who moved that HB 318 be given a favorable report as to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill heard by the Committee was **HB 418 Winston Salem Deannexation** (see **attachment 4**). The Chair recognized Representative Larry Brown to explain the bill. Chairman Setzer then recognized Angela Carmon, City Attorney for the City of Winston Salem, for her remarks in opposition of the bill. Ms. Carmon answered questions from members. Representative Folwell was recognized and he moved that HB 418 Winston Salem Deannexation be given a favorable report. The Chair called for a show of hands for HB 418. The vote being 14 affirmative and 14 against, the motion failed.

Due to time, **HB 352 Delay Kannapolis Annexation** was unable to be heard and is scheduled to be heard on Thursday, May 5, 2011.

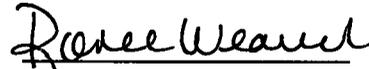
There being no further business presently before the Committee, Chairman Setzer adjourned the meeting at 9:48 am.

Respectfully submitted,



Representative Mitchell Setzer

Presiding Chair



Renee Weaver

Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 318 A BILL TO BE ENTITLED AN ACT TO MODIFY THE STATE TREASURER INVESTMENT STATUTE.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

AGENDA
House Finance Committee

Wednesday, May 4, 2011

8:30 am

Room 544 LOB

Chaired by: Representative Mitchell Setzer

Call to Order

Introduction of Pages

Bills:

HB 318 State Treasurer's Investments

Representatives McGee, Folwell

HB 352 Delay Kannapolis Annexation

Representative Steen

HB 418 Winston-Salem Deannexation

Representative L. Brown

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAY 4, 2011 Room: 544

*Name: William Mobley

6 Brandon Edds Ed's

County: Wayne Rowan

Sponsor: Rep. Bell Rep. Harry Warren

*Name: Alexander Umstead

County: Forsyth

Sponsor: Larry Womble

*Name: Joseph Vutr

County: Wake

Sponsor: Rep. Stam

*Name: Khari Briley

County: WAKE

Sponsor: Rep. Gill

*Name: Alexis McDonald

County: Wake

Sponsor: Rep. Wainwright

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: EARL COKER

2. Name: JOHN BRANDON

5. Name: _____

3. Name: KEN KIRBY

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

May 4, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

TERENCE BEAVICH	UNIC
Jack Cashio	NC Chamber
Mel Sober	DOR
1/2 Kayla	Kayla from Jim
A.A. Adams	Winston Advocate
W.L. BUZZ EAYTON	BEAUFORT PATRIOT TEN PARTY WASHINGTON N.C.
Kalie Bretz	THE COUNTY COMPASS Bayboro, NC Pamlico County
Jackie VanEssendel	Ft Washington NC
Pete Rolde	Forsyth Co Tax Assessor/Collector
WILLIAM V. "BILL" BELL	MAYOR Durham NC
Bill Rowe	NC Justice Center

VISITOR REGISTRATION SHEET

House Finance

May 4, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
David Starling	NCDST
Carl Howell	DST
Karl Krapp	NCLM
Doug Lassiter	NCSTA
Joni Allen	BEGINNINGS
J. H. Hart	NEPE/ NCCA
Lachelle Pulliam	Dmd Wainwright's Office
ZEB ALLEY	NMRS
M. Baggett	Smith Moore Leathers
Angele Ann	US City Attorney
Mike Gering	Town of Hillsborough

VISITOR REGISTRATION SHEET

House Finance

May 4, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mitch Leonard	SEANC
Shawn Wischmeier	NCOST
Craig Denko	NCOST
SOLARI	DST
Edgar Miller	LTNC
Emily Grimm	mwc
BJ Miller	MCHS
DAVID BARNES	PS
Vance Hollans	NC Dept. St. Treasurer
John Balle	BCS
Fred Barr	Bank Assn

VISITOR REGISTRATION SHEET

House Finance

May 4, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Christine Craig	Wakenud
Brian Hill	City of Concord
Paige Barefoot	Folwell
Rich Owings	Affiliate Nomad
Tom DAVIES	BRAINY ATOM
Rebecca Madigan	Performance Marketing Association
Dany Miskew	PSC
Bo Heath	McGuire Wood

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 318
PROPOSED COMMITTEE SUBSTITUTE H318-PCS80212-RB-27

Short Title: State Treasurer's Investments.-AB (Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE STATE TREASURER INVESTMENT STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-69.2(b) reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, ~~selecting from among the following funds.~~ The State Treasurer may invest the funds as provided in this subsection. If an investment was authorized by this subsection at the time the investment was made or contractually committed to be made, then none of the percentage or other limitation on investments set forth in this subsection shall be construed to require the State Treasurer to subsequently dispose of the investment or fail to honor any contractual commitments as a result of changes in market values, ratings, or other investment qualifications.

- (1) ~~Any of the investments~~ Investments authorized by G.S. 147-69.1(c)(1)-(7).
- (2) General obligations of other states of the United States.
- (3) General obligations of cities, counties and special districts in North Carolina.
- (4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or outside the United States, including obligations that are convertible into equity securities, if the obligations bear one of the four highest ratings of at least one nationally recognized rating service when acquired.
- (5) Repealed by Session Laws 2001-444, s. 2, effective October 1, 2001.
- (6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4).
- (6a) In addition to the limitations and requirements with respect to the investments of the Retirement Systems set forth in this subsection, the State Treasurer shall select investments of the assets of the Retirement Systems such that investments made pursuant to subdivisions (b)(1) through (6) of this section shall at all times equal or exceed twenty percent (20%) of the market value of all invested assets of the Retirement Systems.
- (6b) Investments pursuant to subdivisions (b)(1) through (6) of this section may be made directly by the State Treasurer or through contractual arrangements in which the investment manager has full and complete discretion and



1 authority to invest assets specified in such arrangements in investments
2 authorized by subdivisions (b)(1) through (6) of this section, provided for
3 each indirect investment, the investment manager has assets under
4 management of at least one hundred million dollars (\$100,000,000).

5 (6c) With respect to Retirement Systems' assets referred to in subdivision (b)(8),
6 they may be invested in obligations and other debt securities, including debt
7 securities convertible into other securities, that do not meet the requirements
8 of any of subdivisions (b)(1) through (6) of this section nor subdivision
9 (b)(7) of this section, provided such investments are made through
10 investment companies registered under the Investment Company Act of
11 1940, individual, ~~common~~ common, or collective trust funds of banks and
12 trust companies, group trusts and limited partnerships, limited liability
13 companies or other limited liability investment vehicles that invest primarily
14 in investments authorized by this subdivision and through contractual
15 arrangements in which the investment manager has full and complete
16 discretion and authority to invest assets specified in such arrangements in
17 investments authorized by this subdivision, provided the investment
18 manager for each investment pursuant to this subdivision has assets under
19 management of at least one hundred million dollars (\$100,000,000) and
20 provided that the investments authorized under this subdivision shall not
21 exceed five percent (5%) of the market value of all invested assets of the
22 Retirement Systems.

23 (7) With respect to Retirement Systems' assets referred to in subdivision (8) of
24 this subsection, (i) insurance contracts that provide for participation in
25 individual or pooled separate accounts of insurance companies, (ii) group
26 trusts, (iii) individual, common, or collective trust funds of banks and trust
27 companies, (iv) real estate investment trusts, (v) investment companies
28 registered under the Investment Company Act of 1940, and (vi) limited
29 partnerships, limited liability companies, or other limited liability investment
30 vehicles; provided the investment manager has assets under management of
31 at least one hundred million dollars (\$100,000,000); provided such
32 investment assets are managed primarily for the purpose of investing in or
33 owning real estate or related debt financing located within or outside the
34 United States; and provided that the investments authorized by this
35 subdivision shall not exceed ten percent (10%) of the market value of all
36 invested assets of the Retirement Systems.

37 (8) With respect to assets of the Teachers' and State Employees' Retirement
38 System, the Consolidated Judicial Retirement System, the Firemen's and
39 Rescue Workers' Pension Fund, the Local Governmental Employees'
40 Retirement System, the Legislative Retirement System, the North Carolina
41 National Guard Pension Fund (hereinafter referred to collectively as the
42 Retirement Systems), and assets invested pursuant to subdivision (b2) of this
43 section, they may be invested in equity securities traded on a public
44 securities exchange or market organized and regulated pursuant to the laws
45 of the jurisdiction of such exchange or market and issued by any company
46 incorporated or otherwise created or located within or outside the United
47 States; provided the investments meet the conditions of this subdivision. The

48 ~~The~~ investments authorized for the Retirement Systems under this
49 subdivision cannot exceed sixty-five percent (65%) of the market value of
50 all invested assets of the Retirement Systems.

1 The assets authorized under this subdivision may be invested directly by
 2 the State Treasurer in any equity securities authorized by this subdivision for
 3 the primary purpose of approximating the movements of a nationally
 4 recognized and published market benchmark index. No more than one and
 5 one-half percent (1 1/2%) of the market value of the Retirement Systems'
 6 assets that may be invested directly under this subdivision can be invested in
 7 the stock of a single corporation, and the total number of shares in that single
 8 corporation cannot exceed eight percent (8%) of the issued and outstanding
 9 stock of that corporation.

10 So long as each investment manager has assets under management of at
 11 least one hundred million dollars (\$100,000,000), the assets authorized under
 12 this subdivision ~~can~~may also be invested through any of the following:

13 ~~(i)a.~~ Investment companies registered under the Investment
 14 Company Act of 1940;~~(ii)~~individual, common, or collective trust
 15 funds of banks and trust companies;~~(iii)~~ companies; and group
 16 trusts, and trusts that invest primarily in investments authorized by
 17 this subdivision.

18 **b.** Limited partnerships, limited liability companies, or other limited
 19 liability investment vehicles that are not publicly traded and invest
 20 primarily in investments authorized by this subdivision. Investments
 21 under this sub-subdivision shall not exceed six and one-half percent
 22 (6.5%) of the market value of all invested assets of the Retirement
 23 Systems.

24 ~~(iv)c.~~ Contractual arrangements in which investment managers
 25 have full and complete discretion and authority to invest assets
 26 specified in such contractual ~~arrangements;~~ arrangements in
 27 investments authorized by this subdivision.

28 ~~The assets authorized under this subdivision can also be invested directly~~
 29 ~~by the State Treasurer in any equity securities represented in the S&P 500~~
 30 ~~Index or that have been publicly announced to be included in the S&P 500~~
 31 ~~Index. No more than one and one-half percent (1 1/2%) of the market value~~
 32 ~~of the Retirement Systems' assets that may be invested directly under this~~
 33 ~~subdivision can be invested in the stock of a single corporation, and the total~~
 34 ~~number of shares in that single corporation cannot exceed eight percent (8%)~~
 35 ~~of the issued and outstanding stock of that corporation.~~

36 (9) With respect to Retirement Systems' assets, as defined in subdivision (b)(8)
 37 of this subsection, they may be invested in interests in limited partnerships,
 38 limited liability companies, or other limited liability investment vehicles that
 39 are not publicly traded if the primary purpose of the limited partnership,
 40 limited liability company, or other limited liability investment vehicle is (i)
 41 to invest in public or private equity, or corporate buyout transactions, within
 42 or outside the United States; States or (ii) to engage in other strategies not
 43 expressly authorized by any other subdivision of this subsection. The
 44 amount invested under this subdivision shall not exceed ~~five percent (5%)~~
 45 seven and one-half percent (7.5%) of the market value of all invested assets
 46 of the Retirement Systems.

47 (9a) With respect to Retirement Systems' assets, as defined in subdivision (b)(8)
 48 of this subsection, they may be invested in inflation-linked bonds,
 49 timberlands, commodities, and other assets that are acquired for the primary
 50 purpose of providing protection against risks associated with inflation,
 51 provided such investments are made through investment companies

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registered under the Investment Company Act of 1940, individual, common or collective trust funds of banks and trust companies, group trusts and limited partnerships, limited liability companies or other limited liability investment vehicles that invest primarily in investments authorized by this subdivision and through contractual arrangements in which the investment manager has full and complete discretion and authority to invest assets specified in such arrangements in investments authorized by this subdivision, provided the investment manager for each investment pursuant to this subdivision has assets under management of at least one hundred million dollars (\$100,000,000) and provided that the investments authorized under this subdivision shall not exceed five percent (5%) of the market value of all invested assets of the Retirement Systems. Notwithstanding anything in this subsection to the contrary, the investments authorized by this subdivision shall not be included in any subdivision other than this subdivision for purposes of the percentage investment limitations therein or otherwise.

(10) Recodified as part of subdivision (b)(9) by Session Laws 2000-160, s. 2.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars (\$25,000,000), that have a final maturity not later than October 1, 2011. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision.

(12) With respect to assets of the Escheat Fund, in addition to those investments authorized by subdivisions (1) through (6) of this subsection, up to twenty percent (20%) of such assets may be invested in the investments authorized under subdivisions (7) through (9) of this subsection, notwithstanding the percentage limitations imposed on the Retirement Systems' investments under those subdivisions."

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



HOUSE BILL 318: State Treasurer's Investments.-AB

2011-2012 General Assembly

Committee: House Finance	Date: May 3, 2011
Introduced by: Reps. McGee, Folwell	Prepared by: Cindy Avrette
Analysis of: PCS to First Edition H318-CSR-27	Committee Counsel

SUMMARY: *House Bill 318¹ makes changes to the State Treasurer's investment authority. The PCS makes technical changes suggested by the State Treasurer and stylistic changes.*

CURRENT LAW: The State Treasurer has the statutory responsibility of managing the State's investments. The types of investments the Treasurer may use are limited by statute. In regards to the investment of assets held by the North Carolina Retirement System², there are additional statutory directions and limitations:

- At least 20% of the market value of all invested assets of the Retirement System must be invested in fixed income assets.
- No more than 65% of the market value of all invested assets of the Retirement System may be invested in public equities.
- Up to 10% of the market value of all invested assets of the Retirement System may be invested in real estate.
- Up to 5% of the market value of all invested assets of the Retirement System may be invested in alternative investments. These investments are primarily private equities. This statutory limit was exceeded in September 2008 when the stock market plummeted, resulting in significantly reduced market value of all investment assets. The limit is currently exceeded by .13%.
- In partial response to the exceeding of the statutory limit for alternative investments in 2008, the General Assembly approved two new asset allocations in S.L. 2009-283, the credit and inflation allocations. Up to 5% of the market value of all invested assets of the Retirement System may be invested in each of these two allocations. Subsequent to the creation of these two allocations, certain investment vehicles were reclassified from the alternatives allocation into the credit and inflation allocations, thus reducing the holdings percentage in alternative investments below the statutory limit.

The State Treasurer may manage the investments of the assets internally or externally through outside managers. Currently, the State Treasurer manages approximately 40% of the assets of the Retirement System internally. Although the State Treasurer may make equity investments internally³, all of those investments are currently managed externally, partially due to the investment limitations imposed on the internal management of this asset allocation. Under current law, the State Treasurer may only invest in equity securities represented in the S&P 500 benchmark.

BILL ANALYSIS: House Bill 318 is an agency bill requested by the State Treasurer. The bill would give the Treasurer greater flexibility in implementing its investment strategy of the assets in the Retirement System. The Treasurer's stated intent of the requested statutory changes is to achieve the same or slightly

¹ House Bill 318, as introduced, was identical to Senate Bill 215, introduced by Sen. Apodaca. Senate Bill 215 is on the Senate calendar for 2nd reading Wednesday, May 4th.

² The North Carolina Retirement System consists of the following retirement plans: Teachers' and State Employees', Consolidated Judicial, Firemen's and Rescue Workers, Local Governmental Employees, Legislative, and North Carolina National Guard.

³ NCRS only manages investment grade fixed income internally.

House PCS 318

Page 2

better returns at a meaningfully lower level of risk. The bill would make three primary changes allowing greater investment management flexibility:

Expand the Benchmark for Internal Management of Public Equities:

The State Treasurer's internal management of public equity securities is limited to those securities represented in the S&P 500 benchmark. The State Treasurer may manage these same public equity securities using broader indexes through external managers. The bill would amend G.S. 147-69.2(b)(8) to allow other, broader indexes to be utilized to manage equities internally. The bill would also limit the Treasurer's ability to invest internally to index funds. Currently, this limitation does not exist.

Securities represented in the S&P 500 comprise only 32% of the global equity universe. The S&P 500 covers approximately 75% of the US equity market and focuses on large cap stocks. There exist other, broader indexes, such as the Russell 3000 index and the MSCI World ex US index. The Russell 3000 index covers approximately 42% of the global equity universe; it covers 98% of the US equity market and includes large cap, mid cap, and small cap stocks. The MSCI World ex US index covers approximately 39% of the global equity universe and consists of 23 developed market countries outside of the United States.

"Alternatives" Cap:

The current statutory cap on the alternative investment allocation is 5% of the total investment assets. Investments in this allocation exceeded the cap in September 2008 when the stock market plummeted and significantly reduced the market value of all investments. With the creation of the credit and inflation asset allocations in 2009, the State Treasurer reclassified certain investment instruments from the alternatives allocation into the credit and inflation allocations, thus reducing the holdings percentage in alternative investments below the statutory limit. However, the allocation subsequently exceeded the cap by .13% as of December 31, 2010, because the Treasurer had to invest additional cash in certain alternative investments in order to meet contractual obligations. The Treasurer has taken steps since that time to reduce the level of investments in this allocation. Currently, investments in the alternatives allocation represent 4.96% of the total investment assets.

The bill would amend G.S. 147-69.2(b)(9) to increase the cap from 5% of plan assets to 7.5%.⁴ The bill would also stipulate that if an investment is within the cap at the time it is made or contractually committed to be made, the Treasurer would not be required to dispose of the investment or fail to honor the contractual commitment as a result of changes in market values, ratings, or other investment qualifications.

Use of Hedge Funds in Public Equity Portfolio

The public equity portfolio represents 40% to 50% of the Retirement System's assets. The State Treasurer may utilize hedge funds for risk reduction in all parts of the portfolio that it makes sense to do so except for the public equity portfolio. The public equity asset allocation is the riskiest asset class in the plan due to its large allocations and high volatility of risks. The bill would amend G.S. 147-69.2(b)(8)d. to allow the State Treasurer to use hedge funds in the public equity portfolio, so long as its investment in them does not exceed 6.5% of the market value of all invested assets in the Retirement System.⁵

EFFECTIVE DATE: House Bill 318 would become effective when it becomes law.

H318-SMRB-39(CSRB-27) v1

⁴ The Treasurer requested 10%.

⁵ The Treasurer requested 10%.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 418

Short Title: Winston-Salem Deannexation. (Local)

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

Referred to: Government, if favorable, Finance.

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE
LIMITS OF THE CITY OF WINSTON-SALEM.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Winston Salem are reduced by removing the following described property:

BEGINNING at an iron, said iron being located in the Southeast corner of Judy B. Lloyd, Deed Book 1148, Page 788, Forsyth County Registry, and also being in the Northern edge of the pavement of Union Cross Road (S.R. 2643); thence from said point of Beginning North 01° 30' 07" East 676.63 feet to an iron in the Northeast corner of Lloyd; thence North 85° 01' 55" West 1,028.47 feet to a stone; thence North 5° 15' 12" East 1,123.47 feet to an iron; thence South 86° 32' 33" East 182.75 feet to an iron; thence South 00° 19' 53" West 666.48 feet to an iron; thence South 81° 02' 18" East 783.00 feet to an iron; thence South 14° 23' 08" East 164.16 feet to an iron; thence South 83° 44' 5" East 44.51 feet to an iron; thence along a new line 01° 30' 51" West 929.24 feet to an iron in the Northern edge of the pavement of Union Cross Road; thence with the Northern edge of the pavement of Union Cross Road North 85° 46' 24" West 108.78 feet to an iron, the point and place of Beginning, containing 16.015 acres, more or less, and being in accordance with a survey prepared by C. Ray Cates, R.L.S., dated February 5, 1989 and being all of Tax Lots 101A, 101B, and 101C of Block 2634 of the Forsyth County 2011 tax maps.

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





HOUSE BILL 418: Winston-Salem Deannexation

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. L. Brown
Analysis of: First Edition

Date: May 4, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 418 removes an area described in the bill from the corporate limits of the City of Winston-Salem.*

CURRENT LAW:

Section 1 of Article VII of the North Carolina Constitution, empowers the General Assembly to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." Pursuant to this Section, the General Assembly enacted Article 4A of Chapter 160A of the General Statutes, which authorizes municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to *deannex* property. The power to deannex remains with the General Assembly.

BILL ANALYSIS:

House Bill 418 would remove a property area described in the bill from the corporate limits of the City of Winston Salem.

EFFECTIVE DATE:

House Bill 418 would become effective when it becomes law.

Giles Perry, staff to House Government, substantially contributed to the content in this summary.

H418-SMSV-33(e1) v1



North Carolina General Assembly
House Committee on Finance

Minutes

~
May 5, 2011

The House Committee on Finance met on Thursday, May 5, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Ken Kirby and Carlton Adams. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Judy Collier, Heather Fennell, Kory Goldsmith, Trina Griffin, Sandra Johnson, Giles Perry, Greg Roney, and Brian Slivka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Starnes called the meeting to order at 8:30 am and recognized the five (5) pages present: (1) Alexander Umstead of Forsyth County sponsored by Representative Womble; (2) Alexis McDonald of Wake County sponsored by Representative Wainwright; (3) Khari Bailey of Wake County sponsored by Representative Gill; (4) Joseph Vuke of Wake County sponsored by Representative Stam; and (5) Brandon Edds of Rowan County sponsored by Representative Harry Warren.

Chairman Starnes stated that **SB 269 Hillsborough Occupancy Tax** conformed to the guidelines and was reported favorable by the Subcommittee on Occupancy Tax and referred to the Committee on Finance.

The first bill considered by the Committee was **SB 269 Hillsborough Occupancy Tax** (see **attachment 3**). The Chair recognized Senator Kinnaird to explain the bill. The Chair recognized Representative Carney who moved that SB 269 be given a favorable report. The motion carried.

The next bill considered by the Committee was **HB 352 Delay Kannapolis Annexation** (see **attachment 4**). Chairman Starnes recognized Representative Steen to explain the bill. The Chair then recognized Representative Setzer who moved that HB 352 be given a favorable report. The motion carried.

The next bill before the Committee was **HB 532 Graham County/Cemetery Tax By General Law** (see **attachment 5**). The Chair recognized Representative West to explain the bill. Chairman

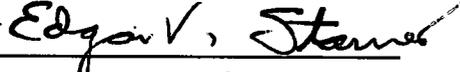
Starnes recognized Representative Womble who moved that HB 532 be given a favorable report. The motion carried.

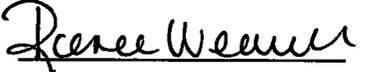
Next before the Committee was **SB 295 Marshville Charter Consolidation** (see **attachment 6**). The Chair recognized Representative McGuirt to explain the bill. The Chair then recognized Representative Ross who moved that SB 295 be given a favorable report. The motion carried.

The next bill to be heard by the Committee was **HB 845 Reform Annexation Laws** (see **attachment 7**). Chairman Starnes recognized Representative Moffitt who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Representatives LaRoque and Dollar were recognized to explain the bill. The following people spoke in the support of the bill: Catherine Heath, Stop Annexation; Kelli Kukura, NC League of Municipalities; Doug Aitken, Fair Annexation Coalition; Kathy Hartkopf, Freedom Works; Mark Dorosin and Peter Gilbert, UNC Center for Civil Rights. No one from the audience spoke in opposition of the bill. The Chair then recognized Representative Warren who moved that HB 845 be given a favorable report as to the proposed committee substitute, unfavorable report to the original bill. The motion was set aside for further discussion. Chairman Starnes recognized Representative McGee who sent forth amendment 1 that moved to amend the bill on page 10, lines 11-12 and on page 9, line 44 (see **attachment 8**). Representative McGee explained his amendment. Being no further discussion or debate, the Chair called for the ayes and noes on amendment 1. The motion to adopt amendment 1 passed. The Chair then recognized Representative Stam who sent forth amendment 2 that moved to amend the bill on page 3, line 19 (see **attachment 9**). Representative Stam explained the amendment. Being no further discussion or debate, the Chair called for the ayes and noes on amendment 2. The motion to adopt amendment 2 passed. Chairman Starnes recognized Representative Hall who sent forth amendment 3 which moved to amend the bill on page 12, lines 13-19 by rewriting those lines; and on page 20, line 41, by rewriting those lines; and on page 20, line 9 by deleting the word; and on page 20, lines 13-14, by rewriting those lines; and on page 22, line 3, by deleting the word; and on page 5, lines 43-44, by adding between those lines; and on page 22, lines 21-22, by adding between those lines two new bill sections; and on page 5, lines 20-21, by adding between those lines (see **attachment 10**). Staff person, Giles Perry of the Research Division was recognized to explain the amendment. The Chair recognized Representative Hall who stated he would like to submit a perfecting amendment. Amendment 3 was temporarily set aside. Chairman Starnes then recognized Representative Womble who sent forth amendment 4 that moved to amend amendment 1 on page 1, line 5 by adding the word (see **attachment 11**). Representative Womble explained his amendment. Being no further discussion or debate, the Chair called for the ayes and noes on amendment 4. The motion to adopt amendment 4 passed. The Chair recognized Representative Hall who sent forth amendment 5 that moved to amend amendment 4 on page 1, lines 1-6; and on page 1 of the amendment by deleting lines 22-23; and on page 3 of the amendment by deleting lines 40-43; and on page 4 of the amendment by deleting lines 1-22 (see **attachment 12**). Staff person Giles Perry explained the perfecting amendment. Due to time, Chairman Starnes brought the discussion to an end with the announcement that the bill will be rescheduled along with **HB 565 Morehead City/Beaufort Boundary**.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 9:52 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 352 A BILL TO BE ENTITLED AN ACT AT THE REQUEST OF THE CITY OF KANNAPOLIS TO DELAY FOR TWO YEARS THE LEGISLATIVE ANNEXATION OF THE SOUTHLAND DEVELOPMENT TRACTS IN SOUTHERN ROWAN COUNTY.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 532 A BILL TO BE ENTITLED AN ACT PROVIDING FOR THE MAINTENANCE OF CEMETERIES IN GRAHAM COUNTY FROM AD VALOREM TAXES UNDER GENERAL LAW.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 269 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF
HILLSBOROUGH TO LEVY A ROOM OCCUPANCY TAX.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 295 A BILL TO BE ENTITLED AN ACT TO REVISE AND CONSOLIDATE THE
CHARTER OF THE TOWN OF MARSHVILLE.

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 _____.

AGENDA
House Finance Committee

Thursday, May 5, 2011

8:30 am

Room 544 LOB

Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 352 Delay Kannapolis Annexation

Representative Steen, II

HB 532 Graham County/Cemetery Tax By General Law

Representative West

HB 565 Morehead City/Beaufort Boundary

Representative McElraft

HB 845 Reform Annexation Laws

Representatives LaRoque, Dollar, Owens, Jr.

SB 269 Hillsborough Occupancy Tax

Representative Kinnaird

SB 295 Marshville Charter Consolidation

Senator Tucker

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAY 5, 2011

Room: 544

*Name: Alexander Umstead

County: Forsyth

Sponsor: Larry Wamble

*Name: Alexis McDonald

County: Wake

Sponsor: Rep. Mainwright

*Name: Khari Bailey

County: Wake

Sponsor: Gill

*Name: Joseph Vake

County: Wake

Sponsor: Paul Stam

*Name: Brandon Edels

County: Rowan

Sponsor: Harry Warriner

House Sgt-At Arms:

1 Name: FRED HINES

4 Name: KEN KIRBY

2 Name: JOHN BRANDON

5 Name: CARLTON ADAMS

3 Name: EARL COKER

6 Name: _____

VISITOR REGISTRATION SHEET

House Finance

May 5, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mitch Leonard	SEANC
Kim Hibbard	NCLM
Dana Festrin	Charlotte
Lana Hygh	Cary
Mike Gering	Hillsborough
Tim Stevens	Hillsborough
Angela Carmon	WS
Lee Gurney	Winston-Salem
Randy Martin	Morehead City
W. Gary Lister	DLC + Assoc
Jake Cashion	N.C. Chamber

VISITOR REGISTRATION SHEET

House Finance

May 5, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allison Fowler	NC Grange
Bryce Scobbin	TSS
Wendy S. Led	R. Led & house.
DAVID BARNES	PS
Maew H.H.	Smith Arden
Cathy	Biznes ct of NC
Emily Grimm	MWC
Allison Waller	Nelson Mullins
Heather Robinson	NORWA
B. Miller	MHS
Vinny Whited	NCMS

VISITOR REGISTRATION SHEET

House Finance

May 5, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
Kellie Slapp	JLF
Becki Gray	JLF
Michael Gray	Lendell
Jeff Mixon	AFP NC
David McGowan	NC Realtors
John [Signature]	nuc
Julia Adams	The Arc of NC
Derek Taylor	NCAV

VISITOR REGISTRATION SHEET

House Finance

May 5, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

WAYNE COOKE	NASH COUNTY OLCAFA
Cindy Matulich	Nash County OLCAFA
Lois Dixon	Nash County OLCAFA
Elsie Pittman	NASH county OLCAFA
E.F. PITTMAN	" " "
Royce MAY	NASH county OLCAFA
Lachelle Pulliam	DML Wainwright's Office
Deesi Hayes	NCHOA
Sam Cab	NC leg. Intern
Cady Thomas	NCAAR
CATHERINE HEATH	STOP NCAANNEXATION - NC

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

May 5, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LAURENCE ALFORD	OLC AFA
Arroyo Nelson	OLC AFA
Gloria Whitley	OLC AFA
Oliver L. Whitley	OLC AFA
DAVID WINSTEAD	OLC AFA
LAYORNS WINSTEAD	OLC AFA
Shirley Whitaker	OLC AFA
Nebant Moore	OLC AFA
Kathy Hartkopf	Freedom Works
Day Aitken	FAIR ANNEXATION COALITION
Karin L...	WLACC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 269

Short Title: Hillsborough Occupancy Tax. (Local)

Sponsors: Senator Kinnaird.

Referred to: Finance.

March 9, 2011

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1.1. Occupancy tax. – (a) Authorization and Scope. – The Town Board of the Town of Hillsborough may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Hillsborough shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Hillsborough Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Hillsborough and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Hillsborough Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.



1 **SECTION 1.2.** Tourism Development Authority. – (a) Appointment and
2 Membership. – When the Town Board adopts a resolution levying a room occupancy tax under
3 this act, it shall also adopt a resolution creating the Hillsborough Tourism Development
4 Authority, which shall be a public authority under the Local Government Budget and Fiscal
5 Control Act. The resolution shall provide for the membership of the Authority, including the
6 members' terms of office, and for the filling of vacancies on the Authority. At least one-third
7 of the members shall be individuals who are affiliated with businesses that collect the tax in the
8 town, and at least one-half of the members shall be individuals who are currently active in the
9 promotion of the travel and tourism in the town. The Town Board shall designate one member
10 of the Authority as chair and shall determine the compensation, if any, to be paid to members
11 of the Authority. The Authority shall meet at the call of the chair and shall adopt rules of
12 procedure to govern its meetings. The finance officer for the Town of Hillsborough shall be the
13 ex officio finance officer of the Authority.

14 **SECTION 1.2.(b)** Duties. – The Tourism Development Authority shall expend the
15 net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.
16 The Authority shall promote travel, tourism, and conventions in the town, sponsor
17 tourist-related events and activities in the town, and finance tourist-related capital projects in
18 the town.

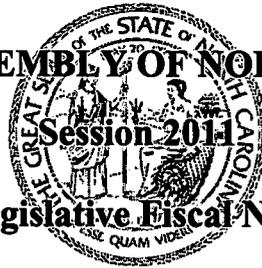
19 **SECTION 1.2.(c)** Reports. – The Tourism Development Authority shall report
20 quarterly and at the close of each fiscal year to the Hillsborough Town Board on its receipts
21 and expenditures for the preceding quarter and for the year in such detail as the Town Board
22 may require.

23 **SECTION 2.** G.S. 160A-215(g) reads as rewritten:

24 "(g) Applicability. – Subsection (c) of this section applies to all cities that levy an
25 occupancy tax. To the extent subsection (c) conflicts with any provision of a local act,
26 subsection (c) supersedes that provision. The remainder of this section applies only to Beech
27 Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia,
28 Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir,
29 Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville,
30 Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of
31 Ahoskie, Beech Mountain, Benson, Bermuda Run, Blowing Rock, Boiling Springs, Boone,
32 Burgaw, Carolina Beach, Carrboro, Cooleemee, Cramerton, Dallas, Dobson, Elkin, Franklin,
33 Hillsborough, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mocksville, Mooresville,
34 Murfreesboro, North Topsail Beach, Pembroke, Pilot Mountain, Ranlo, Selma, Smithfield, St.
35 Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and
36 Yanceyville, and to the municipalities in Avery and Brunswick Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 269 (First Edition)

SHORT TITLE: Hillsborough Occupancy Tax.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES

Town of Hillsborough \$46,385 \$49,327 \$52,164 \$54,371 \$56,230

EXPENDITURES

POSITIONS (cumulative):

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

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

BILL SUMMARY:

Senate Bill 269 authorizes the Town Board of the Town of Hillsborough to levy a room occupancy tax of up to 3%. It provides that the tax must be levied, administered, collected, and repealed as provided in GS 160A-215 (uniform provisions for room occupancy taxes). The bill requires the Hillsborough Tourism Development Authority (TDA) to use at least two-thirds of the occupancy tax proceeds to promote travel and tourism in the town and the remainder for tourism-related expenditures. It mandates that at least one-third of the members of the TDA be affiliated with businesses that collect the tax in the town, and at least one-half of the members be currently active in the town's travel and tourism promotion. Senate Bill 269 makes conforming change to GS 160A-215(g).

ASSUMPTIONS AND METHODOLOGY:

The Town of Hillsborough currently has 208 rooms that would be subject to the proposed 3% local room occupancy tax. According to the town, Orange County estimates that approximately \$50,000 from the current 3% county occupancy tax is derived from hotel rooms in Hillsborough.

Orange County reported \$935,220 in occupancy tax collections for taxable year 2009. Chapel Hill, the only municipality in Orange County that currently levies a room occupancy tax, reported \$891,857 for collections during that same year. Both Orange County and Chapel Hill levy a 3% occupancy tax. It's assumed that the \$43,363 difference was collected from hotels in the town of Hillsborough. This amount was then grown using the leisure and hospitality portion of North Carolina's gross state product as projected by Moody's Economy.com.

SOURCES OF DATA:

Moody's Economy.com; North Carolina Department of State Treasurer; Town of Hillsborough

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Marilyn Chism, Director
Fiscal Research Division

DATE: March 14, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 269: Hillsborough Occupancy Tax

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Kinnaird
Analysis of: First Edition

Date: April 28, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: Senate Bill 269 authorizes the Town of Hillsborough, located in Orange County, to levy a 3% room occupancy tax. At least two-thirds of the proceeds would be used to promote travel and tourism and the remainder would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

CURRENT LAW: Currently, the Town of Hillsborough does not have authority to levy a room occupancy tax. Orange County has had authority to levy a room occupancy tax of up to 3% since 1991.¹ The other municipalities in Orange County, Carrboro and Chapel Hill, have had authority to levy a room occupancy tax of up to 3% since 2001 and 1987 respectively.²

BILL ANALYSIS: Senate Bill 269 authorizes the Town of Hillsborough to levy a room occupancy tax of up to three percent (3%). Once levied, the total occupancy tax rate for the town would be up to six percent (6%) when the county tax is included. The proceeds of the tax levied by the town must be remitted to a Tourism Development Authority (TDA), to be created by the town's governing body when the tax is first levied. The TDA must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines recognized by the House Finance Committee and set out in the chart below.

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

EFFECTIVE DATE: Senate Bill 269 is effective when it becomes law.

¹ S.L. 1991-392. Orange County's occupancy tax does not conform to the occupancy tax guidelines.

² S.L. 2001-439 and S.L. 1987-460. Chapel Hill's occupancy tax does not conform to the occupancy tax guidelines; Carrboro's occupancy tax does conform to the guidelines.

Senate Bill 269

Page 2

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,³ which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes that scrutinizes occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

Cindy Avrette, counsel to Senate Finance, substantially contributed to this summary.

S269-SMSV-29(e1) v3

³ G.S. 153A-155 and G.S. 160A-215.
Research Division

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 352

Short Title: Delay Kannapolis Annexation. (Local)

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

Referred to: Government, if favorable, Finance.

March 15, 2011

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A BILL TO BE ENTITLED
AN ACT AT THE REQUEST OF THE CITY OF KANNAPOLIS TO DELAY FOR TWO
YEARS THE LEGISLATIVE ANNEXATION OF THE SOUTHLAND DEVELOPMENT
TRACTS IN SOUTHERN ROWAN COUNTY.
The General Assembly of North Carolina enacts:
SECTION 1. Section 2 of S.L. 2009-113 reads as rewritten:
"SECTION 2. This act becomes effective September 30, ~~2011-2013~~."
SECTION 2. This act is effective when it becomes law.





HOUSE BILL 352: Delay Kannapolis Annexation

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Steen
Analysis of: First Edition

Date: May 4, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *House Bill 352 delays for two years the annexation by Kannapolis of three tracts known as the Southland Development property.*

CURRENT LAW: S.L. 2009-113 provided for the annexation, effective September 30, 2011, of approximately 327 acres adjacent to I-85 in southern Rowan County into the City of Kannapolis, described as:

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

Collectively, these tracts are known as the Southland Development property.

BILL ANALYSIS: House Bill 352 would delay the annexation of the Southland Development property for two years, to September 30, 2013.

BACKGROUND: In 2009, the property owner planned to develop a corporate business park, Southland Development. The owner formally requested that Southland Development be voluntarily annexed into Kannapolis. Kannapolis could not annex Southland Development because the property is closer to other cities and the annexation statute prohibited Kannapolis' satellite corporate limits being closer to the primary corporate limits of another municipality. G.S. 160A-58.1(b)(2). The General Assembly enacted S.L. 2009-113 to annex Southland Development into Kannapolis effective September 30, 2011. Now, Southland Development has not developed at the anticipated rate, and the property owner seeks to delay the start of Kannapolis' property taxes for two years.

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

Giles S. Perry, counsel to House Government, substantially contributed to this summary.

H352-SMTM-9(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 532

Short Title: Graham County/Cemetery Tax By General Law. (Local)

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

Referred to: Government, if favorable, Finance.

March 31, 2011

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A BILL TO BE ENTITLED
AN ACT PROVIDING FOR THE MAINTENANCE OF CEMETERIES IN GRAHAM
COUNTY FROM AD VALOREM TAXES UNDER GENERAL LAW.
The General Assembly of North Carolina enacts:
SECTION 1. Section 9 of Chapter 797 of the 1957 Session Laws is repealed so
that the general law applies.
SECTION 2. This act is effective when it becomes law.





HOUSE BILL 532: Graham County/Cemetery Tax By General Law

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. West
Analysis of: First Edition

Date: May 5, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 532 repeals a section of a 1957 Session Law authorizing Graham County to call for a special election for the purpose of submitting to the voters the question of levying a special ad valorem tax for the maintenance of cemeteries in Graham County. Upon repeal, the general law would apply.*

CURRENT LAW: Chapter 797 of the 1957 Session Laws created the Graham County Cemetery Commission giving it full charge of all public cemeteries within the county, including supervision and maintenance. Section 9 of that act authorized the Graham County Board of Elections, upon request from the Cemetery Commission, to call a special election for the purpose of submitting the question of a levy of an ad valorem tax for the maintenance of the county cemeteries. The rate provided was \$0.06 on the \$100 of real and personal property. If a majority of voters approve a tax for cemetery maintenance, the tax is to be levied yearly and turned over the Cemetery Commission.

G.S. 153A-149(c) allows counties to levy property taxes, subject to a rate limitation, for specific purposes including the provision of cemeteries. For the purposes listed in G.S. 153A-149(c), the county may levy property taxes up to a combined rate of \$1.50 on the \$100.00 appraised value of property subject to taxation.

BILL ANALYSIS: House Bill 532 would repeal Section 9 of Chapter 797 of the 1957 Session Laws so that the general law would apply.

EFFECTIVE DATE: House Bill 532 would become effective when it becomes law.

BACKGROUND: After the passage of the 1957 local act, the Graham County Board of Commissioners held a referendum in which the ad valorem tax was approved. At some point in time, however, the county stopped collecting the special ad valorem tax specifically for cemetery maintenance and starting funding it as a county department through the appropriations process and based on its needs for the fiscal year. According to the county, the 6¢ on the \$100 rate is far more than is necessary for cemetery maintenance. The Cemetery Commission continues to function and currently has 9 members. The Board has indicated that, if this bill passes, the Commission will continue to exist and act in an advisory capacity to assist the Board with regard to cemetery maintenance.

Susan Barham, Research Assistant, contributed to this summary.

H532-SMSV-37(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 295*

Short Title: Marshville Charter Consolidation. (Local)

Sponsors: Senator Tucker.

Referred to: State and Local Government.

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF MARSHVILLE.

The General Assembly of North Carolina enacts:

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

"THE CHARTER OF THE TOWN OF MARSHVILLE.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation.** The Town of Marshville shall continue to be a body politic and corporate under the name of "Town of Marshville." The term 'general law' is employed herein as defined in G.S. 160A-1.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Corporate Powers.** The Town shall have and continue to have all of the powers, duties, rights, privileges, and immunities conferred and imposed on towns and cities by the general law of North Carolina.

"Section 2.2. **Corporate Boundaries.** The corporate limits of the Town of Marshville shall be and continue to be those existing at the time of the ratification of this revised Charter, and as the same may be altered from time to time in accordance with general law.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structuring of Governing Body.** The Town Council, hereinafter referred to as the "Council," and the Mayor shall be the governing body of the town.

"Section 3.2. **Town Council; Composition; Terms of Office.** The qualified voters of the entire town shall elect the Council. The Council shall be composed of five members to serve staggered terms of four years and until their successors are elected and qualified. Three members shall be elected in 2011 and quadrennially thereafter for four-year terms and two members shall be elected in 2013 and quadrennially thereafter for four-year terms.

"Section 3.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by the qualified voters of the town in 2011 and biennially thereafter for a term of two years and shall serve until a successor is elected and qualified. The Mayor shall be the official head of the Town government and shall preside at meetings of the Council. The Mayor shall have the right to vote only when there is an equal division on any question or matter before the Council and shall exercise the powers and duties conferred by law and as directed by the Council.

"Section 3.4. **Mayor Pro Tempore.** In accordance with general law, the Council shall elect one of its members to act as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability.



1 "Section 3.5. **Meetings.** In accordance with general law, the Council shall establish a
2 suitable time and place for its regular meetings. Special and emergency meetings may be held
3 as provided by general law.

4 "Section 3.6. **Quorum; Voting.** Official actions of the Council and all votes shall be taken
5 in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The
6 quorum provisions of G.S. 160A-74 shall apply.

7 "Section 3.7. **Compensation; Qualifications for Office; Vacancies.** The compensation,
8 qualifications, and filing of vacancies of the Mayor and members of the Council shall be in
9 accordance with general law.

10 "ARTICLE IV. ELECTIONS.

11 "Section 4.1. **Regular Municipal Elections.** Regular municipal elections shall be held in
12 each odd-numbered year in accordance with the uniform municipal election laws of North
13 Carolina. Elections shall be conducted on a nonpartisan basis and the results determined by a
14 plurality as provided in G.S. 163-292.

15 "Section 4.2. **Special Elections and Referenda.** Special elections and referenda may be
16 held only as provided by general law.

17 "ARTICLE V. ADMINISTRATION.

18 "Section 5.1. **Council-Manager Form.** The Town of Marshville shall operate under a
19 council-manager form of government as provided in Part 2 of Article 7 of Chapter 160A of the
20 General Statutes.

21 "Section 5.2. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed
22 to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the
23 Town, advise Town officials, and perform other duties required by law or as the Council may
24 direct.

25 "Section 5.3. **Town Clerk.** The Town Manager shall appoint a Town Clerk to keep a
26 journal of the proceedings of the Council, to maintain official records and documents, to give
27 notice of meetings, and to perform such other duties required by law or as the Council may
28 direct.

29 "Section 5.4. **Tax Collector.** The Town Manager shall appoint a Tax Collector to collect all
30 taxes owed to the Town and perform those duties specified in G.S. 105-350 and such other
31 duties as prescribed by law or assigned by the Council.

32 "Section 5.5. **Police Chief.** The Town Manager shall appoint a police chief to perform the
33 duties of Chief of Police for the Town.

34 "Section 5.6. **Administrative Head Appointment.** The Town Manager may appoint other
35 administration and department heads as permitted by Part 2 of Article 7 of Chapter 160A of the
36 General Statutes.

37 "Section 5.7. **Other Appointments.** The Town may authorize other positions to be filled by
38 appointment and organize the Town governance as deemed appropriate subject to requirements
39 of general law.

40 "ARTICLE VI. MISCELLANEOUS.

41 "Section 6.1. **Utility Billing and Termination.** The Town may provide that any fee
42 imposed pursuant to G.S. 160A-314 for the purpose of G.S. 160A-311(2), 160A-311(3), and
43 160A-311(6) may be billed together in one itemized statement. The Town Council may provide
44 by ordinance the order in which partial payments are to be applied among services. In the case
45 of nonpayment within a period of not less than 30 days, the town may terminate any or all such
46 service for which full payment has not been made."

47 **SECTION 2.** This act does not affect the terms of office of the current Mayor and
48 Town Council of the Town of Marshville.

49 **SECTION 3.** No action of proceeding by any nature (whether civil or criminal,
50 judicial or administrative, or otherwise) pending at the effective date of this act by or against

1 the Town of Marshville or any of its departments or agencies shall be abated or otherwise
2 affected by adoption of this act.

3 **SECTION 4.** The purpose of this act is to revise the Charter of the Town of
4 Marshville and to consolidate herein certain acts concerning the property affairs and
5 government of the Town.

6 **SECTION 5.** The following acts or portion of acts, having served the purposes for
7 which they were enacted or having been consolidated into this act, are hereby repealed:

8 (1) Chapter 313 of the Private Laws of 1913.

9 (2) Chapter 243 of the Private Laws of 1933.

10 (3) Chapter 195 of the Private Laws of 1935.

11 (4) Chapter 124 of the Public-Local Laws of 1941.

12 (5) Chapter 652 of the 1973 Session Laws.

13 (6) Chapter 842 of the 1973 Session Laws.

14 (7) Chapter 978 of the 1987 Session Laws.

15 (8) S.L. 2000-62.

16 **SECTION 6.** This act does not affect the following:

17 (1) Chapter 854 of the Session Laws of 1951, relating to bird sanctuaries.

18 (2) S.L. 2006-171, relating to zoning.

19 (3) S.L. 2008-25, relating to violators of the Town's overgrown vegetation
20 ordinance.

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

25 **SECTION 8.** If any provision of this act or the application thereof to any person or
26 circumstances is held invalid, such invalidity shall not affect other provisions or application of
27 this act which can be given effect without the invalid provision or application, and to this end
28 the provisions of this act are declared to be severable.

29 **SECTION 9.** This act is effective when it becomes law.



SENATE BILL 295: Marshville Charter Consolidation

2011-2012 General Assembly

Committee:	House Finance	Date:	May 5, 2011
Introduced by:	Sen. Tucker	Prepared by:	Greg Roney
Analysis of:	First Edition		Committee Counsel

SUMMARY: *Senate Bill 295 revises and consolidates the Charter of the Town of Marshville.*

[As introduced, this bill was identical to H290, as introduced by Rep. McGuirt, which is currently in House Government.]

CURRENT LAW: The Marshville Charter was last consolidated in 1913.

BILL ANALYSIS: Senate Bill 295 rewrites the Charter of the Town of Marshville. Under the charter the Town Council is to be composed of 5 members serving 4 year terms. The charter provides for a staggering of those terms. The mayor is to be elected every 2 years. Both the mayor and the council members are to be elected by the qualified voters of the entire Town.

The Town will operate under the Council-Manager form of government. The Town Council will appoint the Town Attorney. The Town Manager shall appoint the Town Clerk, Tax Collector, Police Chief, and other administration and department heads.

The act does not affect the terms of office of the current mayor and town council.

A number of local laws for the Town are repealed. Specifically retained are local laws making Marshville a bird sanctuary (S.L. 1951-854), permitting the Town to exercise extraterritorial jurisdiction within one mile of the Town limits without consent of the Union County commissioners (S.L. 2006-171), and providing for annual notice to chronic violators of the Town's overgrown vegetation ordinance (S.L. 2008-25).

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

S295-SMTM-12(e1) v3

Barbara Riley of the Research Division and Giles S. Perry, counsel to House Government, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 845
Committee Substitute Favorable 5/3/11
PROPOSED COMMITTEE SUBSTITUTE H845-PCS80219-RCx-21

Short Title: Annexation Reform Act of 2011. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REFORM THE INVOLUNTARY ANNEXATION LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4A of Chapter 160A of the General Statutes is repealed.

SECTION 2. G.S. 160A-49.1 is recodified as G.S. 160A-58.57 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 3. G.S. 160A-49.2 is recodified as G.S. 160A-58.58 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 4. G.S. 160A-49.3 is recodified as G.S. 160A-58.59 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 5. G.S. 160A-51 is recodified as G.S. 160A-58.61 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 6. G.S. 160A-52 is recodified as G.S. 160A-58.62 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 7. Part 3 of Article 4A of Chapter 160A of the General Statutes is repealed.

SECTION 8. Article 4A of Chapter 160A of the General Statutes is amended by adding a new Part 7 to be entitled "Annexations Initiated by Municipalities."

SECTION 9. Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act and as amended by Sections 2, 3, 4, 5, and 6 of this act, reads as rewritten:

"Part 7.

"Annexations Initiated by Municipalities.

"§ 160A-58.50. Declaration of policy.

It is hereby declared as a matter of State policy:

(1) That sound urban development is essential to the continued economic development of North Carolina.

(2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential,



1 commercial, industrial, institutional, and governmental purposes or in areas
2 undergoing such development.

3 (3) That municipal boundaries should be extended in accordance with legislative
4 standards applicable throughout the State to include such areas and to
5 provide the high quality of governmental services needed therein for the
6 public health, safety, and welfare.

7 (4) That areas annexed to municipalities in accordance with such uniform
8 legislative standards should receive the services provided by the annexing
9 municipality.

10 (5) That the provision of services to protect the health, safety, and welfare is a
11 public purpose.

12 (6) That it is essential for citizens to have an effective voice in annexations
13 initiated by municipalities.

14 **"§ 160A-58.51. Definitions.**

15 As used in this Part, the following definitions apply:

16 (1) Contiguous area. – Any area which, at the time annexation procedures are
17 initiated, either abuts directly on the municipal boundary or is separated
18 from the municipal boundary by a street or street right-of-way, a creek or
19 river, the right-of-way of a railroad or other public service corporation, lands
20 owned by the municipality or some other political subdivision, or lands
21 owned by the State of North Carolina. A connecting corridor consisting
22 solely of the length of a street or street right-of-way may not be used to
23 establish contiguity.

24 (1a) Eligible property owner. – A property owner who is eligible to sign a
25 petition to deny an annexation ordinance or a property owner who is eligible
26 to be notified of the opportunity to have water lines and sewer lines and
27 connections installed at no cost to the property owner. A property owner is
28 eligible to sign a petition to deny an annexation ordinance if the property
29 owner held a fee interest in the property, determined as of the date of the
30 resolution of consideration. A property owner is eligible to be notified of the
31 opportunity to have water lines and sewer lines and connections installed at
32 no cost to the property owner if that property owner held a freehold interest
33 in the real property to be annexed as of the date of the combined notice of
34 public informational meeting and public hearing.

35 (2) Necessary land connection. – An area that does not exceed twenty-five
36 percent (25%) of the total area to be annexed.

37 (3) Property owner. – Any person having a freehold interest in real property.

38 (4) Used for residential purposes. – Any lot or tract five acres or less in size on
39 which is constructed a habitable dwelling unit.

40 **"§ 160A-58.52. Authority to annex.**

41 The governing board of any municipality may extend the corporate limits of such
42 municipality under the procedure set forth in this Part.

43 **"§ 160A-58.53. Prerequisites to annexation.**

44 A municipality exercising authority under this Part shall make plans for the extension of
45 services to the area proposed to be annexed and shall, prior to the public hearing provided for in
46 G.S. 160A-58.55, prepare a report setting forth such plans to provide services to the area
47 proposed to be annexed. The report shall include the following:

48 (1) A map or maps of the municipality and adjacent territory to show the
49 following information:

50 a. The present and proposed boundaries of the municipality.

- 1 b. The present major trunk water mains and sewer interceptors and
2 outfalls, and the proposed extensions of such mains, outfalls, and
3 lines as required in subdivision (3) of this section. The water and
4 sewer map shall bear the seal of a registered professional engineer.
5 c. The general land use pattern in the area proposed to be annexed.
6 (2) A statement showing that the area proposed to be annexed meets the
7 requirements of G.S. 160A-58.54.
8 (3) A statement setting forth the plans for extending to the area proposed to be
9 annexed each major municipal service on substantially the same basis and in
10 the same manner as such services are provided within the rest of the
11 municipality prior to annexation and the method to finance the extension of
12 major municipal services into the area proposed to be annexed as follows:
13 a. Provision of police protection, fire protection, solid waste collection,
14 and street maintenance services on the effective date of annexation.
15 A contract with a rural fire department to provide fire protection shall
16 be an acceptable method of providing fire protection. A contract with
17 a private firm to provide solid waste collection services shall be an
18 acceptable method of providing solid waste collection services.
19 b. Extension of water and sewer services to each lot or parcel, with a
20 proposed timetable for construction of such mains, outfalls, and lines
21 within three and one-half years of the effective date of annexation, in
22 accordance with G.S. 160A-58.56.
23 (4) A statement of the impact of the annexation on any rural fire department
24 providing service in the area proposed to be annexed and a statement of the
25 impact of the annexation on fire protection and fire insurance rates in the
26 area proposed to be annexed, if the area where service is provided is in an
27 insurance district designated under G.S. 153A-233, a rural fire protection
28 district under Article 3A of Chapter 69 of the General Statutes, or a fire
29 service district under Article 16 of Chapter 153A of the General Statutes.
30 The rural fire department shall make available to the municipality not later
31 than 30 days following a written request from the municipality all
32 information in its possession or control, including operational, financial, and
33 budgetary information, necessary for preparation of a statement of impact.
34 The municipality shall, in a timely fashion, supply the rural fire department
35 with information requested by the rural fire department to respond to the
36 written request. The rural fire department forfeits its rights under
37 G.S. 160A-58.57 if it fails to make a good faith response within 45 days
38 following receipt of the written request for information from the
39 municipality, provided that the municipality's written request so states by
40 specific reference to this subdivision.
41 (5) A statement showing how the proposed annexation will affect the
42 municipality's finances and services, including municipal revenue change
43 estimates. This statement shall be delivered to the clerk of the board of
44 county commissioners at least 30 days before the date of the public
45 informational meeting on any annexation under this Part.

46 "**§ 160A-58.54. Character of area to be annexed.**

- 47 (a) A municipal governing board may extend the municipal corporate limits to include
48 any area that meets all of the following criteria:
49 (1) It shall be adjacent or contiguous to the municipality's boundaries at the time
50 the annexation proceeding is begun, except if the entire territory of a county
51 water and sewer district created under G.S. 162A-86(b1) is being annexed.

1 the annexation shall also include any noncontiguous pieces of the district as
2 long as the part of the district with the greatest land area is adjacent or
3 contiguous to the municipality's boundaries at the time the annexation
4 proceeding is begun.

5 (2) At least one-eighth of the aggregate external boundaries of the area shall
6 coincide with the municipal boundary.

7 (3) No part of the area shall be included within the boundary of another
8 incorporated municipality.

9 (4) The total area to be annexed shall meet the requirements of any of the
10 following:

11 a. Part or all of the area to be annexed must be developed for urban
12 purposes at the time of approval of the report provided for in
13 G.S. 160A-58.53. The area of streets and street rights-of-way shall
14 not be used to determine total acreage under this subdivision. An area
15 developed for urban purposes is defined as any area which meets any
16 one of the following standards:

17 1. Has a total resident population equal to at least two and
18 three-tenths persons for each acre of land included within its
19 boundaries.

20 2. Has a total resident population equal to at least one person for
21 each acre of land included within its boundaries, and is
22 subdivided into lots and tracts such that at least sixty percent
23 (60%) of the total acreage consists of lots and tracts three
24 acres or less in size and such that at least sixty-five percent
25 (65%) of the total number of lots and tracts are one acre or
26 less in size.

27 3. Is so developed that at least sixty percent (60%) of the total
28 number of lots and tracts in the area at the time of annexation
29 are used for residential, commercial, industrial, institutional,
30 or governmental purposes, and is subdivided into lots and
31 tracts such that at least sixty percent (60%) of the total
32 acreage, not counting the acreage used at the time of
33 annexation for commercial, industrial, governmental, or
34 institutional purposes, consists of lots and tracts three acres or
35 less in size.

36 4. Is the entire area of any county water and sewer district
37 created under G.S. 162A-86(b1), if all of the following apply:

38 I. The municipality has provided in a contract with that
39 district that the area is developed for urban purposes.

40 II. The contract provides for the municipality to operate
41 the sewer system of that county water and sewer
42 district.

43 III. The municipality is annexing in one ordinance the
44 entire territory of the district not already within the
45 corporate limits of a municipality.

46 5. Is so developed that, at the time of the approval of the
47 annexation report, all tracts in the area to be annexed are used
48 for commercial, industrial, governmental, or institutional
49 purposes.

50 b. Part or all of the area to be annexed meets either of the following:

- 1 1. Lies between the municipal boundary and an area developed
2 for urban purposes so that the area developed for urban
3 purposes is either not adjacent to the municipal boundary or
4 cannot be served by the municipality without extending major
5 municipal services, including water or sewer lines, through
6 such sparsely developed area.
- 7 2. Is adjacent, on at least sixty percent (60%) of its external
8 boundary, to any combination of the municipal boundary and
9 the boundary of an area or areas developed for urban
10 purposes as defined in sub-subdivision a. of this subsection.
11 The purpose of this sub-subdivision is to permit municipal
12 governing boards to extend corporate limits to include all
13 nearby areas developed for urban purposes and where
14 necessary to include areas which at the time of annexation are
15 not yet developed for urban purposes but which constitute
16 necessary land connections between the municipality and
17 areas developed for urban purposes or between two or more
18 areas developed for urban purposes.
- 19 c. The total area to be annexed is completely surrounded by the
20 municipality's primary corporate limits.
- 21 (b) In fixing new municipal boundaries, a municipal governing board shall comply with
22 all the following:
- 23 (1) Use recorded property lines and streets as boundaries. Some or all of the
24 boundaries of a county water and sewer district may also be used when the
25 entire district is not already within the corporate limits of the municipality.
- 26 (2) Use whole parcels of property in that if any portion of that parcel is
27 included, the entire parcel of real property as recorded in the deed
28 transferring title shall be included.
- 29 (3) Not use a connecting corridor consisting solely of the length of a street or
30 street right-of-way to establish contiguity.
- 31 (4) Not consider property in use for a commercial, industrial, institutional, or
32 governmental purpose if the lot or tract is used only temporarily,
33 occasionally, or on an incidental or insubstantial basis in relation to the size
34 and character of the lot or tract.
- 35 (5) Include acreage actually occupied by buildings or other man-made structures
36 together with all areas that are reasonably necessary and appurtenant to such
37 facilities for purposes of parking, storage, ingress and egress, utilities,
38 buffering, and other ancillary services and facilities when determining
39 acreage in use for commercial, industrial, institutional, or governmental
40 purposes.
- 41 (6) Consider the area of an abolished water and sewer district to be a water and
42 sewer district for the purpose of this section even after its abolition under
43 G.S. 162A-87.2(b).

44 **"§ 160A-58.55. Procedure for annexation.**

45 (a) Resolution of Consideration. – Any municipal governing board desiring to annex
46 territory under the provisions of this Part shall first pass a resolution of consideration
47 identifying the area under consideration for annexation by either a metes and bounds
48 description or a map. The resolution of consideration shall remain effective for two years after
49 adoption and be filed with the municipal clerk. A new resolution of consideration adopted
50 before expiration of the two-year period for a previously adopted resolution covering the same

1 area shall relate back to the date of the previous resolution. Adoption of a resolution of
2 consideration shall not confer prior jurisdiction over the area as to any other municipality.

3 (b) Notice of Resolution of Consideration. – A notice of the adoption of the resolution
4 of consideration shall be published once a week for two successive weeks, with each
5 publication being on the same day of the week, in a newspaper having general circulation in the
6 municipality. The second publication shall be no more than 30 days following adoption of the
7 resolution of consideration. The resolution of consideration shall contain a map or description
8 of the area under consideration and a summary of the annexation process and time lines. A
9 copy of the resolution of consideration shall be mailed within 30 days after the adoption of the
10 resolution of consideration by first class mail to the property owners of real property located
11 within the area under consideration for annexation as shown by the tax records of the county.

12 (c) Resolution of Intent. – At least one year after adoption of the resolution of
13 consideration, the municipal governing body may adopt a resolution of intent of the
14 municipality to proceed with the annexation of some or all of the area described in the
15 resolution of consideration. The resolution of intent shall describe the boundaries of the area
16 proposed for annexation, fix a date for a public informational meeting, and fix a date for a
17 public hearing on the question of annexation. The date for the public informational meeting
18 shall be not less than 45 days and not more than 55 days following passage of the resolution of
19 intent. The date for the public hearing shall be not less than 130 days and not more than 150
20 days following passage of the resolution of intent.

21 (d) Notice of Public Informational Meeting, Public Hearing, and Opportunity for Water
22 and Sewer. – A combined notice of public informational meeting and public hearing shall be
23 issued as provided for in this subsection as follows:

24 (1) The notice shall be a combined notice that includes at least all of the
25 following:

- 26 a. The date, hour, and place of the public informational meeting.
- 27 b. The date, hour, and place of the public hearing.
- 28 c. A clear description of the boundaries of the area under consideration,
29 including a legible map of the area.
- 30 d. A statement that the report required by G.S. 160A-58.53 will be
31 available at the office of the municipal clerk.
- 32 e. An explanation of a property owner's rights under this section.
- 33 f. A summary of the annexation process with time lines.
- 34 g. A summary of available statutory remedies for denying and
35 appealing the annexation and the failure to provide services.
- 36 h. Information on how to request to become a customer of the water and
37 sewer service, all forms to request that service, and the consequences
38 of opting in or opting out, as provided in G.S. 160A-58.56.
- 39 i. A clear description of the distinction between the public
40 informational meeting and the public hearing.

41 (2) The combined notice shall be given by publication of the information
42 required by sub-subdivisions (1)a., b., and c. of this subsection and a
43 statement regarding the availability of the information required by the
44 remaining sub-subdivisions of subdivision (1) of this subsection in a
45 newspaper having general circulation in the municipality once a week for at
46 least two successive weeks prior to the date of the public informational
47 meeting, with each publication being on the same day of the week. The date
48 of the last publication shall be not more than 10 days preceding the date of
49 the public informational meeting. In addition thereto, if the area proposed to
50 be annexed lies in a county containing less than fifty percent (50%) of the
51 land area of the municipality, the same publication shall be given in a

1 newspaper having general circulation in the area of proposed annexation. If
2 there is no such newspaper, the municipality shall post the notice in at least
3 five public places within the municipality and at least five public places in
4 the area to be annexed for 30 days prior to the date of public informational
5 meeting.

6 (3) The combined notice, together with the information about requesting water
7 and sewer service, shall be mailed within five business days of the passage
8 of the resolution of intent by first class mail to the property owners of real
9 property located within the area to be annexed as shown by the tax records
10 of the county. The person or persons mailing such notices shall certify to the
11 governing board that fact, and such certificate shall become a part of the
12 public record of the annexation proceeding and shall be deemed conclusive
13 in the absence of fraud. If a notice is returned to the municipality by the
14 postal service by the tenth day before the informational meeting, a copy of
15 the notice shall be sent by certified mail, return receipt requested, at least
16 seven days before the informational meeting. Failure to comply with the
17 mailing requirement of this subsection shall not invalidate the annexation
18 unless it is shown that the requirements were not substantially complied
19 with.

20 (4) If the governing board by resolution finds that the tax records are not
21 adequate to identify the property owners within the area to be annexed after
22 exercising reasonable efforts to locate the property owners, it may, in lieu of
23 the mail procedure required by subdivision (3) of this subsection, post the
24 notice at least 30 days prior to the date of the public informational meeting
25 on all buildings, on such parcels, and in at least five other places within the
26 area to be annexed as to those parcels where the property owner could not be
27 so identified. In any case where notices are placed on property, the person
28 placing the notice shall certify that fact to the governing board.

29 (e) Action Prior to Informational Meeting. – At least 30 days before the date of the
30 public informational meeting, the municipal governing board shall do all of the following:

- 31 (1) Approve the report provided for in G.S. 160A-58.53.
32 (2) Prepare a summary of the approved report for public distribution.
33 (3) Post in the office of the clerk all of the following:
34 a. The approved report provided for in G.S. 160A-58.53.
35 b. The summary of the approved report.
36 c. A legible map of the area to be annexed.
37 d. The list of the property owners, and associated mailing addresses, in
38 the area to be annexed that the municipality has identified and mailed
39 notice.
40 e. Information for property owners on how to request to become a
41 customer of the water service or sewer service and all forms to
42 request that service.
43 (4) If the municipality has a Web site, post on that Web site all of the
44 information under this section together with any forms to apply for water
45 and sewer service.
46 (5) Prepare a summary of the substantive remedies for denying and appealing
47 the annexation for public distribution.

48 (f) Public Informational Meeting. – At the public informational meeting, a
49 representative of the municipality shall first make an explanation of the report required in
50 G.S. 160A-58.53 and an explanation of the provision of major municipal services. The
51 explanation of the provision of services shall include how to request water service or sewer

1 service to individual lots, the average cost of a residential connection to the water and sewer
2 system, and the opportunity for a credit in the amount of that average cost of a residential
3 connection under G.S. 160A-58.56. A summary of the annexation process with time lines, a
4 summary of available statutory remedies for denying and appealing the annexation, an
5 explanation of the provision of services, and information for requesting water service or sewer
6 service to individual lots and any forms to so request shall also be distributed at the public
7 informational meeting. Following such explanation, all property owners and residents of the
8 area proposed to be annexed as described in the notice of public informational meeting and
9 hearing, and all residents of the municipality shall be given the opportunity to ask questions and
10 receive answers regarding the proposed annexation.

11 (g) Public Hearing. – At the public hearing, a representative of the municipality shall
12 first make an explanation of the report required in G.S. 160A-58.53. Following such
13 explanation, all property owners and residents of the area proposed to be annexed as described
14 in the notice of public informational meeting and hearing, and all residents of the municipality,
15 shall be given an opportunity to be heard.

16 (h) Passage of the Annexation Ordinance. – The municipal governing board shall take
17 into consideration facts presented at the public hearing and shall have authority to amend the
18 report required by G.S. 160A-58.53 to make changes in the plans for serving the area proposed
19 to be annexed so long as such changes meet the requirements of G.S. 160A-58.53. At any
20 regular or special meeting held no sooner than the tenth day following the public hearing and
21 not later than 90 days following the public hearing, the governing board shall have authority to
22 adopt an ordinance extending the corporate limits of the municipality to include all, or part, of
23 the area described in the notice of public hearing which the governing board has concluded
24 should be annexed. The annexation ordinance shall:

- 25 (1) Contain specific findings showing that the area to be annexed meets the
26 requirements of G.S. 160A-58.54.
- 27 (2) Describe the external boundaries of the area to be annexed by metes and
28 bounds.
- 29 (3) Include a statement of the intent of the municipality to provide services to
30 the area being annexed as set forth in the report required by G.S. 160A-58.53
31 and a time line for the provision of those services.
- 32 (4) Contain a specific finding that on the effective date of annexation, the
33 municipality will have funds appropriated in sufficient amount to finance
34 construction of any water and sewer lines stated in the report required by
35 G.S. 160A-58.53 to extend the water and sewer services into the area to be
36 annexed, or that on the effective date of annexation the municipality will
37 have authority to issue bonds in an amount sufficient to finance such
38 construction. If authority to issue such bonds shall be secured from the
39 electorate of the municipality prior to the effective date of annexation, then
40 the effective date of annexation shall be no earlier than the day following the
41 statement of the successful result of the bond election.
- 42 (5) Fix the effective date for annexation as June 30 next following the adoption
43 of the ordinance or the second June 30 following adoption of the ordinance,
44 but not before the completion of the water and sewer request and petition to
45 deny and appeal periods are complete.
- 46 (6) Together, with the list of the property owners within the area described in
47 the annexation ordinance to which a notice was mailed under subsection (d)
48 of this section, be delivered within five business days to the county tax
49 assessor of the county in which a majority of the municipality lies.
- 50 (7) Be summarized, and sent in accordance with subsection (i) of this section, to
51 the list of the property owners within the area described in the annexation

1 ordinance to which a notice was mailed under subsection (d) of this section
2 together with a blank petition form, preprinted with name and address of the
3 property owner.

4 (8) If a public body has a Web site, conspicuously post a copy of the petition to
5 deny annexation ordinance that a property owner in the real property located
6 within the area described in the annexation ordinance may download,
7 complete, and return to the county tax assessor in accordance with
8 subsection (i) of this section.

9 (i) Petition to Deny Annexation Ordinance. – The following procedures shall apply to
10 this subsection:

11 (1) Upon receipt of the resolution of intent and a list of property owners of the
12 real property located within the area, the county tax assessor shall prepare
13 petitions for property owners of the real property located within the area
14 described in the resolution of intent to sign opposing the annexation
15 ordinance.

16 (2) A petition shall include the names of the property owners of the parcel of
17 real property listed individually, a signature line for each owner, and a
18 statement that the person signing is petitioning to deny the annexation.

19 (3) The tax assessor shall mail a petition to the address of record for those real
20 property owners within five business days of receipt from the municipality
21 of the list.

22 (4) The tax assessor shall provide two methods by which property owners of the
23 real property located within the area described in the annexation ordinance
24 may sign a petition form prepared by the tax assessor: (i) in person or (ii) by
25 submitting the signed petition form by mail. The tax assessor shall also
26 accept signatures signed on a petition form prepared by the tax assessor, but
27 collected by another, if that petition form is returned to the tax assessor in a
28 sealed container.

29 (5) If the signed petition is one that was mailed under subdivision (h)(7) of this
30 section and the signer is not the same as the preprinted name on the form, the
31 signed petition shall be notarized and accompanied by a copy of the legal
32 authority for the signature of the person signing a petition.

33 (6) If a petition is returned as undeliverable to the tax assessor, the assessor shall
34 send the petition return receipt requested. If the petition is returned again, the
35 tax assessor shall not include that property owner in the total number of
36 eligible property owners.

37 (7) If there is a change in ownership of real property after the date of the
38 resolution of consideration until 30 days after the date of the adoption of the
39 annexation ordinance, the new owner of the real property shall be considered
40 an eligible owner of real property.

41 (8) The tax assessor shall accept signatures on the petition until 130 days after
42 the adoption of the annexation ordinance.

43 (9) The determination of the results by the tax assessor of the petition period
44 shall be observed by three persons from the area proposed for annexation
45 and three persons designated by the municipality. A majority of the property
46 owners of a single parcel of real property must respond favorably before the
47 tax assessor may count that parcel as having submitted a petition to deny
48 annexation.

49 (10) Within 10 business days after the close of the signature period, the tax
50 assessor shall certify to the municipal governing body the number of

1 signatures of property owners of the real property located within the area
2 described in the annexation ordinance.

3 (11) If the tax assessor delivers to the municipal governing board petitions signed
4 by at least sixty percent (60%) of the eligible property owners of the real
5 property located within the area described in the annexation ordinance as
6 provided in this subsection, the annexation shall be terminated and the
7 municipality may not adopt a resolution of consideration for the area
8 described in the annexation ordinance for at least 36 months.

9 (12) This subsection shall not apply to any property owner of real property
10 located within the area described in the annexation ordinance that is
11 completely surrounded by the municipality's primary corporate limits.

12 (j) Effect of Annexation Ordinance. – Except as provided in subsection (k) of this
13 section, from and after the effective date of the annexation ordinance, the territory and its
14 citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in
15 such municipality and shall be entitled to the same privileges and benefits as other parts of such
16 municipality.

17 (k) Property Subject to Present-Use Value Appraisal. – If an area described in an
18 annexation ordinance includes agricultural land, horticultural land, or forestland that meets
19 either of the conditions listed below on the effective date of annexation, then the annexation
20 becomes effective as to that property pursuant to subsection (l) of this section:

21 (1) The land is being taxed at present-use value pursuant to G.S. 105-277.4.

22 (2) The land meets both of the following conditions:

23 a. On the date of the resolution of intent for annexation it was being
24 used for actual production and is eligible for present-use value
25 taxation under G.S. 105-277.4, but the land had not been in use for
26 actual production for the required time under G.S. 105-277.3.

27 b. The assessor for the county where the land subject to annexation is
28 located has certified to the municipality that the land meets the
29 requirements of this subdivision.

30 (l) Effective Date of Annexation for Certain Property. – Annexation of property subject
31 to annexation under subsection (j) of this section becomes effective as provided in this
32 subsection:

33 (1) Upon the effective date of the annexation ordinance, the property shall be
34 considered part of the municipality only (i) for the purpose of establishing
35 municipal boundaries for additional annexations pursuant to this Article and
36 (ii) for the exercise of municipal authority pursuant to Article 19 of this
37 Chapter.

38 (2) For all other purposes, the annexation becomes effective as to each tract of
39 the property or part thereof on the last day of the month in which that tract or
40 part thereof becomes ineligible for classification pursuant to G.S. 105-277.4
41 or no longer meets the requirements of subdivision (k)(2) of this section.
42 Until annexation of a tract or a part of a tract becomes effective pursuant to
43 this subsection, the tract or part of a tract is not subject to taxation by the
44 municipality under Article 12 of Chapter 105 of the General Statutes nor is
45 the tract or part of a tract entitled to services provided by the municipality.
46 Upon the effective date of annexation, taxation of real and personal property
47 is subject to the provisions of G.S. 160A-58.10.

48 (m) Simultaneous Annexation Proceedings. – If a municipality is considering the
49 annexation of two or more areas which are all adjacent to the municipal boundary but are not
50 adjacent to one another, it may undertake simultaneous proceedings under authority of this Part
51 for the annexation of such areas.

1 (n) Remedies for Failure to Provide Services. – If, not earlier than 30 days after the
2 effective date of annexation and not later than 15 months from the effective date of annexation,
3 any property owner in the annexed territory shall believe that the municipality has not followed
4 through providing services as set forth in the report adopted under G.S. 160A-58.53 and
5 subsection (e) of this section, the property owner may apply for a writ of mandamus under the
6 provisions of Article 40 of Chapter 1 of the General Statutes. Relief may be granted by the
7 judge of superior court if the municipality has not provided the services set forth in its plan
8 submitted under the provisions of G.S. 160A-58.53(3)a. on substantially the same basis and in
9 the same manner as such services were provided within the rest of the municipality prior to the
10 effective date of annexation and those services are still being provided on substantially the
11 same basis and in the same manner within the original corporate limits of the municipality. If a
12 writ is issued, costs in the action, including reasonable attorneys' fees for such aggrieved
13 property owner, shall be charged to the municipality.

14 (o) Reports to the Local Government Commission. – The municipality shall report to
15 the Local Government Commission as follows:

16 (1) As to whether police protection, fire protection, solid waste services, and
17 street maintenance services were provided in accordance with
18 G.S. 160A-58.53(3)a., within 30 days after the effective date of the
19 annexation. Such report shall be filed no more than 30 days following the
20 expiration of the 30-day period. If the Local Government Commission
21 determines that the municipality failed to deliver police protection, fire
22 protection, solid waste services, or street maintenance services as provided
23 for in G.S. 160A-58.53(3)a. within 30 days after the effective date of the
24 annexation, the Local Government Commission shall notify the municipality
25 that the municipality may not count any of the residents as part of the
26 population of the municipality for the purpose of receiving any State,
27 federal, or county dollars distributed based on population until all of the
28 services are provided.

29 (2) As to whether the extension of water and sewer lines was completed within
30 the time period specified in G.S. 160A-58.53(3), within six months after the
31 effective date of the annexation ordinance, and again within three and
32 one-half years of the effective date of the annexation ordinance or upon the
33 completion of the installation, whichever occurs first. If the municipality
34 failed to deliver either water or sewer services, or both, as provided for in
35 G.S. 160A-58.53(3)b. within three and one-half years after the effective date
36 of the annexation, the municipality shall stop any other annexations in
37 progress and may not begin any other annexation until the water and sewer
38 services are provided. The municipality shall adopt a resolution of
39 consideration to begin again any annexation that is stopped due to this
40 subdivision.

41 **"§ 160A-58.56. Provision of water and sewer service.**

42 (a) The municipality shall provide water and sewer service to the annexed area as
43 required by plans for extension under G.S. 160A-58.53(3) within three and one-half years of
44 the effective date of the annexation ordinance except as provided in subdivision (b)(4) of this
45 section.

46 (b) Prior to the adoption of the annexation ordinance, the municipality shall offer to
47 each eligible property owner of real property located within the area proposed to be annexed an
48 opportunity to obtain water or sewer service, or both, at no cost other than periodic user fees
49 based upon usage as follows:

50 (1) After passage of the resolution of intent, the property owner of real property
51 located within the area proposed to be annexed shall be notified in writing,

1 as provided in G.S. 160A-58.55(d), within five business days of the passage
2 of the resolution of intent, of the opportunity to have water and sewer lines
3 and connections installed at no cost to the property owner. The notice shall
4 state that a request for extending water and sewer lines does not waive the
5 right to contest the annexation. The property owners of real property located
6 within the area proposed to be annexed shall be allowed 65 days from the
7 date of the passage of the resolution of intent to respond yes or no to the
8 opportunity. Any property owner of a parcel that is an existing customer of
9 the municipality's water or sewer, whether provided by the municipality or
10 by a third party under contract with the municipality, shall be deemed to
11 respond yes to the opportunity, whether or not the property owner returns the
12 notification.

13 (2) At the close of the 65-day period, the municipality shall determine if a
14 majority of the property owners of real property located within the area
15 proposed to be annexed have responded favorably. A majority of the
16 property owners in a single parcel of real property must respond favorably
17 before the municipality may count that parcel of real property as responding
18 favorably.

19 (3) If a majority of the property owners of the real property located within the
20 area proposed to be annexed respond favorably, the municipality shall do all
21 of the following:

22 a. Provide water and sewer lines, service lines, and connections at no
23 cost other than periodic user fees to all real property for which an
24 owner responded favorably if the annexation ordinance is adopted.
25 The right to receive water and sewer lines shall run with the land.

26 b. Notify, within five days of the close of the 65-day period under
27 subdivision (2) of this subsection, those property owners of real
28 property located within the area proposed to be annexed who failed
29 to respond or responded negatively that a majority of the property
30 owners of the real property located within the area proposed to be
31 annexed responded favorably and offer a second opportunity for that
32 property owner to respond favorably within 30 days.

33 (4) If a majority of the property owners of the real property located within the
34 area proposed to be annexed fail to respond favorably to the offer to obtain
35 water and sewer services made under this section, the municipality may
36 nevertheless proceed with the annexation. If the municipality proceeds with
37 the annexation when a majority of the property owners of the real property
38 located within the area proposed to be annexed fail to respond favorably to
39 the offer to obtain water and sewer services, the municipality is not required
40 to provide water and sewer services to any property owners in the area that is
41 annexed. If the municipality does provide water and sewer services, and if a
42 property owner requests those services, the municipality may charge the
43 property owner for the connection to a residential lot as provided in
44 subsection (d) of this section during the first five years following the
45 effective date of the annexation. After five years, and only if connection is
46 requested by a property owner in accordance with subsection (e) of this
47 section, the municipality may charge for the connection according to the
48 municipality's policy.

49 (c) The process required by subsection (b) of this section shall be completed by the
50 municipality at least 30 days prior to the public hearing. The report required by

1 G.S. 160A-58.53 shall include the results of the process required by subsection (b) of this
2 section.

3 (d) Any property owner of the real property located within the area described in the
4 annexation ordinance may apply to participate in the water and sewer system after the
5 completion of the process required by subsection (b) of this section. For a property owner of
6 real property located within the area described in the annexation ordinance applying within the
7 first year, that property owner may be charged an amount not to exceed fifty percent (50%) of
8 average cost of the installation of the water and sewer for a residential lot. For a property owner
9 of real property located within the area described in the annexation ordinance applying within
10 the second year, that property owner may be charged an amount not to exceed sixty percent
11 (60%) of average cost of the installation of the water and sewer for a residential lot. For a
12 property owner of real property located within the area described in the annexation ordinance
13 applying within the third year, that property owner may be charged an amount not to exceed
14 seventy percent (70%) of average cost of the installation of the water and sewer for a residential
15 lot. For a property owner of real property located within the area described in the annexation
16 ordinance applying within the fourth year, that property owner may be charged an amount not
17 to exceed eighty percent (80%) of average cost of the installation of the water and sewer for a
18 residential lot. For a property owner of real property located within the area described in the
19 annexation ordinance applying within the fifth year, that property owner may be charged an
20 amount not to exceed ninety percent (90%) of average cost of the installation of the water and
21 sewer for a residential lot. Charges pursuant to this section shall be made when the water and
22 sewer connection is operable.

23 (e) Notwithstanding Article 16 of this Chapter, the municipality may not charge, for
24 any reason, any property owner within the area described in the annexation ordinance, for the
25 installation or use of the water or sewer system unless that property owner is, or has requested
26 to become, a customer of the water or sewer system.

27 (f) For purposes of this section, the following definitions apply:

28 (1) "At no cost other than periodic user fees." – The municipality may not
29 charge the property owner who responded favorably under subdivision
30 (b)(3) of this section for any costs associated with the installation of the
31 water or sewer system. The municipality may not charge a property owner
32 who applies to participate in the water and sewer system under subsection
33 (d) of this section prior to the first periodic user fee charge, and on that bill
34 the owner may be charged no more then as provided in subsection (d) of this
35 section.

36 (2) "Average installation of a connection for a residential lot." – The average of
37 the cost for residential installations from curb to residence, including
38 connection and tap fees, in the area described in the annexation ordinance.

39 **"§ 160A-58.57. Contract with rural fire department.**

40 (a) If the area to be annexed described in a resolution of intent passed under
41 ~~G.S. 160A-49(a)~~ G.S. 160A-58.55(c) includes an area in an insurance district defined under
42 G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General
43 Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and
44 a rural fire department was on the date of adoption of the resolution of intent providing fire
45 protection in the area to be annexed, then the city (if the rural fire department makes a written
46 request for a good faith offer, and the request is signed by the chief officer of the fire
47 department and delivered to the city clerk no later than 15 days before the public hearing) is
48 required to make a good faith effort to negotiate a five-year contract with the rural fire
49 department to provide fire protection in the area to be annexed.

50 (b) If the area is a rural fire protection district or a fire service district, then an offer to
51 pay annually for the term of the contract the amount of money that the tax rate in the district in

1 effect on the date of adoption of the resolution of intent would generate based on property
2 values on January 1 of each year in the area to be annexed which is in such a district is deemed
3 to be a good faith offer of consideration for the contract.

4 (c) If the area is an insurance district but not a rural fire protection district or fire
5 service district, then an offer to pay annually over the term of the contract the amount of money
6 which is determined to be the equivalent of the amount which would be generated by
7 multiplying the fraction of the city's general fund budget in that current fiscal year which is
8 proposed to be expended for fire protection times the tax rate for the city in the current year,
9 and multiplying that result by the property valuation in the area to be annexed which is served
10 by the rural fire department is deemed to be a good faith offer of consideration for the contract;
11 Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred
12 dollars (\$100.00) valuation of annexed property in the district according to county valuations
13 for the current fiscal year.

14 (d) Any offer by a city to a rural fire department which would compensate the rural fire
15 department for revenue loss directly attributable to the annexation by paying such amount
16 annually for five years, is deemed to be a good faith offer of consideration for the contract.

17 (e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first
18 responder service, an offer of one-half the calculated amount under those subsections is deemed
19 to be a good faith offer.

20 (f) This section does not obligate the city or rural fire department to enter into any
21 contract.

22 (g) The rural fire department may, if it feels that no good faith offer has been made,
23 appeal to the Local Government Commission within 30 days following the passage of an
24 annexation ordinance. The rural fire department may apply to the Local Government
25 Commission for an order staying the operation of the annexation ordinance pending the
26 outcome of the review. The Commission may grant or deny the stay in its discretion upon such
27 terms as it deems proper, and it may permit annexation of any part of the area described in the
28 ordinance concerning which no question for review has been raised, provided that no other
29 appeal under ~~G.S. 160A-50~~ G.S. 160A-58.60 is pending.

30 (h) The Local Government Commission may affirm the ordinance, or if the Local
31 Government Commission finds that no good faith offer has been made, it shall remand the
32 ordinance to the municipal governing board for further proceedings, and the ordinance shall
33 then not become effective unless the Local Government Commission finds that a good faith
34 offer has been made.

35 (i) Any party to the review under subsection (h) may obtain judicial review in
36 accordance with Chapter 150B of the General Statutes.

37 **"§ 160A-58.58. Assumption of debt.**

38 (a) If the city has annexed any area which is served by a rural fire department and
39 which is in an insurance district defined under G.S. 153A-233, a rural fire protection district
40 under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16
41 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city
42 has not contracted with the rural fire department for fire protection, or when the rural fire
43 department ceases to provide fire protection under contract, then the city shall pay annually a
44 proportionate share of any payments due on any debt (including principal and interest) relating
45 to facilities or equipment of the rural fire department, if the debt was existing at the time of
46 adoption of the resolution of intent, with the payments in the same proportion that the assessed
47 valuation of the area of the district annexed bears to the assessed valuation of the entire district
48 on the date the annexation ordinance becomes effective or another date for valuation mutually
49 agreed upon by the city and the fire department.

1 (b) The city and rural fire department shall jointly present a payment schedule to the
2 Local Government Commission for approval and no payment may be made until such schedule
3 is approved.

4 **"§ 160A-58.59. Contract with private solid waste collection firms.**

5 (a) If the area to be annexed described in a resolution of intent passed under
6 ~~G.S. 160A-49(a)~~ G.S. 160A-58.55(c) includes an area where a firm (i) meets the requirements
7 of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the
8 resolution of intent or resolution of consideration was providing solid waste collection services
9 in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still
10 providing such services, and (iv) by reason of the annexation the firm's franchise with a county
11 or arrangements with third parties for solid waste collection will be terminated, the city shall do
12 one of the following:

- 13 (1) Contract with the firm for a period of two years after the effective date of the
14 annexation ordinance to allow the firm to provide collection services to the
15 city in the area to be annexed for sums determined under subsection (d) of
16 this section.
- 17 (2) Pay the firm for the firm's economic loss, with one-third of the economic
18 loss to be paid within 30 days of the termination and the balance paid in 12
19 equal monthly installments during the next succeeding 12 months. Any
20 remaining economic loss payment is forfeited if the firm terminates service
21 to customers in the annexation area prior to the effective date of the
22 annexation.
- 23 (3) Make other arrangements satisfactory to the parties.

24 (a1) To qualify for the options set forth in subsection (a) of this section, a firm must have
25 done one of the following:

- 26 (1) Subsequent to receiving notice of the annexation in accordance with
27 subsection (b) of this section, filed with the city clerk at least 10 days prior
28 to the public hearing a written request to contract with the city to provide
29 solid waste collection services containing a certification, signed by an officer
30 or owner of the firm, that the firm serves at least 50 customers within the
31 county at that time.
- 32 (2) Contacted the city clerk pursuant to public notice published by the city,
33 pursuant to ~~G.S. 160A-49(b)~~, G.S. 160A-58.55(d) at least 10 days before the
34 hearing and provided to the city clerk a written request to contract with the
35 city to provide solid waste collection services. The request must contain a
36 certification signed by an officer or owner of the firm that the firm serves at
37 least 50 customers within the county at that time.

38 (a2) Firms shall file notice of provision of solid waste collection service with the city
39 clerk of all cities located in the firm's collection area or within five miles thereof.

40 (b) At least four weeks prior to the date of the informational meeting, the city shall
41 provide written notice of the resolution of intent to all firms serving the area to be annexed. The
42 notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this
43 section by certified mail, return receipt requested, to the address provided by the firm under
44 subsection (a2) of this section.

45 (c) The city may require that the contract contain:

- 46 (1) A requirement that the firm post a performance bond and maintain public
47 liability insurance coverage;
- 48 (2) A requirement that the firm agree to service customers in the annexed area
49 that were not served by that firm on the effective date of annexation;

- 1 (3) A provision that divides the annexed area into service areas if there were
- 2 more than one firm being contracted within the area, such that the entire area
- 3 is served by the firms, or by the city as to customers not served by the firms;
- 4 (4) A provision that the city may serve customers not served by the firm on the
- 5 effective date of annexation;
- 6 (5) A provision that the contract can be cancelled in writing, delivered by
- 7 certified mail to the firm in question with 30 days to cure substantial
- 8 violations of the contract, but no contract may be cancelled on these grounds
- 9 unless the Local Government Commission finds that substantial violations
- 10 have occurred, except that the city may suspend the contract for up to 30
- 11 days if it finds substantial violation of health laws;
- 12 (6) Performance standards, not exceeding city standards existing at the time of
- 13 notice published pursuant to G.S. 160A-49(b) with provision that the
- 14 contract may be cancelled for substantial violations of those standards, but
- 15 no contract may be cancelled on those grounds unless the Local Government
- 16 Commission finds that substantial violations have occurred;
- 17 (7) A provision for monetary damages if there are violations of the contract or
- 18 of performance standards.

19 (d) If the services to be provided to the city by reason of the annexation are
 20 substantially the same as rendered under the franchise with the county or arrangements with the
 21 parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or
 22 required under the existing franchise or arrangements. If such services are required to be
 23 adjusted to conform to city standards or as a result of changes in the number of customers and
 24 as a result there are changes in disposal costs (including mileage and landfill charges),
 25 requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of
 26 collection, the amount paid by the city for the service shall be increased or decreased to reflect
 27 the value of such adjusted services as if computed under the existing franchise or arrangements.
 28 In the event agreement cannot be reached between the city and the firm under this subsection,
 29 the matters shall be determined by the Local Government Commission.

30 (e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which a
 31 resolution of intent is adopted on or after January 1, 2007.

32 (g) The firm may, if it contends that no contract has been offered, appeal to the Local
 33 Government Commission within 30 days following passage of an annexation ordinance. The
 34 firm may appeal to the Local Government Commission for an order staying the operation of the
 35 annexation ordinance pending the outcome of the review. The Commission may grant or deny
 36 the stay upon such terms as it deems proper. If the Local Government Commission finds that
 37 the city has not made an offer which complies with this section, it shall remand the ordinance to
 38 the municipal governing board for further proceedings, and the ordinance shall not become
 39 effective until the Local Government Commission finds that such an offer has been made.
 40 Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the
 41 General Statutes.

42 (h) A firm which has given notice under subsection (a) of this section that it desires to
 43 contract, and any firm that the city believes is eligible to give such notice, shall make available
 44 to the city not later than 30 days following a written request of the city, sent by certified mail
 45 return receipt requested, all information in its possession or control, including but not limited to
 46 operational, financial and budgetary information, necessary for the city to determine if the firm
 47 qualifies for the benefits of this section and to determine the nature and scope of the potential
 48 contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a
 49 good faith response within 30 days following receipt of the written request for information
 50 from the city, provided that the city's written request so states by specific reference to this
 51 section.

1 (i) As used in this section, the following terms mean:

2 (1) Economic loss. – A sum equal to 15 times the average gross monthly
3 revenue for the three months prior to the passage of the resolution of intent
4 or resolution of consideration, as applicable under subsection (a) of this
5 section, collected or due the firm for residential, commercial, and industrial
6 collection service in the area annexed or to be annexed; provided that
7 revenues shall be included in calculations under this subdivision only if
8 policies of the city will provide solid waste collection to those customers
9 such that arrangements between the firm and the customers will be
10 terminated.

11 (2) Firm. – A private solid waste collection firm.

12 **"§ 160A-58.60. Appeal.**

13 (a) Within 60 days following the close of the signature period under
14 G.S. 160A-58.55(i), any property owner of real property located within the area described in
15 the annexation ordinance who believes that property owner will suffer material injury by reason
16 of the failure of the municipal governing board to comply with the procedure or to meet the
17 requirements set forth in this Part as they apply to the annexation may file a petition in the
18 superior court of the county in which the municipality is located seeking review of the action of
19 the governing board.

20 (b) Such petition shall explicitly state what exceptions are taken to the action of the
21 governing board and what relief the petitioner seeks. Within 10 days after the petition is filed
22 with the court, the person seeking review shall serve copies of the petition by registered mail,
23 return receipt requested, upon the municipality.

24 (c) Within 15 days after receipt of the copy of the petition for review or within such
25 additional time as the court may allow, the municipality shall transmit to the reviewing court
26 both of the following:

27 (1) A transcript of the portions of the municipal journal or minute book in which
28 the procedure for annexation has been set forth.

29 (2) A copy of the report setting forth the plans for extending services to the
30 annexed area as required in G.S. 160A-58.53.

31 (d) If two or more petitions for review are submitted to the court, the court may
32 consolidate all such petitions for review at a single hearing, and the municipality shall be
33 required to submit only one set of minutes and one report as required in subsection (c) of this
34 section.

35 (e) At any time before or during the review proceeding, any petitioner or petitioners
36 may apply to the reviewing court for an order staying the operation of the annexation ordinance
37 pending the outcome of the review. The court may grant or deny the stay in its discretion upon
38 such terms as it deems proper, and it may permit annexation of any part of the area described in
39 the ordinance concerning which no question for review has been raised.

40 (f) The court shall fix the date for review of annexation proceedings under this Part,
41 which review date shall be expeditious and without unnecessary delays. The review shall be
42 conducted by the court without a jury. The court may hear oral arguments and receive written
43 briefs and may take evidence intended to show one or more of the following:

44 (1) That the statutory procedure was not followed.

45 (2) That the provisions of G.S. 160A-58.53 were not met.

46 (3) That the provisions of G.S. 160A-58.54 have not been met.

47 (4) That the provisions of G.S. 160A-58.50 have not been met.

48 (g) The court may affirm the action of the governing board without change, or it may
49 order any of the following:

- 1 (1) Remand the ordinance to the municipal governing board for further
2 proceedings if procedural irregularities are found to have materially
3 prejudiced the substantive rights of any of the petitioners.
4 (2) Remand the ordinance to the municipal governing board for amendment of
5 the boundaries to conform to the provisions of G.S. 160A-58.54 if it finds
6 that the provisions of G.S. 160A-58.54 have not been met; provided, that the
7 court cannot remand the ordinance to the municipal governing board with
8 directions to add area to the municipality which was not included in the
9 notice of public hearing and not provided for in plans for service.
10 (3) Remand the report to the municipal governing board for amendment of the
11 plans for providing services to the end that the provisions of
12 G.S. 160A-58.53 are satisfied.
13 (4) Declare the ordinance null and void, if the court finds that the ordinance
14 cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of
15 this subsection.

16 If any municipality shall fail to take action in accordance with the court's instructions upon
17 remand within 90 days following entry of the order embodying the court's instructions, the
18 annexation proceeding shall be deemed null and void.

19 (h) Any party to the review proceedings, including the municipality, may appeal to the
20 Court of Appeals from the final judgment of the superior court under rules of procedure
21 applicable in other civil cases. The superior court may, with the agreement of the municipality,
22 permit annexation to be effective with respect to any part of the area concerning which no
23 appeal is being made and which can be incorporated into the municipality without regard to any
24 part of the area concerning which an appeal is being made.

25 (i) If part or all of the area annexed under the terms of an annexation ordinance is the
26 subject of an appeal to the superior court, Court of Appeals, or Supreme Court on the effective
27 date of the ordinance, then the ordinance shall be deemed amended to make the effective date
28 with respect to such area the first June 30th at least six months following the date of the final
29 judgment of the superior court or appellate division, or the first June 30th at least six months
30 from the date the municipal governing board completes action to make the ordinance conform
31 to the court's instructions in the event of remand. For the purposes of this subsection, a denial
32 of a petition for rehearing or for discretionary review shall be treated as a final judgment.

33 (j) If a petition for review is filed under subsection (a) of this section or an appeal is
34 filed under G.S. 160A-58.57(g) or G.S. 160A-58.59(g) and a stay is granted, then the time
35 periods of three and one-half years or G.S. 160A-58.55(n) are each extended by the lesser of
36 the length of the stay or one year for that annexation.

37 (k) The provisions of subsection (i) of this section shall apply to any judicial review
38 authorized in whole or in part by G.S. 160A-58.57(i) or G.S. 160A-58.57(g).

39 (l) In any proceeding related to an annexation ordinance appeal under this section, a
40 municipality shall not state a claim for lost property tax revenue caused by the appeal. Nothing
41 in this Article shall be construed to mean that as a result of an appeal a municipality may assert
42 a claim for property tax revenue lost during the pendency of the appeal.

43 (m) Any settlement reached by all parties in an appeal under this section may be
44 presented to the superior court in the county in which the municipality is located. If the superior
45 court, in its discretion, approves the settlement, it shall be binding on all parties without the
46 need for approval by the General Assembly.

47 (n) If a final court order is issued against the annexing municipality, costs in the action,
48 including reasonable attorneys' fees for such aggrieved person having a freehold interest in the
49 real property located within the area described in the annexation ordinance, may be charged to
50 the municipality.

51 **"§ 160A-58.61. Annexation recorded.**

1 Whenever the limits of a municipality are enlarged in accordance with the provisions of this
2 Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such
3 annexed territory, together with a copy of the ordinance duly certified, to be recorded in the
4 office of the register of deeds of the county or counties in which such territory is situated and in
5 the office of the Secretary of State. The documents required to be filed with the Secretary of
6 State under this section shall be filed not later than 30 days following the effective date of the
7 annexation ordinance. All documents shall have an identifying number affixed thereto and shall
8 conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30
9 days shall not affect the validity of the annexation. Any annexation shall be reported as part of
10 the Boundary and Annexation Survey of the United States Bureau of the Census.

11 **"§ 160A-58.62. Authorized expenditures.**

12 Municipalities initiating annexations under the provisions of this Part are authorized to
13 make expenditures for surveys required to describe the property under consideration or for any
14 other purpose necessary to plan for the study and/or annexation of unincorporated territory
15 adjacent to the municipality. In addition, following final passage of the annexation ordinance,
16 the annexing municipality shall have authority to proceed with expenditures for construction of
17 water and sewer lines and other capital facilities and for any other purpose calculated to bring
18 services into the annexed area in a more effective and expeditious manner prior to the effective
19 date of annexation.

20 **"§ 160A-58.63. Population and land estimates.**

21 In determining population and degree of land subdivision for purposes of meeting the
22 requirements of G.S. 160A-58.54, the municipality shall use methods calculated to provide
23 reasonably accurate results. In determining whether the standards set forth in G.S. 160A-58.54
24 have been met on appeal to the superior court under G.S. 160A-58.60, the reviewing court shall
25 accept the estimates of the municipality unless the actual population, total area, or degree of
26 land subdivision falls below the standards in G.S. 160A-58.54:

27 (1) As to population, if the estimate is based on the number of dwelling units in
28 the area multiplied by the average family size in such area, or in the
29 township or townships of which such area is a part, as determined by the last
30 preceding federal decennial census; or if it is based on a new enumeration
31 carried out under reasonable rules and regulations by the annexing
32 municipality; provided, that the court shall not accept such estimates if the
33 petitioners demonstrate that such estimates are in error in the amount of ten
34 percent (10%) or more.

35 (2) As to total area, if the estimate is based on an actual survey, or on county tax
36 maps or records, or on aerial photographs, or on some other reasonably
37 reliable map used for official purposes by a governmental agency, unless the
38 petitioners on appeal demonstrate that such estimates are in error in the
39 amount of five percent (5%) or more.

40 (3) As to degree of land subdivision, if the estimates are based on an actual
41 survey, or on county tax maps or records, or on aerial photographs, or on
42 some other reasonably reliable source, unless the petitioners on appeal show
43 that such estimates are in error in the amount of five percent (5%) or more."

44 **SECTION 10.** G.S. 160A-31, as amended by Section 3 of S.L. 2011-57, reads as
45 rewritten:

46 **"§ 160A-31. Annexation by petition.**

47 (a) The governing board of any municipality may annex by ordinance any area
48 contiguous to its boundaries upon presentation to the governing board of a petition signed by
49 the owners of all the real property located within such area. The petition shall be signed by each
50 owner of real property in the area and shall contain the address of each such owner.'

51 (b) The petition shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____

2. The area to be annexed is contiguous to the (City or Town) of _____ and the boundaries of such territory are as follows:

(b1) Notwithstanding the provisions of subsections (a) and (b) of this section, if two-thirds of the households in an area petitioning for annexation pursuant to this section have incomes that are two hundred percent (200%) or less than the most recently published United States Census Bureau poverty thresholds, the governing board of any municipality shall annex by ordinance any area one-eighth of the aggregate external boundaries of which are contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of at least seventy-five percent (75%) of the parcels of real property in that area.

(b2) The petition under subsection (b1) of this section shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned owners of real property believe that the area described in paragraph 2 below meets the requirements of G.S. 160A-31(b1) and respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____.

2. The area to be annexed is contiguous to the (City or Town) of _____, and the boundaries of such territory are as follows:

(c) Upon receipt of the petition, the municipal governing board shall cause the clerk of the municipality to investigate the sufficiency thereof and to certify the result of his—the investigation. For petitions received under subsection (b1) or (i) of this section, the clerk shall receive the report from the Department of Revenue as provided in subsection (k) of this section before certifying the sufficiency of the petition. Upon receipt of the certification, the municipal governing board shall fix a date for a public hearing on the question of annexation, and shall cause notice of the public hearing to be published once in a newspaper having general circulation in the municipality at least 10 days prior to the date of the public hearing; provided, if there be no such paper, the governing board shall have notices posted in three or more public places within the area to be annexed and three or more public places within the municipality.

(d) At the public hearing ~~all persons resident or owning property in the area described in the petition to be annexed who allege an error in the petition and persons resident or owning property in the municipality~~ shall be given an opportunity to be heard, as well as residents of the municipality who question the necessity for annexation. The governing board shall then determine whether the petition meets the requirements of this section. Upon a finding that the petition meets the requirements of this section, the governing board shall have authority to pass an ordinance annexing the territory described in the petition. The governing board shall have authority to make the annexing ordinance effective immediately or on ~~any specified date within the June 30 after six months from the date of the passage of the ordinance or the June 30 of the following year~~ after the date of passage of the ordinance.

(e) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax

1 ordinance of the annexing municipality is June 1, then businesses in the area to be annexed
2 shall be liable for taxes imposed in such ordinance from and after the effective date of
3 annexation.

4 (f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the
5 petition is submitted, such area either abuts directly on the municipal boundary or is separated
6 from the municipal boundary by the width of a street or street right-of-way, a creek or river, or
7 the right-of-way of a railroad or other public service corporation, lands owned by the
8 municipality or some other political subdivision, or lands owned by the State of North Carolina.
9 A connecting corridor consisting solely of a street or street right-of-way may not be used to
10 establish contiguity. In describing the area to be annexed in the annexation ordinance, the
11 municipal governing board may include within the description any territory described in this
12 subsection which separates the municipal boundary from the area petitioning for annexation.

13 (g) The governing board may initiate annexation of contiguous property owned by the
14 municipality by adopting a resolution stating its intent to annex the property, in lieu of filing a
15 petition. The resolution shall contain an adequate description of the property, state that the
16 property is contiguous to the municipal boundaries and fix a date for a public hearing on the
17 question of annexation. Notice of the public hearing shall be published as provided in
18 subsection (c) of this section. The governing board may hold the public hearing and adopt the
19 annexation ordinance as provided in subsection (d) of this section.

20 (h) A city council which receives a petition for annexation under this section may by
21 ordinance require that the petitioners file a signed statement declaring whether or not vested
22 rights with respect to the properties subject to the petition have been established under
23 G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been
24 established, the city may require petitioners to provide proof of such rights. A statement which
25 declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1
26 shall be binding on the landowner and any such vested right shall be terminated.

27 (i) A municipality has no authority to adopt a resolution or petition itself under this Part
28 for annexation of property it does not own or have any legal interest in. For the purpose of this
29 subsection, a municipality has no legal interest in a State-maintained street unless it owns the
30 underlying fee and not just an easement.

31 (j) Using the procedures under this section, the governing board of any municipality
32 may annex by ordinance any distressed area contiguous to its boundaries upon presentation to
33 the governing board of a petition signed by at least one adult resident of at least two-thirds of
34 the resident households located within such area. For purposes of this subsection, a "distressed
35 area" is defined as an area in which at least fifty-one percent (51%) of the households in the
36 area petitioning to be annexed have incomes that are two hundred percent (200%) or less than
37 the most recently published United States Census Bureau poverty thresholds. The municipality
38 may require reasonable proof that the petitioner in fact resides at the address indicated.

39 (k) The petition under subsection (j) of this section shall be prepared in substantially the
40 following form:

41 DATE:

42 To the _____ (name of governing board) of the (City or Town) of
43 _____

44 1. We the undersigned residents of real property believe that the area described in
45 paragraph 2 below meets the requirements of G.S. 160A-31(i) and respectfully request that the
46 area described in paragraph 2 below be annexed to the (City or Town) of _____.

47 2. The area to be annexed is contiguous to the (City or Town) of _____, and the
48 boundaries of such territory are as follows:

49 (l) For purposes of determining whether the percentage of households in the area
50 petitioning for annexation meets the poverty thresholds under subsections (b1) and (j) of this
51 section, the petitioners shall submit to the municipal governing board any reasonable evidence

1 that demonstrates the area in fact meets the income requirements of that subsection. The
2 evidence presented may include data from the most recent federal decennial census, other
3 official census documents, signed affidavits by at least one adult resident of the household
4 attesting to the household size and income level, or any other documentation verifying the
5 incomes for a majority of the households within the petitioning area. Petitioners may select to
6 submit name, address, and social security number to the clerk, who shall in turn submit the
7 information to the Department of Revenue. Such information shall be kept confidential and is
8 not a public record. The Department shall provide the municipality with a summary report of
9 income for households in the petitioning area. Information for the report shall be gleaned from
10 income tax returns, but the report submitted to the municipality shall not identify individuals or
11 households."

12 SECTION 11. Article 4A of Chapter 160A of the General Statutes is amended by
13 adding a new Part 8 to read:

14 **"Part 8.**

15 **"Recording and Reporting.**

16 **"§ 160A-58.90. Recording and Reporting.**

17 (a) Annexations made under this Article shall be recorded and reported in the same
18 manner as under G.S. 160A-29.

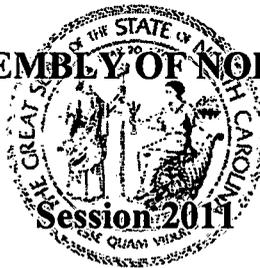
19 (b) To be enforceable, any written agreement with a person having a freehold interest in
20 real property regarding annexation shall be recorded in the county register of deeds office in
21 which the real property lies."

22 SECTION 12. This act does not apply to any municipality that in its charter
23 requires that an annexation must be approved by (i) either the voters in a referendum or the
24 request of a majority of the property owners; (ii) the voters in a referendum; or (iii) the request
25 of a majority of the property owners.

26 SECTION 13. If any provision of this act or its application is held invalid, the
27 invalidity does not affect other provisions or applications of this act that can be given effect
28 without the invalid provisions or application, and to this end the provisions of this act are
29 severable.

30 SECTION 14. This act is effective when it becomes law and applies to annexations
31 initiated by municipalities on or after that date and to petitions for annexation under Part 1 and
32 Part 4 of Article 4A of Chapter 160A of the General Statutes presented on or after that date.
33 Annexations initiated prior to the effective date of this act by any action under Part 2 or Part 3
34 of Article 4A of Chapter 160A of the General Statutes, but for which an annexation ordinance
35 has not been adopted, shall terminate and may be reinitiated in compliance with Part 7 of
36 Article 4A of Chapter 160A of the General Statutes as enacted by this act.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: May 5, 2011

TO:

FROM: Rick Shreve
Fiscal Research Division

RE: House Bill 845 (PCS to 2nd Edition)

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
Municipalities					
EXPENDITURES:					
Municipalities					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Municipalities					
EFFECTIVE DATE: This act is effective when it becomes law.					

BILL SUMMARY:

H 845. ANNEXATION REFORM ACT OF 2011.

The proposed committed substitute for House Bill 845 makes substantive changes to the involuntary annexation process for all municipalities.

Section 1 of the bill repeals Part 2 of Article 4A of Chapter 160A of the General Statutes, Annexation of Cities of Less than 5,000.

The bill creates a new Part 7, Involuntary Annexation by Municipalities, within Article 4A of GS Chapter 160A, authorizing the governing board of any municipality to extend the municipality's corporate limits under proposed Part 7. This includes definitions applicable to Part 7, and Section 2 through 6 of this bill present recodifications of existing statutory language.

Section 7 of the bill repeals Part 3 of Article 4A of Chapter 160A of the General Statutes, Annexation by Cities of 5,000 or More.

This proposed legislation would require the municipality to offer to each eligible property owner in proposed annexation areas water or sewer service, or both, at no cost other than usage-based fees. A majority of residents in the affected area must opt in to receive this benefit.

This bill allows for property owners to petition to deny annexations. If at least 60% of eligible property owners in a proposed annexation area sign such a petition, the annexation will be terminated, and the municipality may not adopt a resolution of consideration for the same area for at least 36 months.

ASSUMPTIONS AND METHODOLOGY:

Expenditures

This proposed legislation would require the municipality to offer to each eligible property owner in proposed annexation areas water or sewer service, or both, at no cost other than usage-based fees. A majority of residents in the affected area must opt in to receive this benefit. Municipalities will face the increased expenses of water and sewer hookups to every residence in annexed areas, if 50% or more of the property owners choose this option. Because the incidence of these proposals and intentions of residents cannot be known at this point, it is not possible to estimate the expenses required to meet this need.

Revenues

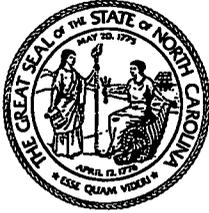
This bill allows for property owners to petition to deny annexations. If at least 60% of eligible property owners in a proposed annexation area sign such a petition, the annexation will be terminated, and the municipality may not adopt a resolution of consideration for the same area for at least 36 months. By indefinitely delaying the effective date of potential annexations, the bill would postpone the collection of property taxes from annexed areas. G.S. 160A-58.10 allows for collection of property taxes from property owners in annexed areas on a prorated basis.

Therefore, the bill will result in reduced property tax revenues for any municipalities that are forced to stop annexations under the new petition method. Several other revenue sources would potentially be impacted by the delay of annexations because they are distributed based on

population, sales or operation of businesses within municipal boundaries. These sources include local option sales and use taxes, privilege license taxes, videoprogramming taxes, gasoline taxes (Powell Bill funds), utility franchise taxes, excise tax on piped natural gas and beer and wine taxes.

Because the property values, population, sales and other data upon which the revenue attributable to annexed areas is not known, it is not possible to estimate the amount of tax revenue that would be lost due to the delay of annexations.

TECHNICAL CONSIDERATIONS: None



HOUSE BILL 845: Annexation Reform Act of 2011

2011-2012 General Assembly

Committee: House Finance	Date: May 4, 2011
Introduced by: Reps. LaRoque, Dollar, Owens	Prepared by: Kory Goldsmith and Giles Perry, Staff Attorneys
Analysis of: PCS to Second Edition H845-CSRCx-21	

SUMMARY: *The proposed committee substitute for House Bill 845 makes substantive changes to the involuntary annexation process for all municipalities.*

CURRENT LAW: North Carolina law sets forth four basic ways in which a town or city may annex an area into its corporate limits:

- **Legislative Act.** The General Assembly has the authority to extend the boundaries of any town or city through local acts.
- **Voluntary Contiguous Annexation.** The owners of all real property in the area desiring to be annexed sign a petition requesting annexation.
- **Voluntary Satellite Annexation.** This method allows a town or city to annex a non-contiguous area into the town or city limits, with the agreement of the property owner.
- **Involuntary Annexation.** The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed through a statutorily prescribed process. The statutorily prescribed process is different for cities of less than 5,000 people than it is for larger cities.

BILL ANALYSIS:

Amends *involuntary contiguous annexation* in the following ways:

Section 1. Repeals the Part 2 of Article 4A of Chapter 160A of the General Statutes, Annexation of Cities of Less than 5,000.

Sections 2 – 6 recodify selected provisions of Part 3 of Article 4A of Chapter 160A of the General Statutes (Annexation by Cities of 5,000 or more) and places those provisions in a new Part 7 created in Section 8 of the bill.

Section 7 repeals the remaining provisions of Part 3 of Article 4A of Chapter 160A of the General Statutes, Annexation by Cities of 5,000 or more.

Section 8 creates a new Part 7 of Article 4A of Chapter 160A of the General Statutes to govern involuntary annexation by all municipalities in North Carolina, regardless of size.

Section 9 sets forth the procedures for annexation under the new Part 7 as follows:

- Prerequisites for Annexation
 - The area to be annexed must comply with the criteria set forth in the statute for urban density, etc.
 - A plan must be in place to provide the following services, within the time frames stated, on substantially the same basis and in the same manner as each service is provided within the rest of the municipal limits:
 - At the time of annexation: Police, Fire, Solid waste collection, Street maintenance
 - Within 3 ½ years of annexation: Water and Sewer
- Character of the Area to be Annexed – the property to be annexed must meet all of the following:

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- Must be adjacent or contiguous to the municipal boundaries, with at least 1/8 of the aggregate external boundaries of the area to be annexed coinciding with the municipal boundary.
- Cannot be part of another municipality.
- Is one of the following:
 - Completely surrounded by the municipal limits.
 - Is either:
 - between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending major municipal services, OR
 - adjacent, on at least 60% of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes.
 - Developed for urban purposes. Developed for urban purposes is any one of the following criteria:
 - Has a total resident population equal to at least 2.3 persons for each acre.
 - Has a total resident population equal to at least 1 person per acre, and is subdivided into lots and tracts such that at least 60% of the total acreage consists of lots and tracts 3 acres or less in size and such that at least 65% of the total number of lots and tracts are 1 acre or less in size.
 - Is so developed that at least 60% of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least 60% of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts three acres or less in size.
 - Is the entire area of any county water and sewer district, only if the municipality operates the sewer system and the entire territory is annexed in one annexation proceeding
 - All the tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes

In fixing municipal boundaries, the municipality shall do all of the following:

- Use recorded property lines and streets as boundaries.
- Use whole parcels of property in that if any portion of that parcel is included, the entire parcel of real property as recorded in the deed transferring title shall be included.
- Not use a connecting corridor consisting solely of a street or street right-of-way to establish contiguity.
- Not consider property in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract.
- Include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities,

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buffering, and other ancillary services and facilities when determining acreage in use for commercial, industrial, institutional, or governmental purposes.

- Consider the area of an abolished water and sewer district to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b).
- Procedure for Annexation
 - Resolution of Consideration. – Must be adopted at least one year, but not more than 2 years prior to the resolution of intent. Property owners must be mailed a copy of the resolution.
 - Resolution of Intent. – Adopted at least one year after the resolution of consideration, describing the area to be annexed, that complies with the criteria of area to be annexed.
 - Public Informational Meeting. – Held at least 45, but not more than 55, days after the adoption of the resolution of intent. An official from the municipality is to explain the annexation process and answer questions of property owners and residents of the area to be annexed and of the municipality.
 - Public Hearing. – To be held at least 130, but not more than 150, days after the public informational meeting, to accept comment from the property owners and residents of the area to be annexed and of the municipality. Prior to the public hearing, the property owners must be given an opportunity to opt into the water and sewer service at no cost.
 - Annexation Ordinance. – May be adopted at least 10, but not more than 90, days after the public hearing. Must set an effective date of June 30, either of that year or the following year.
 - Petition to Deny Annexation. – If the County Tax Assessor certifies that at least 60% of the property owners have signed petitions to deny the annexation, then the annexation is terminated, and the municipality cannot begin the involuntary annexation process on that area again for 36 months.
 - Report to the Local Government Commission on provision of services to the area annexed. – 30 days after the effective date of the annexation, the municipality must report to the LGC as to whether the fire, police, solid waste collection, street maintenance and water/sewer services have been provided. If fire, police, solid waste collection and street maintenance services have not been provided within the 30 days, then the municipality may not include the population of the annexed area for purposes of monies distributed based on population by the State, federal or county government. If the water/sewer services have not been provided, then the municipality has to report again at the completion of the installation of the services or within 3 ½ years, whichever is later. If the municipality has not provided the water/sewer services within 3 ½ years, the municipality must stop, and may not begin, any other annexations until the installation is completed.
- Provision of Services – Generally, must be provided on substantially the same basis and in the same manner as within the corporate limits.
 - Fire, Police, Solid Waste Collection, Street Maintenance. – The municipality may provide the service directly, or contract for the provision of the services. Either way, each service must be in place on the date of annexation.
 - Water and Sewer –The water and sewer service to the annexed area shall be provided by the municipality within three and one half years of the effective date of the annexation ordinance. The municipality shall provide water and sewer lines and connections at no, or reduced, costs other than periodic fees to all property owners requesting the service within the process set out below:

House PCS 845

Page 4

- After passage of the resolution of intent, the property owner of real property located within the area proposed to be annexed shall be notified in writing, within five business days of the passage of the resolution of intent, of the opportunity to have water and sewer or both installed at no cost to the property owner, if a majority of the property owners respond positively to the opportunity. If a property owner fails to respond or responds negatively within 65 days, the property owner will be sent a reminder notice and will have 30 additional days to request water and sewer or both at no charge. If the property is other than residential, that property will be given a credit in the amount of the average residential installation costs.
- If a majority of property owners do not respond positively to the opportunity the municipality may still go forward with the annexation. If it does, the municipality is not required to provide water or sewer to the annexed area, but if it does and if a property owner requests to be provided service, the municipality may be charged as described below.
- Any residential property owner who do not initially request water and sewer may do so later, but may be charged the following percentage of the average residential installation cost:
 - In the 1st year of the annexation – up to 50%.
 - In the 2nd year of the annexation – up to 60%
 - In the 3rd year of the annexation - up to 70%
 - In the 4th year of the annexation - up to 80%
 - In the 5th year of the annexation - up to 90%

The municipality may not charge, for any reason, any property owner within the area described in the annexation ordinance, for the installation or use of the water or sewer system unless that property owner is, or has requested to become, a customer of the water and sewer system.

- Appeal

- Transfers the current process for appeal from G.S. 160A-50, and makes conforming changes:
 - Within 60 days of the close of the time to sign a petition to deny, a property owner who believes they will suffer material injury by reason of the failure of the municipality to comply with the annexation procedure may file petition seeking review.
 - The court is to review and take evidence intended to show:
 - That the statutory procedure was not followed
 - That the prerequisites for annexation were not met
 - That the area annexed did not comply with the statutory requirements
 - That the provisions of the Declaration of Policy in G.S. 160A-58.50 have not been met
 - Remedies for the court:
 - Affirm the annexation without change
 - Remand to the municipality for further proceedings
 - Remand to the municipality for amendment to the boundaries
 - Remand the report to the municipality for amendment on the plan for providing services
 - Declare the ordinance null and void

House PCS 845

Page 5

Section 10 amends voluntary contiguous annexation in the following ways:

1. Clarifies that petitions for voluntary contiguous annexation do not need to be signed by owners of real property that is any of the following:
 1. Exempt from property taxation.
 2. Owned by a railroad, public utility or electric or telephone membership corporation.
2. Prohibits the use of a street as a "shoestring connection" to establish contiguity to an outlying, noncontiguous area.
3. Requires the annexation of contiguous "distressed areas" upon petition of 75% of the property owners in the area, and sets forth an example of the petition.
4. Allows the annexation of contiguous "distressed areas" upon petition of two-thirds the resident households located in the area, and sets forth an example of the petition.

Section 11 adds a new Part 8 to Article 4A of Chapter 160A that requires all annexations to be recorded and reported in the same manner as under G.S. 160A-29. It also requires that in order for an agreement regarding annexation must be recorded in order to be enforceable.

Section 12 provides that the act does not apply to any municipality that in its charter requires that an annexation must be approved by (i) either the voters in a referendum or the request of a majority of the property owners; (ii) the voters in a referendum; or (iii) the request of a majority of the property owners.

EFFECTIVE DATE: When the act becomes law, and applies to annexations initiated by municipalities on or after that date and to voluntary petitions for annexation presented on or after that date. Involuntary Annexations initiated prior to the effective date of this act by any action but for which an annexation ordinance has not been adopted, shall terminate and may be reinitiated in compliance with Part 7 of Article 4A of Chapter 160A of the General Statutes as enacted by this act

Erika Churchill, staff attorney, substantially contributed to this summary.

H845-SMRC-25(CSRCx-21) v2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 845

S. B. No. _____

DATE 5.5.11

Amendment No. 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) McGee
Sen.)

1 moves to amend the bill on page 10, line 11-12

2 () WHICH CHANGES THE TITLE

3 by inserting the following between the lines
4 "(13) - The municipality shall reimburse
5 the tax assessor the costs
6 of the petition process required
7 under this subsection of
8 this section."

10 and on page 9, ~~line~~ line 44, by
11 adding the following at the
12 end of the line:

13 "as designated by the
14 county commissioners".

SIGNED [Signature]

ADOPTED FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 845

DATE 5.5.11

S. B. No. _____

Amendment No. 2

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Stam
)
Sen.)

1 moves to amend the bill on page 3, line 19

2 () WHICH CHANGES THE TITLE

3 by adding after the word "parcel"

4
5 "if an easement is provided
6 by the affected property owner,"

9
10
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15
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17
18
19

SIGNED Stam

ADOPTED FAILED _____ TABLED _____

5/5 no vote due to time



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 845

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H845-ARW-16 [v.2]

Page 1 of 3

Comm. Sub. [YES]
Amends Title [NO]
PCS

Date _____, 2011

Representative Hall

1 moves to amend the bill on page 12, lines 13-18, by rewriting those lines to read:

2 "(2) At the close of the 65-day period, the municipality shall determine if at least
3 one owner from each parcel of a majority of the parcels of real property
4 located within the area proposed to be annexed has responded favorably. For
5 the purpose of this subsection, if a parcel has more than one owner, the
6 signature of one owner is sufficient."; and

8 on page 20, line 41, by rewriting that line to read:

9 " an ordinance annexing the territory described in the petition. The petition, except if the
10 governing body receives a petition under subsection (b1), or accepts a petition under subsection
11 (j) of this section and finds that the petition meets the requirements of the relevant subsection,
12 the governing body shall within 60 days of such finding annex the territory described in the
13 petition, with an effective date no later than 24 months after adoption of the annexation
14 ordinance. Municipal services shall be rendered to territory annexed under subsections (b1) or
15 (j) of this section in accordance with the requirements of Part 7 of this Article. Except as
16 provided in this subsection with respect to petitions under subsection (b1) or (j) of this section,
17 the governing board shall have"; and

19 on page 20, line 9, by deleting the word "two-thirds" and substituting "fifty-one percent
20 (51%)"; and

22 on page 20, lines 13-14, by rewriting those lines to read:

23 "to its boundaries upon presentation to the governing board of a petition signed by at least one
24 adult resident of at least two-thirds of the resident households located within such area."; and

26 on page 22, line 3, by deleting the word "affidavits", and substituting the word "statements";
27 and

29 on page 5, lines 43-44, by adding between those lines the following:

30 "(c) A municipal governing board shall extend its municipal corporate limits to include a
31 distressed area as defined by subsection (a)(4)(d) of this section that is either (i) completely
32 surrounded by the municipality's primary corporate limits, or (ii) completely surrounded by that
33 municipality's corporate limits and those of one or more other municipalities. In the case of this



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 845**

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

H845-ARW-16 [v.2]

Page 2 of 3

1 subsection (ii), the area eligible for annexation is only that which is in the extraterritorial
2 jurisdiction of the annexing municipality either under G.S. 160A-360 or under a local act. This
3 subdivision applies only if a petition requesting annexation is signed by at least one owner of
4 real property within the distressed area and filed with the city clerk. Upon receipt of such
5 petition, the city shall proceed to determine whether the area requested for annexation qualifies
6 as a distressed area, and if it so determines it shall adopt a resolution of intent no later than 60
7 days after such finding and adopt an annexation ordinance as to such area within one year of
8 such finding, with an effective date no later than one year after adoption of the ordinance.
9 Municipal services shall be rendered to such territory in accordance with the requirements of
10 Part 7 of this Article."; and

11
12 on page 22, lines 21-22, by adding between those lines two new bill sections, as follows:

13 "SECTION 11.1. G.S. 143B-437.04(a) is amended by adding a new subdivision to
14 read:

15 "(a) The Department of Commerce shall adopt guidelines for the awarding of
16 Community Development Block Grants to ensure that:

17 ...

18 (3) Priority consideration is given to projects located in areas annexed by a
19 municipality under Article 4A of Chapter 160A of the General Statutes in
20 order to provide water or sewer services to low-income residents. For
21 purposes of this section, low-income residents are those with a family
22 income that is eighty percent (80%) or less of median family income."

23 SECTION 11.2. G.S. 159G-23 is amended by adding a new subdivision to read:
24 "§ 159G-23. **Common criteria for loan or grant from Wastewater Reserve or Drinking**
25 **Water Reserve.**

26 The criteria in this section apply to a loan or grant from the Wastewater Reserve or the
27 Drinking Water Reserve. The Division of Water Quality and the Division of Environmental
28 Health must each establish a system of assigning points to applications based on the following
29 criteria:

30 ...

31 (9) Low-income residents. – A project that is located in an area annexed by a
32 municipality under Article 4A of Chapter 160A of the General Statutes in
33 order to provide water or sewer services to low-income residents has
34 priority. For purposes of this section, low-income residents are those with a
35 family income that is eighty percent (80%) or less of median family income.
36 ...""; and

37
38 on page 5, lines 20-21, by adding between those lines the following:

39
40 "d. Any distressed area that is so developed that at least fifty percent
41 (50%) of the total number of lots and tracts in the area at the time of
42 annexation are used for residential, commercial, industrial,
43 institutional, or governmental purposes, and is subdivided into lots

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 845

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

H845-ARW-16 [v.2]

Page 3 of 3

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and tracts such that at least fifty percent (50%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental, or institutional purposes, consists of lots and tracts three acres or less in size. For purposes of this subdivision, a "distressed area" is defined as an area in which at least fifty-one percent (51%) of the households in the area to be annexed have incomes that are two hundred percent (200%) or less than the most recently published United States Census Bureau poverty thresholds. For purposes of determining whether the percentage of households in the area to be annexed meets the poverty thresholds under this subdivision, the municipal governing board may use any reasonable evidence that demonstrates the area in fact meets the income requirements of that subdivision. The evidence may include data from the most recent federal decennial census, other official census documents, signed affidavits by at least one adult resident of a household attesting to the household size and income level, or any other documentation verifying the incomes for a majority of the households within the area. The Department of Revenue shall provide the municipality with a summary report of income for households in the area. Information for the report shall be gleaned from income tax returns, but the report submitted to the municipality shall not identify individuals or households."

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

11

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 845

DATE 5.5.11

S. B. No. _____

Amendment No. 4

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep. Womble
Sen.)

McGehee amendment # 1

1 moves to amend the bill on page 1, line 5

2 () WHICH CHANGES THE TITLE

3 by adding the word "reasonable" between the
4 words "the" and "costs".

5 _____

6 _____

7 _____

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19 _____

SIGNED Larry G. Womble

ADOPTED FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

no vote due to time

EDITION No. _____

H. B. No. 845

DATE 5.5.11

S. B. No. _____

Amendment No. 5

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hall
Sen.)

~~amendment~~ # 4

1 moves to amend the bill on page 1, line 5 1-6

2 () WHICH CHANGES THE TITLE

3 by deleting those lines ;

4
5 and on pages ~~1-22~~ of the amendment,
6 by deleting lines 22-33; and ~~lines~~
7 ~~lines~~

8 of the amendment
9 page 2, lines 1-10, by deleting
10 those lines; and

11
12 on page 3 of the amendment, by
13 deleting lines 46-43; and

14
15 on page 4 of the amendment,
16 by deleting lines 1-22.

17

18

19

SIGNED Ray D. Hall

ADOPTED _____ FAILED _____ TABLED _____



North Carolina General Assembly
House Committee on Finance

Minutes

~
May 11, 2011

The House Committee on Finance met on Wednesday, May 11, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chairs McComas and Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Ken Kirby and Earl Coker. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Judy Collier, Heather Fennell, Kory Goldsmith, Trina Griffin, Sandra Johnson, Giles Perry, Greg Roney, and Brian Slivka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Starnes called the meeting to order at 8:30 am and recognized the five (5) pages present from the Tarheel Challenge Academy, sponsored by Speaker Tillis: (1) Darris Hopkins; (2) Ali Smith; (3) Angel Thavone; (4) Daniel Hood; and (5) Ryan Marsh.

The first bill to be heard by the Committee was **HB 845 Reform Annexation Laws** (see **attachment 3**). Chairman Starnes recognized Representative Collins who moved to adopt the proposed committee substitute with adopted amendments for the purpose of discussion. The motion carried. Representatives LaRoque and Dollar were recognized to explain the bill. The Chair recognized Representative Warren who re-stated his motion from the Thursday, May 5, 2011 meeting. Representative Warren moved that HB 845 be given a favorable report to committee substitute #2, unfavorable report to committee substitute #1. The motion carried.

Chairman Starnes recognized Representative McGee, Chair of the Subcommittee on Occupancy Tax, who stated that **HB 414 Amend Rutherford County Occupancy Tax** conformed to the guidelines and was reported favorable by the Subcommittee on Occupancy Tax and re-referred to the Committee on Finance.

The next bill considered by the Committee was **HB 414 Amend Rutherford County Occupancy Tax** (see **attachment 4**). Chairman Starnes recognized Representative Hager to explain the bill. The Chair then recognized Representative Cotham who moved that HB 414 be given a favorable report. The motion carried.

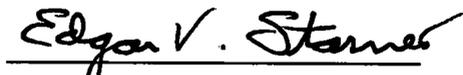
The next bill before the Committee was **HB 565 Morehead City/Beaufort Boundary** (see **attachment 5**). The Chair recognized Representative McElraft to explain the bill. Chairman Starnes recognized Representative Setzer who moved that HB 565 be given a favorable report. The motion carried.

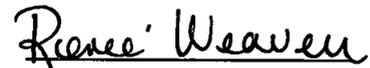
The Chair recognized Representative Samuelson, Chair of the subcommittee for **SB 288 Atlantic Beach/Beaufort/Parking**. Representative Samuelson reported that SB 288 was given a favorable report and was re-referred to the Committee on Finance.

Next before the Committee was **SB 288 Atlantic Beach/Beaufort/Parking** (see **attachment 6**). Chairman Starnes recognized Representative Stone who moved to adopt the proposed committee substitute for the purpose of discussion. The Chair recognized Senator Preston to explain the proposed committee substitute. The Chair then recognized Representative Weiss who moved that SB 288 be given a favorable report. The motion carried.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 8:54 am.

Respectfully submitted,


Edgar V. Starnes
Representative Edgar Starnes
Presiding Chair


Renee Weaver
Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 414 A BILL TO BE ENTITLED AN ACT TO MODIFY THE RUTHERFORD COUNTY
OCCUPANCY TAX.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 565 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A BOUNDARY LINE AGREEMENT AND LIMIT THE EXTRATERRITORIAL JURISDICTION AND ANNEXATION AUTHORITY WHICH MAY BE EXERCISED BY THE TOWNS OF MOREHEAD CITY AND BEAUFORT.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 845 A BILL TO BE ENTITLED AN ACT TO REFORM THE INVOLUNTARY
ANNEXATION LAWS OF NORTH CAROLINA.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 288 A BILL TO BE ENTITLED AN ACT EXPANDING THE PURPOSES FOR WHICH THE TOWNS OF ATLANTIC BEACH AND BEAUFORT MAY USE THE PROCEEDS FROM ON-STREET PARKING METERS, PROVIDING THAT PARKING METERS IN THE TOWNS MAY BE ACTIVATED BY COMMERCIALY AVAILABLE MEANS OF PREPAYMENT CREDIT, AND AUTHORIZING THE TOWNS TO USE CERTAIN CIVIL PENALTIES COLLECTED FOR VIOLATING PARKING ORDINANCES IN THE SAME MANNER IN WHICH PROCEEDS FROM ON-STREET AND OFF-STREET PARKING FACILITIES ARE USED.

With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

AGENDA
House Finance Committee

Wednesday, May 11, 2011
8:30 am
Room 544 LOB
Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 414 Amend Rutherford County Occupancy Tax
Representative Hager

HB 565 Morehead City/Beaufort Boundary
Representative McElraft

HB 845 Annexation Reform Act of 2011
Representatives LaRoque, Dollar, Owens, Jr.

SB 288 Atlantic Beach/Beaufort/Parking
Senator Preston

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAY 11, 2011

Room: 544

*Name: Darris Hopkins

County: Sampson County

Sponsor: TARHeel Challenge Academy

*Name: Ali Smith

County: more

Sponsor: Speaker Tillis

*Name: Angel Thavone

County: Guilford

Sponsor: _____

*Name: Doniel Hood

County: Moore

Sponsor: Speaker Tillis

*Name: Ryan Marsh

County: mecklenburg

Sponsor: _____

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: KEN KIRBY

2. Name: JOHN BRANDON

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

May 11, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Les Mullins	OLCAFA Rocky mount NC
LAWRENCE ALFORD	OLCAFA
Rose Chappell	OLCAFA Rockmont M.C
Pete Whitley	OLCAFA NASH CO.
Gloria Whitley	OLCAFA NASH CO.
Shirley Whitaker	OLCAFA NASH CO.
Kathy Hartkopf	Freedom Works
Hubert Moore	OLCAFA Nash Co.
Rayce May	OLCAFA NASH CO
Harvey Nelson	OLCAFA Nash County
CECIL D. HALE	OLCAFA NASH County

VISITOR REGISTRATION SHEET

House Finance

May 11, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peter Gilbert	UNC Center for Civil Rights Chapel Hill, NC
Bill Rowe	NC Justice Center
Adam McBroom	UNC center F
Dane Farrow	City of Charlotte
Kelli Kulura	NCLM
Allison Fowler	NC Grange
W. Gordon Pugh	DLC & Assoc. L. H. C. DC
Florine Bell	Roanoke Rapids, NC
Lana Hygh	Town of Cary
Kim Hibbard	NCLM
Patricia Biffi	NCLM

VISITOR REGISTRATION SHEET

House Finance

May 11, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
<i>Cameron Hooley</i>	<i>ElectroCities of NC</i>

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 845
Committee Substitute Favorable 5/3/11
PROPOSED COMMITTEE SUBSTITUTE H845-CSRCx-22 [v.6]

Short Title: Annexation Reform Act of 2011.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REFORM THE INVOLUNTARY ANNEXATION LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4A of Chapter 160A of the General Statutes is repealed.

SECTION 2. G.S. 160A-49.1 is recodified as G.S. 160A-58.57 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 3. G.S. 160A-49.2 is recodified as G.S. 160A-58.58 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 4. G.S. 160A-49.3 is recodified as G.S. 160A-58.59 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 5. G.S. 160A-51 is recodified as G.S. 160A-58.61 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 6. G.S. 160A-52 is recodified as G.S. 160A-58.62 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

SECTION 7. Part 3 of Article 4A of Chapter 160A of the General Statutes is repealed.

SECTION 8. Article 4A of Chapter 160A of the General Statutes is amended by adding a new Part 7 to be entitled "Annexations Initiated by Municipalities."

SECTION 9. Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act and as amended by Sections 2, 3, 4, 5, and 6 of this act, reads as rewritten:

"Part 7.

"Annexations Initiated by Municipalities.

§ 160A-58.50. Declaration of policy.

It is hereby declared as a matter of State policy:

- (1) That sound urban development is essential to the continued economic development of North Carolina.
- (2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential,



commercial, industrial, institutional, and governmental purposes or in areas undergoing such development.

(3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State to include such areas and to provide the high quality of governmental services needed therein for the public health, safety, and welfare.

(4) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality.

(5) That the provision of services to protect the health, safety, and welfare is a public purpose.

(6) That it is essential for citizens to have an effective voice in annexations initiated by municipalities.

"§ 160A-58.51. Definitions.

As used in this Part, the following definitions apply:

(1) Contiguous area. – Any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. A connecting corridor consisting solely of the length of a street or street right-of-way may not be used to establish contiguity.

(1a) Eligible property owner. – A property owner who is eligible to sign a petition to deny an annexation ordinance or a property owner who is eligible to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner. A property owner is eligible to sign a petition to deny an annexation ordinance if the property owner held a freehold interest in the property, determined as of the date of the resolution of consideration. A property owner is eligible to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner if that property owner held a freehold interest in the real property to be annexed as of the date of the combined notice of public informational meeting and public hearing.

(2) Necessary land connection. – An area that does not exceed twenty-five percent (25%) of the total area to be annexed.

(3) Property owner. – Any person having a freehold interest in real property.

(4) Used for residential purposes. – Any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. The term also includes any lot or tract that is used in common for social or recreational purposes by either owners of lots with habitable dwelling units or owners of lots intended for occupation by dwelling units and the lot owners have a real property interest in the commonly used property that attaches to or is appurtenant to the owners' lots.

"§ 160A-58.52. Authority to annex.

The governing board of any municipality may extend the corporate limits of such municipality under the procedure set forth in this Part.

"§ 160A-58.53. Prerequisites to annexation.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in

1 G.S. 160A-58.55, prepare a report setting forth such plans to provide services to the area
2 proposed to be annexed. The report shall include the following:

3 (1) Δ map or maps of the municipality and adjacent territory to show the
4 following information:

5 a. The present and proposed boundaries of the municipality.

6 b. The present major trunk water mains and sewer interceptors and
7 outfalls, and the proposed extensions of such mains, outfalls, and
8 lines as required in subdivision (3) of this section. The water and
9 sewer map shall bear the seal of a registered professional engineer.

10 c. The general land use pattern in the area proposed to be annexed.

11 (2) A statement showing that the area proposed to be annexed meets the
12 requirements of G.S. 160A-58.54.

13 (3) A statement setting forth the plans for extending to the area proposed to be
14 annexed each major municipal service on substantially the same basis and in
15 the same manner as such services are provided within the rest of the
16 municipality prior to annexation and the method to finance the extension of
17 major municipal services into the area proposed to be annexed as follows:

18 a. Provision of police protection, fire protection, solid waste collection,
19 and street maintenance services on the effective date of annexation.

20 A contract with a rural fire department to provide fire protection shall
21 be an acceptable method of providing fire protection. A contract with
22 a private firm to provide solid waste collection services shall be an
23 acceptable method of providing solid waste collection services.

24 b. Extension of water and sewer services to each lot or parcel, if an
25 easement is provided by the affected property owner, with a
26 proposed timetable for construction of such mains, outfalls, and lines
27 within three and one-half years of the effective date of annexation, in
28 accordance with G.S. 160A-58.56.

29 (4) A statement of the impact of the annexation on any rural fire department
30 providing service in the area proposed to be annexed and a statement of the
31 impact of the annexation on fire protection and fire insurance rates in the
32 area proposed to be annexed, if the area where service is provided is in an
33 insurance district designated under G.S. 153A-233, a rural fire protection
34 district under Article 3A of Chapter 69 of the General Statutes, or a fire
35 service district under Article 16 of Chapter 153A of the General Statutes.
36 The rural fire department shall make available to the municipality not later
37 than 30 days following a written request from the municipality all
38 information in its possession or control, including operational, financial, and
39 budgetary information, necessary for preparation of a statement of impact.
40 The municipality shall, in a timely fashion, supply the rural fire department
41 with information requested by the rural fire department to respond to the
42 written request. The rural fire department forfeits its rights under
43 G.S. 160A-58.57 if it fails to make a good faith response within 45 days
44 following receipt of the written request for information from the
45 municipality, provided that the municipality's written request so states by
46 specific reference to this subdivision.

47 (5) A statement showing how the proposed annexation will affect the
48 municipality's finances and services, including municipal revenue change
49 estimates. This statement shall be delivered to the clerk of the board of
50 county commissioners at least 30 days before the date of the public
51 informational meeting on any annexation under this Part.

"§ 160A-58.54. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area that meets all of the following criteria:

(1) It shall be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one-eighth of the aggregate external boundaries of the area shall coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(4) The total area to be annexed shall meet the requirements of any of the following:

a. Part or all of the area to be annexed must be developed for urban purposes at the time of approval of the report provided for in G.S. 160A-58.53. The area of streets and street rights-of-way shall not be used to determine total acreage under this subdivision. An area developed for urban purposes is defined as any area which meets any one of the following standards:

1. Has a total resident population equal to at least two and three-tenths persons for each acre of land included within its boundaries.

2. Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts three acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size.

3. Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional, or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental, or institutional purposes, consists of lots and tracts three acres or less in size.

4. Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), if all of the following apply:

I. The municipality has provided in a contract with that district that the area is developed for urban purposes.

II. The contract provides for the municipality to operate the sewer system of that county water and sewer district.

III. The municipality is annexing in one ordinance the entire territory of the district not already within the corporate limits of a municipality.

5. Is so developed that, at the time of the approval of the annexation report, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.

b. Part or all of the area to be annexed meets either of the following:

1. Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending major municipal services, including water or sewer lines, through such sparsely developed area.

2. Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in sub-subdivision a. of this subsection.

The purpose of paragraphs 1. and 2. of this sub-subdivision is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

c. The total area to be annexed is completely surrounded by the municipality's primary corporate limits.

(b) In fixing new municipal boundaries and determining whether an area is developed for urban purposes, a municipal governing board shall comply with all the following:

(1) Use recorded property lines and streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district is not already within the corporate limits of the municipality.

(2) Use whole parcels of property in that if any portion of that parcel is included, the entire parcel of real property as recorded in the deed transferring title shall be included.

(3) Not use a connecting corridor consisting solely of the length of a street or street right-of-way to establish contiguity.

(4) Not consider property in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract.

(5) Include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities when determining acreage in use for commercial, industrial, institutional, or governmental purposes.

(6) Consider the area of an abolished water and sewer district to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b).

§ 160A-58.55. Procedure for annexation.

(a) Resolution of Consideration. – Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution of consideration identifying the area under consideration for annexation by either a metes and bounds

1 description or a map. The resolution of consideration shall remain effective for two years after
2 adoption and be filed with the municipal clerk. A new resolution of consideration adopted
3 before expiration of the two-year period for a previously adopted resolution covering the same
4 area shall relate back to the date of the previous resolution. Adoption of a resolution of
5 consideration shall not confer prior jurisdiction over the area as to any other municipality.

6 (b) Notice of Resolution of Consideration. – A notice of the adoption of the resolution
7 of consideration shall be published once a week for two successive weeks, with each
8 publication being on the same day of the week, in a newspaper having general circulation in the
9 municipality. The second publication shall be no more than 30 days following adoption of the
10 resolution of consideration. The resolution of consideration shall contain a map or description
11 of the area under consideration and a summary of the annexation process and time lines. A
12 copy of the resolution of consideration shall be mailed within 30 days after the adoption of the
13 resolution of consideration by first class mail to the property owners of real property located
14 within the area under consideration for annexation as shown by the tax records of the county.

15 (c) Resolution of Intent. – At least one year after adoption of the resolution of
16 consideration, the municipal governing body may adopt a resolution of intent of the
17 municipality to proceed with the annexation of some or all of the area described in the
18 resolution of consideration. The resolution of intent shall describe the boundaries of the area
19 proposed for annexation, fix a date for a public informational meeting, and fix a date for a
20 public hearing on the question of annexation. The date for the public informational meeting
21 shall be not less than 45 days and not more than 55 days following passage of the resolution of
22 intent. The date for the public hearing shall be not less than 130 days and not more than 150
23 days following passage of the resolution of intent.

24 (d) Notice of Public Informational Meeting, Public Hearing, and Opportunity for Water
25 and Sewer. – A combined notice of public informational meeting and public hearing shall be
26 issued as provided for in this subsection as follows:

27 (1) The notice shall be a combined notice that includes at least all of the
28 following:

- 29 a. The date, hour, and place of the public informational meeting.
30 b. The date, hour, and place of the public hearing.
31 c. A clear description of the boundaries of the area under consideration,
32 including a legible map of the area.
33 d. A statement that the report required by G.S. 160A-58.53 will be
34 available at the office of the municipal clerk.
35 e. An explanation of a property owner's rights under this section.
36 f. A summary of the annexation process with time lines.
37 g. A summary of available statutory remedies for denying and
38 appealing the annexation and the failure to provide services.
39 h. Information on how to request to become a customer of the water and
40 sewer service, all forms to request that service, and the consequences
41 of opting in or opting out, as provided in G.S. 160A-58.56.
42 i. A clear description of the distinction between the public
43 informational meeting and the public hearing.

44 (2) The combined notice shall be given by publication of the information
45 required by sub-subdivisions (1)a., b., and c. of this subsection and a
46 statement regarding the availability of the information required by the
47 remaining sub-subdivisions of subdivision (1) of this subsection in a
48 newspaper having general circulation in the municipality once a week for at
49 least two successive weeks prior to the date of the public informational
50 meeting, with each publication being on the same day of the week. The date
51 of the last publication shall be not more than 10 days preceding the date of

1 the public informational meeting. In addition thereto, if the area proposed to
2 be annexed lies in a county containing less than fifty percent (50%) of the
3 land area of the municipality, the same publication shall be given in a
4 newspaper having general circulation in the area of proposed annexation. If
5 there is no such newspaper, the municipality shall post the notice in at least
6 five public places within the municipality and at least five public places in
7 the area to be annexed for 30 days prior to the date of public informational
8 meeting.

9 (3) The combined notice, together with the information about requesting water
10 and sewer service, shall be mailed within five business days of the passage
11 of the resolution of intent by first class mail to the property owners of real
12 property located within the area to be annexed as shown by the tax records
13 of the county. The person or persons mailing such notices shall certify to the
14 governing board that fact, and such certificate shall become a part of the
15 public record of the annexation proceeding and shall be deemed conclusive
16 in the absence of fraud. If a notice is returned to the municipality by the
17 postal service by the tenth day before the informational meeting, a copy of
18 the notice shall be sent by certified mail, return receipt requested, at least
19 seven days before the informational meeting. Failure to comply with the
20 mailing requirement of this subsection shall not invalidate the annexation
21 unless it is shown that the requirements were not substantially complied
22 with.

23 (4) If the governing board by resolution finds that the tax records are not
24 adequate to identify the property owners within the area to be annexed after
25 exercising reasonable efforts to locate the property owners, it may, in lieu of
26 the mail procedure required by subdivision (3) of this subsection, post the
27 notice at least 30 days prior to the date of the public informational meeting
28 on all buildings, on such parcels, and in at least five other places within the
29 area to be annexed as to those parcels where the property owner could not be
30 so identified. In any case where notices are placed on property, the person
31 placing the notice shall certify that fact to the governing board.

32 (e) Action Prior to Informational Meeting. – At least 30 days before the date of the
33 public informational meeting, the municipal governing board shall do all of the following:

34 (1) Approve the report provided for in G.S. 160A-58.53.

35 (2) Prepare a summary of the approved report for public distribution.

36 (3) Post in the office of the clerk all of the following:

37 a. The approved report provided for in G.S. 160A-58.53.

38 b. The summary of the approved report.

39 c. A legible map of the area to be annexed.

40 d. The list of the property owners, and associated mailing addresses, in
41 the area to be annexed that the municipality has identified and mailed
42 notice.

43 e. Information for property owners on how to request to become a
44 customer of the water service or sewer service and all forms to
45 request that service.

46 (4) If the municipality has a Web site, post on that Web site all of the
47 information under this section together with any forms to apply for water
48 and sewer service.

49 (5) Prepare a summary of the substantive remedies for denying and appealing
50 the annexation for public distribution.

1 (f) Public Informational Meeting. – At the public informational meeting, a
2 representative of the municipality shall first make an explanation of the report required in
3 G.S. 160A-58.53 and an explanation of the provision of major municipal services. The
4 explanation of the provision of services shall include how to request water service or sewer
5 service to individual lots, the average cost of a residential connection to the water and sewer
6 system, and the opportunity for a credit in the amount of that average cost of a residential
7 connection under G.S. 160A-58.56. A summary of the annexation process with time lines, a
8 summary of available statutory remedies for denying and appealing the annexation, an
9 explanation of the provision of services, and information for requesting water service or sewer
10 service to individual lots and any forms to so request shall also be distributed at the public
11 informational meeting. Following such explanation, all property owners and residents of the
12 area proposed to be annexed as described in the notice of public informational meeting and
13 hearing, and all residents of the municipality shall be given the opportunity to ask questions and
14 receive answers regarding the proposed annexation.

15 (g) Public Hearing. – At the public hearing, a representative of the municipality shall
16 first make an explanation of the report required in G.S. 160A-58.53. Following such
17 explanation, all property owners and residents of the area proposed to be annexed as described
18 in the notice of public informational meeting and hearing, and all residents of the municipality,
19 shall be given an opportunity to be heard.

20 (h) Passage of the Annexation Ordinance. – The municipal governing board shall take
21 into consideration facts presented at the public hearing and shall have authority to amend the
22 report required by G.S. 160A-58.53 to make changes in the plans for serving the area proposed
23 to be annexed so long as such changes meet the requirements of G.S. 160A-58.53. At any
24 regular or special meeting held no sooner than the tenth day following the public hearing and
25 not later than 90 days following the public hearing, the governing board shall have authority to
26 adopt an ordinance, subject to subsection (i) of this section, extending the corporate limits of
27 the municipality to include all, or part, of the area described in the notice of public hearing
28 which the governing board has concluded should be annexed. The annexation ordinance shall:

- 29 (1) Contain specific findings showing that the area to be annexed meets the
30 requirements of G.S. 160A-58.54.
- 31 (2) Describe the external boundaries of the area to be annexed by metes and
32 bounds.
- 33 (3) Include a statement of the intent of the municipality to provide services to
34 the area being annexed as set forth in the report required by G.S. 160A-58.53
35 and a time line for the provision of those services.
- 36 (4) Contain a specific finding that on the effective date of annexation, the
37 municipality will have funds appropriated in sufficient amount to finance
38 construction of any water and sewer lines stated in the report required by
39 G.S. 160A-58.53 to extend the water and sewer services into the area to be
40 annexed, or that on the effective date of annexation the municipality will
41 have authority to issue bonds in an amount sufficient to finance such
42 construction. If authority to issue such bonds shall be secured from the
43 electorate of the municipality prior to the effective date of annexation, then
44 the effective date of annexation shall be no earlier than the day following the
45 statement of the successful result of the bond election.
- 46 (5) Fix the effective date for annexation as June 30 next following the adoption
47 of the ordinance or the second June 30 following adoption of the ordinance,
48 but not before the completion of the water and sewer request and petition to
49 deny and appeal periods are complete.
- 50 (6) Together, with the list of the property owners within the area described in
51 the annexation ordinance to which a notice was mailed under subsection (d)

1 of this section, be delivered within five business days to the county tax
2 assessor of the county in which a majority of the municipality lies.

3 (7) Be summarized, and sent in accordance with subsection (i) of this section, to
4 the list of the property owners within the area described in the annexation
5 ordinance to which a notice was mailed under subsection (d) of this section
6 together with a blank petition form, preprinted with name and address of the
7 property owner.

8 (8) If a public body has a Web site, conspicuously post a copy of the petition to
9 deny annexation ordinance that a property owner in the real property located
10 within the area described in the annexation ordinance may download,
11 complete, and return to the county tax assessor in accordance with
12 subsection (i) of this section.

13 (i) Petition to Deny Annexation Ordinance. – The following procedures shall apply to
14 this subsection:

15 (1) Upon receipt of the resolution of intent and a list of property owners of the
16 real property located within the area, the county tax assessor in the county
17 where a majority of the parcels proposed for annexation are located shall
18 prepare petitions for property owners of the real property located within the
19 area described in the resolution of intent to sign opposing the annexation
20 ordinance.

21 (2) A petition shall include the names of the property owners of the parcel of
22 real property listed individually, a signature line for each owner, and a
23 statement that the person signing is petitioning to deny the annexation.

24 (3) The tax assessor shall mail a petition to the address of record for those real
25 property owners within five business days of receipt from the municipality
26 of the list.

27 (4) The tax assessor shall provide two methods by which property owners of the
28 real property located within the area described in the annexation ordinance
29 may sign a petition form prepared by the tax assessor: (i) in person or (ii) by
30 submitting the signed petition form by mail. The tax assessor shall also
31 accept signatures signed on a petition form prepared by the tax assessor, but
32 collected by another, if that petition form is returned to the tax assessor in a
33 sealed container.

34 (5) If the signed petition is one that was mailed under subdivision (h)(7) of this
35 section and the signer is not the same as the preprinted name on the form, the
36 signed petition shall be notarized and accompanied by a copy of the legal
37 authority for the signature of the person signing a petition.

38 (6) If a petition is returned as undeliverable to the tax assessor, the assessor shall
39 send the petition return receipt requested. If the petition is returned again, the
40 tax assessor shall not include that property owner in the total number of
41 eligible property owners.

42 (7) If there is a change in ownership of real property after the date of the
43 resolution of consideration until 30 days after the date of the adoption of the
44 annexation ordinance, the new owner of the real property shall be considered
45 the eligible owner of real property.

46 (8) The tax assessor shall accept signatures on the petition until 130 days after
47 the adoption of the annexation ordinance.

48 (9) The determination of the results by the tax assessor of the petition period
49 shall be observed by three property owners from the area proposed for
50 annexation, chosen by lot by the county tax assessor from among those who
51 request to serve in this role, and three persons designated by the

1 municipality. A majority of the property owners of a single parcel of real
2 property must sign the petition before the tax assessor may count that parcel
3 as having submitted a petition to deny annexation.

4 (10) Within 10 business days after the close of the signature period, the tax
5 assessor shall certify to the municipal governing body the number of
6 petitions signed by eligible property owners of the real property located
7 within the area described in the annexation ordinance.

8 (11) If the tax assessor delivers to the municipal governing board petitions signed
9 by eligible property owners of at least sixty percent (60%) of the parcels
10 located within the area described in the annexation ordinance as provided in
11 this subsection, the annexation shall be terminated and the municipality may
12 not adopt a resolution of consideration for the area described in the
13 annexation ordinance for at least 36 months.

14 (12) This subsection shall not apply to any property owner of real property
15 located within the area described in the annexation ordinance that is
16 completely surrounded by the municipality's primary corporate limits.

17 (13) The municipality shall reimburse the tax assessor the costs of the petition
18 process required under this subsection of this section.

19 (j) Effect of Annexation Ordinance. – Except as provided in subsection (k) of this
20 section, from and after the effective date of the annexation ordinance, the territory and its
21 citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in
22 such municipality and shall be entitled to the same privileges and benefits as other parts of such
23 municipality.

24 (k) Property Subject to Present-Use Value Appraisal. – If an area described in an
25 annexation ordinance includes agricultural land, horticultural land, or forestland that meets
26 either of the conditions listed below on the effective date of annexation, then the annexation
27 becomes effective as to that property pursuant to subsection (l) of this section:

28 (1) The land is being taxed at present-use value pursuant to G.S. 105-277.4.

29 (2) The land meets both of the following conditions:

30 a. On the date of the resolution of intent for annexation it was being
31 used for actual production and is eligible for present-use value
32 taxation under G.S. 105-277.4, but the land had not been in use for
33 actual production for the required time under G.S. 105-277.3.

34 b. The assessor for the county where the land subject to annexation is
35 located has certified to the municipality that the land meets the
36 requirements of this subdivision.

37 (l) Effective Date of Annexation for Certain Property. – Annexation of property subject
38 to annexation under subsection (j) of this section becomes effective as provided in this
39 subsection:

40 (1) Upon the effective date of the annexation ordinance, the property shall be
41 considered part of the municipality only (i) for the purpose of establishing
42 municipal boundaries for additional annexations pursuant to this Article and
43 (ii) for the exercise of municipal authority pursuant to Article 19 of this
44 Chapter.

45 (2) For all other purposes, the annexation becomes effective as to each tract of
46 the property or part thereof on the last day of the month in which that tract or
47 part thereof becomes ineligible for classification pursuant to G.S. 105-277.4
48 or no longer meets the requirements of subdivision (k)(2) of this section.
49 Until annexation of a tract or a part of a tract becomes effective pursuant to
50 this subsection, the tract or part of a tract is not subject to taxation by the
51 municipality under Article 12 of Chapter 105 of the General Statutes nor is

1 the tract or part of a tract entitled to services provided by the municipality.
2 Upon the effective date of annexation, taxation of real and personal property
3 is subject to the provisions of G.S. 160A-58.10.

4 (m) Simultaneous Annexation Proceedings. – If a municipality is considering the
5 annexation of two or more areas which are all adjacent to the municipal boundary but are not
6 adjacent to one another, it may undertake simultaneous proceedings under authority of this Part
7 for the annexation of such areas.

8 (n) Remedies for Failure to Provide Services. – If, not earlier than 30 days after the
9 effective date of annexation and not later than 15 months from the effective date of annexation,
10 any property owner in the annexed territory shall believe that the municipality has not followed
11 through providing services as set forth in the report adopted under G.S. 160A-58.53 and
12 subsection (e) of this section, the property owner may apply for a writ of mandamus under the
13 provisions of Article 40 of Chapter 1 of the General Statutes. Relief may be granted by the
14 judge of superior court if the municipality has not provided the services set forth in its plan
15 submitted under the provisions of G.S. 160A-58.53(3)a. on substantially the same basis and in
16 the same manner as such services were provided within the rest of the municipality prior to the
17 effective date of annexation and those services are still being provided on substantially the
18 same basis and in the same manner within the original corporate limits of the municipality. If a
19 writ is issued, costs in the action, including reasonable attorneys' fees for such aggrieved
20 property owner, shall be charged to the municipality.

21 (o) Reports to the Local Government Commission. – The municipality shall report to
22 the Local Government Commission as follows:

23 (1) As to whether police protection, fire protection, solid waste services, and
24 street maintenance services were provided in accordance with
25 G.S. 160A-58.53(3)a., within 30 days after the effective date of the
26 annexation. Such report shall be filed no more than 30 days following the
27 expiration of the 30-day period. If the Local Government Commission
28 determines that the municipality failed to deliver police protection, fire
29 protection, solid waste services, or street maintenance services as provided
30 for in G.S. 160A-58.53(3)a. within 30 days after the effective date of the
31 annexation, the Local Government Commission shall notify the municipality
32 that the municipality may not count any of the residents as part of the
33 population of the municipality for the purpose of receiving any State,
34 federal, or county dollars distributed based on population until all of the
35 services are provided.

36 (2) As to whether the extension of water and sewer lines was completed within
37 the time period specified in G.S. 160A-58.53(3), within six months after the
38 effective date of the annexation ordinance, and again within three and
39 one-half years of the effective date of the annexation ordinance or upon the
40 completion of the installation, whichever occurs first. If the municipality
41 failed to deliver either water or sewer services, or both, as provided for in
42 G.S. 160A-58.53(3)b. within three and one-half years after the effective date
43 of the annexation, the municipality shall stop any other annexations in
44 progress and may not begin any other annexation until the water and sewer
45 services are provided. The municipality shall adopt a resolution of
46 consideration to begin again any annexation that is stopped due to this
47 subdivision.

18 **"§ 160A-58.56. Provision of water and sewer service.**

49 (a) The municipality shall provide water and sewer service to the annexed area as
50 required by plans for extension under G.S. 160A-58.53(3) within three and one-half years of

1 the effective date of the annexation ordinance except as provided in subdivision (b)(4) of this
2 section.

3 (b) Prior to the adoption of the annexation ordinance, the municipality shall offer to
4 each eligible property owner of real property located within the area proposed to be annexed an
5 opportunity to obtain water or sewer service, or both, at no cost other than periodic user fees
6 based upon usage as follows:

7 (1) After passage of the resolution of intent, the property owner of real property
8 located within the area proposed to be annexed shall be notified in writing,
9 as provided in G.S. 160A-58.55(d), within five business days of the passage
10 of the resolution of intent, of the opportunity to have water and sewer lines
11 and connections installed at no cost to the property owner. The notice shall
12 state that a request for extending water and sewer lines does not waive the
13 right to contest the annexation. The property owners of real property located
14 within the area proposed to be annexed shall be allowed 65 days from the
15 date of the passage of the resolution of intent to respond yes or no to the
16 opportunity. Any property owner of a parcel that is an existing customer of
17 the municipality's water or sewer, whether provided by the municipality or
18 by a third party under contract with the municipality, shall be deemed to
19 respond yes to the opportunity, whether or not the property owner returns the
20 notification.

21 (2) At the close of the 65-day period, the municipality shall determine if the
22 eligible property owners of a majority of the parcels to be annexed have
23 responded favorably. A majority of the property owners of a single parcel of
24 real property must respond favorably before the municipality may count that
25 parcel of real property as responding favorably.

26 (3) If the property owners of a majority of the parcels located within the area
27 proposed to be annexed respond favorably, the municipality shall do all of
28 the following:

29 a. Provide water and sewer lines, service lines, and connections at no
30 cost other than periodic user fees to all real property for which an
31 owner responded favorably if the annexation ordinance is adopted.
32 The right to receive water and sewer lines shall run with the land.

33 b. Notify, within five days of the close of the 65-day period under
34 subdivision (2) of this subsection, those property owners of real
35 property located within the area proposed to be annexed who failed
36 to respond or responded negatively that the property owners of a
37 majority of the parcels located within the area proposed to be
38 annexed responded favorably and offer a second opportunity for that
39 property owner to respond favorably within 30 days.

40 (4) If the property owners of a majority of the parcels located within the area
41 proposed to be annexed fail to respond favorably to the offer to obtain water
42 and sewer services made under this section, the municipality may
43 nevertheless proceed with the annexation. If the municipality proceeds with
44 the annexation when the property owners of a majority of the parcels located
45 within the area proposed to be annexed fail to respond favorably to the offer
46 to obtain water and sewer services, the municipality is not required to
47 provide water and sewer services to any property owners in the area that is
48 annexed. If the municipality does provide water and sewer services, and if a
49 property owner requests those services, the municipality may charge the
50 property owner for the connection to a residential lot as provided in
51 subsection (d) of this section during the first five years following the

1 effective date of the annexation. After five years, and only if connection is
2 requested by a property owner in accordance with subsection (e) of this
3 section, the municipality may charge for the connection according to the
4 municipality's policy.

5 (c) The process required by subsection (b) of this section shall be completed by the
6 municipality at least 30 days prior to the public hearing. The report required by
7 G.S. 160A-58.53 shall include the results of the process required by subsection (b) of this
8 section.

9 (d) Any property owner of the real property located within the area described in the
10 annexation ordinance may apply to participate in the water and sewer system after the
11 completion of the process required by subsection (b) of this section. For a property owner of
12 real property located within the area described in the annexation ordinance applying within the
13 first year, that property owner may be charged an amount not to exceed fifty percent (50%) of
14 average cost of the installation of the water and sewer for a residential lot. For a property owner
15 of real property located within the area described in the annexation ordinance applying within
16 the second year, that property owner may be charged an amount not to exceed sixty percent
17 (60%) of average cost of the installation of the water and sewer for a residential lot. For a
18 property owner of real property located within the area described in the annexation ordinance
19 applying within the third year, that property owner may be charged an amount not to exceed
20 seventy percent (70%) of average cost of the installation of the water and sewer for a residential
21 lot. For a property owner of real property located within the area described in the annexation
22 ordinance applying within the fourth year, that property owner may be charged an amount not
23 to exceed eighty percent (80%) of average cost of the installation of the water and sewer for a
24 residential lot. For a property owner of real property located within the area described in the
25 annexation ordinance applying within the fifth year, that property owner may be charged an
26 amount not to exceed ninety percent (90%) of average cost of the installation of the water and
27 sewer for a residential lot. Charges pursuant to this section shall be made when the water and
28 sewer connection is operable.

29 (e) Notwithstanding Article 16 of this Chapter, the municipality may not charge, for
30 any reason, any property owner within the area described in the annexation ordinance, for the
31 installation or use of the water or sewer system unless that property owner is, or has requested
32 to become, a customer of the water or sewer system.

33 (f) For purposes of this section, the following definitions apply:

34 (1) "At no cost other than periodic user fees." – The municipality may not
35 charge the property owner who responded favorably under subdivision
36 (b)(3) of this section for any costs associated with the installation of the
37 water or sewer system. The municipality may not charge a property owner
38 who applies to participate in the water and sewer system under subsection
39 (d) of this section prior to the first periodic user fee charge, and on that bill
40 the owner may be charged no more than as provided in subsection (d) of this
41 section.

42 (2) "Average installation of a connection for a residential lot." – The average of
43 the cost for residential installations from curb to residence, including
44 connection and tap fees, in the area described in the annexation ordinance.

45 **"§ 160A-58.57. Contract with rural fire department.**

46 (a) If the area to be annexed described in a resolution of intent passed under
47 G.S. 160A-49(a)-G.S. 160A-58.55(c) includes an area in an insurance district defined under
48 G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General
49 Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and
50 a rural fire department was on the date of adoption of the resolution of intent providing fire
51 protection in the area to be annexed, then the city (if the rural fire department makes a written

1 request for a good faith offer, and the request is signed by the chief officer of the fire
2 department and delivered to the city clerk no later than 15 days before the public hearing) is
3 required to make a good faith effort to negotiate a five-year contract with the rural fire
4 department to provide fire protection in the area to be annexed.

5 (b) If the area is a rural fire protection district or a fire service district, then an offer to
6 pay annually for the term of the contract the amount of money that the tax rate in the district in
7 effect on the date of adoption of the resolution of intent would generate based on property
8 values on January 1 of each year in the area to be annexed which is in such a district is deemed
9 to be a good faith offer of consideration for the contract.

10 (c) If the area is an insurance district but not a rural fire protection district or fire
11 service district, then an offer to pay annually over the term of the contract the amount of money
12 which is determined to be the equivalent of the amount which would be generated by
13 multiplying the fraction of the city's general fund budget in that current fiscal year which is
14 proposed to be expended for fire protection times the tax rate for the city in the current year,
15 and multiplying that result by the property valuation in the area to be annexed which is served
16 by the rural fire department is deemed to be a good faith offer of consideration for the contract;
17 Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred
18 dollars (\$100.00) valuation of annexed property in the district according to county valuations
19 for the current fiscal year.

20 (d) Any offer by a city to a rural fire department which would compensate the rural fire
21 department for revenue loss directly attributable to the annexation by paying such amount
22 annually for five years, is deemed to be a good faith offer of consideration for the contract.

23 (e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first
24 responder service, an offer of one-half the calculated amount under those subsections is deemed
25 to be a good faith offer.

26 (f) This section does not obligate the city or rural fire department to enter into any
27 contract.

28 (g) The rural fire department may, if it feels that no good faith offer has been made,
29 appeal to the Local Government Commission within 30 days following the passage of an
30 annexation ordinance. The rural fire department may apply to the Local Government
31 Commission for an order staying the operation of the annexation ordinance pending the
32 outcome of the review. The Commission may grant or deny the stay in its discretion upon such
33 terms as it deems proper, and it may permit annexation of any part of the area described in the
34 ordinance concerning which no question for review has been raised, provided that no other
35 appeal under ~~G.S. 160A-50~~ G.S. 160A-58.60 is pending.

36 (h) The Local Government Commission may affirm the ordinance, or if the Local
37 Government Commission finds that no good faith offer has been made, it shall remand the
38 ordinance to the municipal governing board for further proceedings, and the ordinance shall
39 then not become effective unless the Local Government Commission finds that a good faith
40 offer has been made.

41 (i) Any party to the review under subsection (h) may obtain judicial review in
42 accordance with Chapter 150B of the General Statutes.

43 **"§ 160A-58.58. Assumption of debt.**

44 (a) If the city has annexed any area which is served by a rural fire department and
45 which is in an insurance district defined under G.S. 153A-233, a rural fire protection district
46 under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16
47 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city
48 has not contracted with the rural fire department for fire protection, or when the rural fire
49 department ceases to provide fire protection under contract, then the city shall pay annually a
50 proportionate share of any payments due on any debt (including principal and interest) relating
51 to facilities or equipment of the rural fire department, if the debt was existing at the time of

1 adoption of the resolution of intent, with the payments in the same proportion that the assessed
2 valuation of the area of the district annexed bears to the assessed valuation of the entire district
3 on the date the annexation ordinance becomes effective or another date for valuation mutually
4 agreed upon by the city and the fire department.

5 (b) The city and rural fire department shall jointly present a payment schedule to the
6 Local Government Commission for approval and no payment may be made until such schedule
7 is approved.

8 **"§ 160A-58.59. Contract with private solid waste collection firms.**

9 (a) If the area to be annexed described in a resolution of intent passed under
10 ~~G.S. 160A-49(a)~~ G.S. 160A-58.55(c) includes an area where a firm (i) meets the requirements
11 of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the
12 resolution of intent or resolution of consideration was providing solid waste collection services
13 in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still
14 providing such services, and (iv) by reason of the annexation the firm's franchise with a county
15 or arrangements with third parties for solid waste collection will be terminated, the city shall do
16 one of the following:

17 (1) Contract with the firm for a period of two years after the effective date of the
18 annexation ordinance to allow the firm to provide collection services to the
19 city in the area to be annexed for sums determined under subsection (d) of
20 this section.

21 (2) Pay the firm for the firm's economic loss, with one-third of the economic
22 loss to be paid within 30 days of the termination and the balance paid in 12
23 equal monthly installments during the next succeeding 12 months. Any
24 remaining economic loss payment is forfeited if the firm terminates service
25 to customers in the annexation area prior to the effective date of the
26 annexation.

27 (3) Make other arrangements satisfactory to the parties.

28 (a1) To qualify for the options set forth in subsection (a) of this section, a firm must have
29 done one of the following:

30 (1) Subsequent to receiving notice of the annexation in accordance with
31 subsection (b) of this section, filed with the city clerk at least 10 days prior
32 to the public hearing a written request to contract with the city to provide
33 solid waste collection services containing a certification, signed by an officer
34 or owner of the firm, that the firm serves at least 50 customers within the
35 county at that time.

36 (2) Contacted the city clerk pursuant to public notice published by the city,
37 pursuant to ~~G.S. 160A-49(b)~~, G.S. 160A-58.55(d) at least 10 days before the
38 hearing and provided to the city clerk a written request to contract with the
39 city to provide solid waste collection services. The request must contain a
40 certification signed by an officer or owner of the firm that the firm serves at
41 least 50 customers within the county at that time.

42 (a2) Firms shall file notice of provision of solid waste collection service with the city
43 clerk of all cities located in the firm's collection area or within five miles thereof.

44 (b) At least four weeks prior to the date of the informational meeting, the city shall
45 provide written notice of the resolution of intent to all firms serving the area to be annexed. The
46 notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this
47 section by certified mail, return receipt requested, to the address provided by the firm under
48 subsection (a2) of this section.

49 (c) The city may require that the contract contain:

50 (1) A requirement that the firm post a performance bond and maintain public
51 liability insurance coverage;

- 1 (2) A requirement that the firm agree to service customers in the annexed area
2 that were not served by that firm on the effective date of annexation;
- 3 (3) A provision that divides the annexed area into service areas if there were
4 more than one firm being contracted within the area, such that the entire area
5 is served by the firms, or by the city as to customers not served by the firms;
- 6 (4) A provision that the city may serve customers not served by the firm on the
7 effective date of annexation;
- 8 (5) A provision that the contract can be cancelled in writing, delivered by
9 certified mail to the firm in question with 30 days to cure substantial
10 violations of the contract, but no contract may be cancelled on these grounds
11 unless the Local Government Commission finds that substantial violations
12 have occurred, except that the city may suspend the contract for up to 30
13 days if it finds substantial violation of health laws;
- 14 (6) Performance standards, not exceeding city standards existing at the time of
15 notice published pursuant to G.S. 160A-49(b) with provision that the
16 contract may be cancelled for substantial violations of those standards, but
17 no contract may be cancelled on those grounds unless the Local Government
18 Commission finds that substantial violations have occurred;
- 19 (7) A provision for monetary damages if there are violations of the contract or
20 of performance standards.

21 (d) If the services to be provided to the city by reason of the annexation are
22 substantially the same as rendered under the franchise with the county or arrangements with the
23 parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or
24 required under the existing franchise or arrangements. If such services are required to be
25 adjusted to conform to city standards or as a result of changes in the number of customers and
26 as a result there are changes in disposal costs (including mileage and landfill charges),
27 requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of
28 collection, the amount paid by the city for the service shall be increased or decreased to reflect
29 the value of such adjusted services as if computed under the existing franchise or arrangements.
30 In the event agreement cannot be reached between the city and the firm under this subsection,
31 the matters shall be determined by the Local Government Commission.

32 (e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which a
33 resolution of intent is adopted on or after January 1, 2007.

34 (g) The firm may, if it contends that no contract has been offered, appeal to the Local
35 Government Commission within 30 days following passage of an annexation ordinance. The
36 firm may appeal to the Local Government Commission for an order staying the operation of the
37 annexation ordinance pending the outcome of the review. The Commission may grant or deny
38 the stay upon such terms as it deems proper. If the Local Government Commission finds that
39 the city has not made an offer which complies with this section, it shall remand the ordinance to
40 the municipal governing board for further proceedings, and the ordinance shall not become
41 effective until the Local Government Commission finds that such an offer has been made.
42 Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the
43 General Statutes.

44 (h) A firm which has given notice under subsection (a) of this section that it desires to
45 contract, and any firm that the city believes is eligible to give such notice, shall make available
46 to the city not later than 30 days following a written request of the city, sent by certified mail
47 return receipt requested, all information in its possession or control, including but not limited to
48 operational, financial and budgetary information, necessary for the city to determine if the firm
49 qualifies for the benefits of this section and to determine the nature and scope of the potential
50 contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a
51 good faith response within 30 days following receipt of the written request for information

1 from the city, provided that the city's written request so states by specific reference to this
2 section.

3 (i) As used in this section, the following terms mean:

4 (1) Economic loss. – A sum equal to 15 times the average gross monthly
5 revenue for the three months prior to the passage of the resolution of intent
6 or resolution of consideration, as applicable under subsection (a) of this
7 section, collected or due the firm for residential, commercial, and industrial
8 collection service in the area annexed or to be annexed; provided that
9 revenues shall be included in calculations under this subdivision only if
10 policies of the city will provide solid waste collection to those customers
11 such that arrangements between the firm and the customers will be
12 terminated.

13 (2) Firm. – A private solid waste collection firm.

14 **"§ 160A-58.60. Appeal.**

15 (a) Within 60 days following the close of the signature period under
16 G.S. 160A-58.55(i), any property owner of real property located within the area described in
17 the annexation ordinance who believes that property owner will suffer material injury by reason
18 of the failure of the municipal governing board to comply with the procedure or to meet the
19 requirements set forth in this Part as they apply to the annexation may file a petition in the
20 superior court of the county in which the municipality is located seeking review of the action of
21 the governing board.

22 (b) Such petition shall explicitly state what exceptions are taken to the action of the
23 governing board and what relief the petitioner seeks. Within 10 days after the petition is filed
24 with the court, the person seeking review shall serve copies of the petition by registered mail,
25 return receipt requested, upon the municipality.

26 (c) Within 15 days after receipt of the copy of the petition for review or within such
27 additional time as the court may allow, the municipality shall transmit to the reviewing court
28 both of the following:

29 (1) A transcript of the portions of the municipal journal or minute book in which
30 the procedure for annexation has been set forth.

31 (2) A copy of the report setting forth the plans for extending services to the
32 annexed area as required in G.S. 160A-58.53.

33 (d) If two or more petitions for review are submitted to the court, the court may
34 consolidate all such petitions for review at a single hearing, and the municipality shall be
35 required to submit only one set of minutes and one report as required in subsection (c) of this
36 section.

37 (e) At any time before or during the review proceeding, any petitioner or petitioners
38 may apply to the reviewing court for an order staying the operation of the annexation ordinance
39 pending the outcome of the review. The court may grant or deny the stay in its discretion upon
40 such terms as it deems proper, and it may permit annexation of any part of the area described in
41 the ordinance concerning which no question for review has been raised.

42 (f) The court shall fix the date for review of annexation proceedings under this Part,
43 which review date shall be expeditious and without unnecessary delays. The review shall be
44 conducted by the court without a jury. The court may hear oral arguments and receive written
45 briefs and may take evidence intended to show one or more of the following:

46 (1) That the statutory procedure was not followed.

47 (2) That the provisions of G.S. 160A-58.53 were not met.

48 (3) That the provisions of G.S. 160A-58.54 have not been met.

49 (4) That the provisions of G.S. 160A-58.50 have not been met.

50 (g) The court may affirm the action of the governing board without change, or it may
51 order any of the following:

- 1 (1) Remand the ordinance to the municipal governing board for further
2 proceedings if procedural irregularities are found to have materially
3 prejudiced the substantive rights of any of the petitioners.
- 4 (2) Remand the ordinance to the municipal governing board for amendment of
5 the boundaries to conform to the provisions of G.S. 160A-58.54 if it finds
6 that the provisions of G.S. 160A-58.54 have not been met; provided, that the
7 court cannot remand the ordinance to the municipal governing board with
8 directions to add area to the municipality which was not included in the
9 notice of public hearing and not provided for in plans for service.
- 10 (3) Remand the report to the municipal governing board for amendment of the
11 plans for providing services to the end that the provisions of
12 G.S. 160A-58.53 are satisfied or to correct errors in municipal governing
13 board's estimates that fall below the standards in G.S. 160A-58.63.
- 14 (4) Declare the ordinance null and void, if the court finds that the ordinance
15 cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of
16 this subsection.

17 If any municipality shall fail to take action in accordance with the court's instructions upon
18 remand within 90 days following entry of the order embodying the court's instructions, the
19 annexation proceeding shall be deemed null and void.

20 (h) Any party to the review proceedings, including the municipality, may appeal to the
21 Court of Appeals from the final judgment of the superior court under rules of procedure
22 applicable in other civil cases. The superior court may, with the agreement of the municipality,
23 permit annexation to be effective with respect to any part of the area concerning which no
24 appeal is being made and which can be incorporated into the municipality without regard to any
25 part of the area concerning which an appeal is being made.

26 (i) If part or all of the area annexed under the terms of an annexation ordinance is the
27 subject of an appeal to the superior court, Court of Appeals, or Supreme Court on the effective
28 date of the ordinance, then the ordinance shall be deemed amended to make the effective date
29 with respect to such area the first June 30th at least six months following the date of the final
30 judgment of the superior court or appellate division, or the first June 30th at least six months
31 from the date the municipal governing board completes action to make the ordinance conform
32 to the court's instructions in the event of remand. For the purposes of this subsection, a denial
33 of a petition for rehearing or for discretionary review shall be treated as a final judgment.

34 (j) If a petition for review is filed under subsection (a) of this section or an appeal is
35 filed under G.S. 160A-58.57(g) or G.S. 160A-58.59(g) and a stay is granted, then the time
36 periods of three and one-half years or G.S. 160A-58.55(n) are each extended by the lesser of
37 the length of the stay or one year for that annexation.

38 (k) The provisions of subsection (i) of this section shall apply to any judicial review
39 authorized in whole or in part by G.S. 160A-58.57(i) or G.S. 160A-58.57(g).

40 (l) In any proceeding related to an annexation ordinance appeal under this section, a
41 municipality shall not state a claim for lost property tax revenue caused by the appeal. Nothing
42 in this Article shall be construed to mean that as a result of an appeal a municipality may assert
43 a claim for property tax revenue lost during the pendency of the appeal.

44 (m) Any settlement reached by all parties in an appeal under this section may be
45 presented to the superior court in the county in which the municipality is located. If the superior
46 court, in its discretion, approves the settlement, it shall be binding on all parties without the
47 need for approval by the General Assembly.

48 (n) If a final court order is issued against the annexing municipality, costs in the action,
49 including reasonable attorneys' fees for such aggrieved person having a freehold interest in the
50 real property located within the area described in the annexation ordinance, may be charged to
51 the municipality.

"§ 160A-58.61. Annexation recorded.

Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census.

"§ 160A-58.62. Authorized expenditures.

Municipalities initiating annexations under the provisions of this Part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation.

"§ 160A-58.63. Population and land estimates.

In determining population and degree of land subdivision for purposes of meeting the requirements of G.S. 160A-58.54, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-58.54 have been met on appeal to the superior court under G.S. 160A-58.60, the reviewing court shall accept the estimates of the municipality unless the actual population, total area, or degree of land subdivision falls below the standards in G.S. 160A-58.54:

- (1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; provided, that the court shall not accept such estimates if the petitioners demonstrate that such estimates are in error in the amount of ten percent (10%) or more.
- (2) As to total area, if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

SECTION 10. G.S. 160A-31, as amended by Section 3 of S.L. 2011-57, reads as rewritten:

"§ 160A-31. Annexation by petition.

(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such owner.

1 (b) The petition shall be prepared in substantially the following form:

2 DATE:

3 To the _____ (name of governing board) of the (City or Town) of

4
5 1. We the undersigned owners of real property respectfully request that the area described
6 in paragraph 2 below be annexed to the (City or Town) of _____

7 2. The area to be annexed is contiguous to the (City or Town) of _____ and the
8 boundaries of such territory are as follows:

9 (b1) Notwithstanding the provisions of subsections (a) and (b) of this section, if fifty-one
10 percent (51%) of the households in an area petitioning for annexation pursuant to this section
11 have incomes that are two hundred percent (200%) or less than the most recently published
12 United States Census Bureau poverty thresholds, the governing board of any municipality shall
13 annex by ordinance any area the population of which is no more than ten percent (10%) of that
14 of the municipality and one eighth of the aggregate external boundaries of which are
15 contiguous to its boundaries, upon presentation to the governing board of a petition signed by
16 the owners of at least seventy five percent (75%) of the parcels of real property in that area. A
17 municipality shall not be required to adopt more than one ordinance under this subsection
18 within a 36 month period.

19 (b2) The petition under subsection (b1) of this section shall be prepared in substantially
20 the following form:

21 DATE:

22 To the _____ (name of governing board) of the (City or Town) of

23
24 1. We the undersigned owners of real property believe that the area described in paragraph
25 2 below meets the requirements of G.S. 160A-31(b1) and respectfully request that the area
26 described in paragraph 2 below be annexed to the (City or Town) of _____.

27 2. The area to be annexed is contiguous to the (City or Town) of _____, and the
28 boundaries of such territory are as follows:

29 (c) Upon receipt of the petition, the municipal governing board shall cause the clerk of
30 the municipality to investigate the sufficiency thereof and to certify the result of his—the
31 investigation. For petitions received under subsection (b1) or (j) of this section, the clerk shall
32 receive the evidence provided under subsection (k) of this section before certifying the
33 sufficiency of the petition. Upon receipt of the certification, the municipal governing board
34 shall fix a date for a public hearing on the question of annexation, and shall cause notice of the
35 public hearing to be published once in a newspaper having general circulation in the
36 municipality at least 10 days prior to the date of the public hearing; provided, if there be no
37 such paper, the governing board shall have notices posted in three or more public places within
38 the area to be annexed and three or more public places within the municipality.

39 (d) At the public hearing ~~all persons resident or owning property in the area described~~
40 ~~in the petition to be annexed who allege an error in the petition and persons resident or owning~~
41 ~~property in the municipality shall be given an opportunity to be heard, as well as residents of~~
42 ~~the municipality who question the necessity for annexation heard.~~ The governing board shall
43 then determine whether the petition meets the requirements of this section. Upon a finding that
44 the petition that was not submitted under subsection (b1) or (j) meets the requirements of this
45 section, the governing board shall have authority to pass an ordinance annexing the territory
46 described in the petition. The governing board shall have authority to make the annexing
47 ordinance effective immediately or on any specified date within the June 30 after six months
48 from the date of the passage of the ordinance or the June 30 of the following year after the date
49 of passage of the ordinance.

1 (d1) Upon a finding that a petition submitted under subsection (j) meets the requirements
2 of this section, the governing body shall have the authority to adopt an annexation ordinance
3 for the area with an effective date no later than 24 months after the adoption of the ordinance.

4 (d2) Upon a finding that a petition submitted under subsection (b1) meets the
5 requirements of this section, the governing body shall, within 60 days of the finding, estimate
6 the capital cost to the municipality of extending water and sewer lines to all parcels within the
7 area covered by the petition and estimate the annual debt service payment that would be
8 required if those costs were financed by a 20 year revenue bond. If the estimated annual debt
9 service payment is less than five percent of the municipality's annual water and sewer systems
10 revenue for the most recent fiscal year, then the governing body shall within 30 days adopt an
11 annexation ordinance for the area with an effective date no later than 24 months after the
12 adoption of the ordinance. If the estimated annual debt service payment is greater than or equal
13 to five percent of the municipality's annual water and sewer systems revenue for the most
14 recent fiscal year, then the governing body may adopt a resolution declining to annex the area.
15 If such a resolution is adopted, the governing body shall immediately submit a request to the
16 Local Government Commission to certify that its estimate of the annual debt service payment is
17 reasonable based on established governmental accounting principles.

18 (1) If the Local Government Commission certifies the estimate, the municipality
19 is not required to annex the area and no petition to annex the area may be
20 submitted under subsection (b1) for 36 months following the certification.
21 During the 36 month period, the municipality shall make ongoing, annual
22 good faith efforts to secure Community Development Block Grants or other
23 grant funding for extending water and sewer service to all parcels in the
24 areas covered by the petition. If sufficient funding is secured so that the
25 estimated capital cost to the municipality for extending water and sewer
26 service, less the funds secured, would result in an annual debt service
27 payment cost to the municipality of less than five percent of the
28 municipality's annual water and sewer systems revenue for the most recent
29 fiscal year, then the governing body shall within 30 days adopt an
30 annexation ordinance for the area with an effective date no later than 24
31 months after the adoption of the ordinance.

32 (2) If the local Government Commission notifies the governing board that the
33 estimates are not reasonable based on established governmental accounting
34 principles and that a reasonable estimate of the annual debt service payment
35 is less than five percent of the municipality's annual water and sewer
36 systems revenue for the most recent fiscal year, then the governing body
37 shall within 30 days of the notification adopt an annexation ordinance for the
38 area with an effective date no later than 24 months after the adoption of the
39 ordinance.

40 (d3) Municipal services shall be provided to an area annexed under subsections (b1) and
41 (j) of this section in accordance with the requirements of Part 7 of this Article.

42 (e) From and after the effective date of the annexation ordinance, the territory and its
43 citizens and property shall be subject to all debts, laws, ordinances and regulations in force in
44 such municipality and shall be entitled to the same privileges and benefits as other parts of such
45 municipality. Real and personal property in the newly annexed territory on the January 1
46 immediately preceding the beginning of the fiscal year in which the annexation becomes
47 effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of
48 annexation falls between June 1 and June 30, and the effective date of the privilege license tax
49 ordinance of the annexing municipality is June 1, then businesses in the area to be annexed
50 shall be liable for taxes imposed in such ordinance from and after the effective date of
51 annexation.

(f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the municipal boundary or is separated from the municipal boundary by the width of a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. A connecting corridor consisting solely of a street or street right-of-way may not be used to establish contiguity. In describing the area to be annexed in the annexation ordinance, the municipal governing board may include within the description any territory described in this subsection which separates the municipal boundary from the area petitioning for annexation.

(g) The governing board may initiate annexation of contiguous property owned by the municipality by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The resolution shall contain an adequate description of the property, state that the property is contiguous to the municipal boundaries and fix a date for a public hearing on the question of annexation. Notice of the public hearing shall be published as provided in subsection (c) of this section. The governing board may hold the public hearing and adopt the annexation ordinance as provided in subsection (d) of this section.

(h) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested right shall be terminated.

(i) A municipality has no authority to adopt a resolution or petition itself under this Part for annexation of property it does not own or have any legal interest in. For the purpose of this subsection, a municipality has no legal interest in a State-maintained street unless it owns the underlying fee and not just an easement.

(j) Using the procedures under this section, the governing board of any municipality may annex by ordinance any distressed area contiguous to its boundaries upon presentation to the governing board of a petition signed by at least one adult resident of at least two-thirds of the resident households located within such area. For purposes of this subsection, a "distressed area" is defined as an area in which at least fifty-one percent (51%) of the households in the area petitioning to be annexed have incomes that are two hundred percent (200%) or less than the most recently published United States Census Bureau poverty thresholds. The municipality may require reasonable proof that the petitioner in fact resides at the address indicated.

(k) The petition under subsection (j) of this section shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned residents of real property believe that the area described in paragraph 2 below meets the requirements of G.S. 160A-31(j) and respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____.

2. The area to be annexed is contiguous to the (City or Town) of _____, and the boundaries of such territory are as follows:

(l) For purposes of determining whether the percentage of households in the area petitioning for annexation meets the poverty thresholds under subsections (b1) and (j) of this section, the petitioners shall submit to the municipal governing board any reasonable evidence that demonstrates the area in fact meets the income requirements of that subsection. The evidence presented may include data from the most recent federal decennial census, other official census documents, signed affidavits by at least one adult resident of the household

1 attesting to the household size and income level, or any other documentation verifying the
2 incomes for a majority of the households within the petitioning area. Petitioners may select to
3 submit name, address, and social security number to the clerk, who shall in turn submit the
4 information to the Department of Revenue. Such information shall be kept confidential and is
5 not a public record. The Department shall provide the municipality with a summary report of
6 income for households in the petitioning area. Information for the report shall be gleaned from
7 income tax returns, but the report submitted to the municipality shall not identify individuals or
8 households."

9 SECTION 11. Article 4A of Chapter 160A of the General Statutes is amended by
10 adding a new Part 8 to read:

11 **"Part 8.**

12 **"Recording and Reporting.**

13 **"§ 160A-58.90. Recording and Reporting.**

14 (a) Annexations made under this Article shall be recorded and reported in the same
15 manner as under G.S. 160A-29.

16 (b) To be enforceable, any written agreement with a person having a freehold interest in
17 real property regarding annexation shall be recorded in the county register of deeds office in
18 which the real property lies."

19 SECTION 11.1. G.S. 143B-437.04(a) is amended by adding a new subdivision to
20 read:

21 "(a) The Department of Commerce shall adopt guidelines for the awarding of
22 Community Development Block Grants to ensure that:

23 ...

24 (3) Priority consideration is given to projects located in areas annexed by a
25 municipality under Article 4A of Chapter 160A of the General Statutes in
26 order to provide water or sewer services to low-income residents. For
27 purposes of this section, low-income residents are those with a family
28 income that is eighty percent (80%) or less of median family income."

29 SECTION 11.2. G.S. 159G-23 is amended by adding a new subdivision to read:
30 **"§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking**
31 **Water Reserve.**

32 The criteria in this section apply to a loan or grant from the Wastewater Reserve or the
33 Drinking Water Reserve. The Division of Water Quality and the Division of Environmental
34 Health must each establish a system of assigning points to applications based on the following
35 criteria:

36 ...

37 (9) Low-income residents. – A project that is located in an area annexed by a
38 municipality under Article 4A of Chapter 160A of the General Statutes in
39 order to provide water or sewer services to low-income residents has
40 priority. For purposes of this section, low-income residents are those with a
41 family income that is eighty percent (80%) or less of median family income.

42 ... "

43 SECTION 12. Except for Sections 10, 11.1 and 11.2, this act does not apply to any
44 municipality that in its charter requires that an annexation must be approved by (i) either the
45 voters in a referendum or the request of a majority of the property owners; (ii) the voters in a
46 referendum; or (iii) the request of a majority of the property owners.

47 SECTION 13. If any provision of this act or its application is held invalid, the
48 invalidity does not affect other provisions or applications of this act that can be given effect
49 without the invalid provisions or application, and to this end the provisions of this act are
50 severable.

1 **SECTION 14.** This act is effective when it becomes law and applies to annexations
2 initiated by municipalities on or after that date and to petitions for annexation under Part 1 and
3 Part 4 of Article 4A of Chapter 160A of the General Statutes presented on or after that date.
4 Annexations initiated prior to the effective date of this act by any action under Part 2 or Part 3
5 of Article 4A of Chapter 160A of the General Statutes, but for which an annexation ordinance
6 has not been adopted, shall terminate and may be reinitiated in compliance with Part 7 of
7 Article 4A of Chapter 160A of the General Statutes as enacted by this act.



HOUSE BILL 845: Annexation Reform Act of 2011

2011-2012 General Assembly

Committee: House Finance	Date: May 10, 2011
Introduced by: Reps. LaRoque, Dollar, Owens	Prepared by: Kory Goldsmith and Giles Perry
Analysis of: PCS to Second Edition H845-CSRCx-22	Staff Attorneys

SUMMARY: *The proposed committee substitute for House Bill 845 makes substantive changes to the involuntary annexation process for all municipalities.*

CURRENT LAW: North Carolina law sets forth four basic ways in which a town or city may annex an area into its corporate limits:

- **Legislative Act.** The General Assembly has the authority to extend the boundaries of any town or city through local acts.
- **Voluntary Contiguous Annexation.** The owners of all real property in the area desiring to be annexed sign a petition requesting annexation.
- **Voluntary Satellite Annexation.** This method allows a town or city to annex a non-contiguous area into the town or city limits, with the agreement of the property owner.
- **Involuntary Annexation.** The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed through a statutorily prescribed process. The statutorily prescribed process is different for cities of less than 5,000 people than it is for larger cities.

BILL ANALYSIS:

Amends *involuntary contiguous annexation* in the following ways:

Section 1. Repeals the Part 2 of Article 4A of Chapter 160A of the General Statutes, Annexation of Cities of Less than 5,000.

Sections 2 – 6 recodify selected provisions of Part 3 of Article 4A of Chapter 160A of the General Statutes (Annexation by Cities of 5,000 or more) and places those provisions in a new Part 7 created in Section 8 of the bill.

Section 7 repeals the remaining provisions of Part 3 of Article 4A of Chapter 160A of the General Statutes, Annexation by Cities of 5,000 or more.

Section 8 creates a new Part 7 of Article 4A of Chapter 160A of the General Statutes to govern involuntary annexation by all municipalities in North Carolina, regardless of size.

Section 9 sets forth the procedures for annexation under the new Part 7 as follows:

- Prerequisites for Annexation
 - The area to be annexed must comply with the criteria set forth in the statute for urban density, etc.
 - A plan must be in place to provide the following services, within the time frames stated, on substantially the same basis and in the same manner as each service is provided within the rest of the municipal limits:
 - At the time of annexation: Police, Fire, Solid waste collection, Street maintenance
 - Within 3 ½ years of annexation: Water and Sewer
- Character of the Area to be Annexed – the property to be annexed must meet all of the following:

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- Must be adjacent or contiguous to the municipal boundaries, with at least 1/8 of the aggregate external boundaries of the area to be annexed coinciding with the municipal boundary.
- Cannot be part of another municipality.
- Is one of the following:
 - Completely surrounded by the municipal limits.
 - Is either:
 - between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending major municipal services, OR
 - adjacent, on at least 60% of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes.
 - Developed for urban purposes. Developed for urban purposes is any one of the following criteria:
 - Has a total resident population equal to at least 2.3 persons for each acre.
 - Has a total resident population equal to at least 1 person per acre, and is subdivided into lots and tracts such that at least 60% of the total acreage consists of lots and tracts 3 acres or less in size and such that at least 65% of the total number of lots and tracts are 1 acre or less in size.
 - Is so developed that at least 60% of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least 60% of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts three acres or less in size.
 - Is the entire area of any county water and sewer district, only if the municipality operates the sewer system and the entire territory is annexed in one annexation proceeding
 - All the tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes

In fixing municipal boundaries and determining whether an area is developed for urban purposes, the municipality shall do all of the following:

- Use recorded property lines and streets as boundaries.
- Use whole parcels of property in that if any portion of that parcel is included, the entire parcel of real property as recorded in the deed transferring title shall be included.
- Not use a connecting corridor consisting solely of a street or street right-of-way to establish contiguity.
- Not consider property in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract.
- Include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such

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facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities when determining acreage in use for commercial, industrial, institutional, or governmental purposes.

- Consider the area of an abolished water and sewer district to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b).
- Procedure for Annexation
 - Resolution of Consideration. – Must be adopted at least one year, but not more than 2 years prior to the resolution of intent. Property owners must be mailed a copy of the resolution.
 - Resolution of Intent. – Adopted at least one year after the resolution of consideration, describing the area to be annexed, that complies with the criteria of area to be annexed.
 - Public Informational Meeting. – Held at least 45, but not more than 55, days after the adoption of the resolution of intent. An official from the municipality is to explain the annexation process and answer questions of property owners and residents of the area to be annexed and of the municipality.
 - Public Hearing. – To be held at least 130, but not more than 150, days after the public informational meeting, to accept comment from the property owners and residents of the area to be annexed and of the municipality. Prior to the public hearing, the property owners must be given an opportunity to opt into the water and sewer service at no cost.
 - Annexation Ordinance. – May be adopted at least 10, but not more than 90, days after the public hearing. Must set an effective date of June 30, either of that year or the following year.
 - Petition to Deny Annexation. – If the County Tax Assessor delivers to the municipal governing board petitions to deny annexation signed by eligible property owners of at least 60% of the parcels within the area to be annexed, then the annexation is terminated, and the municipality cannot begin the involuntary annexation process on that area again for 36 months.
 - Report to the Local Government Commission on provision of services to the area annexed. – 30 days after the effective date of the annexation, the municipality must report to the LGC as to whether the fire, police, solid waste collection, street maintenance and water/sewer services have been provided. If fire, police, solid waste collection and street maintenance services have not been provided within the 30 days, then the municipality may not include the population of the annexed area for purposes of monies distributed based on population by the State, federal or county government. If the water/sewer services have not been provided, then the municipality has to report again at the completion of the installation of the services or within 3 ½ years, whichever is earlier. If the municipality has not provided the water/sewer services within 3 ½ years, the municipality must stop, and may not begin, any other annexations until the installation is completed.
- Provision of Services – Generally, must be provided on substantially the same basis and in the same manner as within the corporate limits.
 - Fire, Police, Solid Waste Collection, Street Maintenance. – The municipality may provide the service directly, or contract for the provision of the services. Either way, each service must be in place on the date of annexation.
 - Water and Sewer – The water and sewer service to the annexed area shall be provided by the municipality within three and one half years of the effective date of the annexation ordinance. The municipality shall provide water and sewer lines and connections at no,

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or reduced, costs other than periodic fees to all property owners requesting the service within the process set out below:

- After passage of the resolution of intent, the property owners of real property located within the area proposed to be annexed shall be notified in writing, within five business days of the passage of the resolution of intent, of the opportunity to have water and sewer or both installed at no cost to the property owner, if the property owners a majority of the parcels respond positively to the opportunity. If a property owner fails to respond or responds negatively within 65 days, the property owner will be sent a reminder notice and will have 30 additional days to request water and sewer or both at no charge. If the property is other than residential, that property will be given a credit in the amount of the average residential installation costs.
- If the property owners a majority of parcels do not respond positively to the opportunity the municipality may still go forward with the annexation. If it does, the municipality is not required to provide water or sewer to the annexed area, but if it does and if a property owner requests to be provided service, the municipality may be charged as described below.
- Any residential property owner who does not initially request water and sewer may do so later, but may be charged the following percentage of the average residential installation cost:
 - In the 1st year of the annexation – up to 50%.
 - In the 2nd year of the annexation – up to 60%
 - In the 3rd year of the annexation - up to 70%
 - In the 4th year of the annexation - up to 80%
 - In the 5th year of the annexation - up to 90%

The municipality may not charge, for any reason, any property owner within the area described in the annexation ordinance, for the installation or use of the water or sewer system unless that property owner is, or has requested to become, a customer of the water and sewer system.

- Appeal

- Transfers the current process for appeal from G.S. 160A-50, and makes conforming changes:
 - Within 60 days of the close of the time to sign a petition to deny, a property owner who believes they will suffer material injury by reason of the failure of the municipality to comply with the annexation procedure may file petition seeking review.
 - The court is to review and take evidence intended to show:
 - That the statutory procedure was not followed
 - That the prerequisites for annexation were not met
 - That the area annexed did not comply with the statutory requirements
 - That the provisions of the Declaration of Policy in G.S. 160A-58.50 have not been met
 - Remedies for the court:
 - Affirm the annexation without change.
 - Remand to the municipality for further proceedings.
 - Remand to the municipality for amendment to the boundaries.
 - Remand the report to the municipality for amendment on the plan for providing services or to correct errors in the city's estimates.
 - Declare the ordinance null and void.

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Section 10 amends *voluntary contiguous annexation* in the following ways:

1. Requires the annexation of contiguous "distressed areas" if the following requirements are met:
 - a. 51% of the households have incomes that are 200% or less than the US Census poverty thresholds
 - b. The population of the area seeking to be petitioned is no more than 10% of the municipality and 1/8th of the aggregate external boundaries are contiguous to the municipality
 - c. The owners of at least 75% of the parcels submit a signed petition to the governing board.
 - d. If the capital costs to the municipality of extending water and sewer to all parcels does not exceed certain thresholds, as certified by the Local Government Commission.
2. Allows the annexation of contiguous "distressed areas" upon petition of two-thirds of the resident households located in the area.
3. Prohibits the use of a street as a connecting corridor to establish contiguity.

Section 11 adds a new Part 8 to Article 4A of Chapter 160A that requires all annexations to be recorded and reported in the same manner as under G.S. 160A-29. It also requires that in order for an agreement regarding annexation must be recorded in order to be enforceable.

Sections 11.1 requires the Department of Commerce and **Section 11.2** requires the Division of Water Quality to adopt guidelines for the awarding of Community Development Block Grants and other grants to cities that annex areas under Article 4A of Chapter 160A.

Section 12 provides that the act (except Sections 10, 11.1 and 11.2) does not apply to any municipality that in its charter requires that an annexation must be approved by (i) either the voters in a referendum or the request of a majority of the property owners; (ii) the voters in a referendum; or (iii) the request of a majority of the property owners.

EFFECTIVE DATE: When the act becomes law, and applies to annexations initiated by municipalities on or after that date and to voluntary petitions for annexation presented on or after that date. Involuntary Annexations initiated prior to the effective date of this act by any action but for which an annexation ordinance has not been adopted, shall terminate and may be reinitiated in compliance with Part 7 of Article 4A of Chapter 160A of the General Statutes as enacted by this act

Erika Churchill, staff attorney, substantially contributed to this summary.

H845-SMRC-26(CSRCx-22) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 414

Short Title: Amend Rutherford County Occupancy Tax. (Local)

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

Referred to: Government, if favorable, Finance.

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RUTHERFORD COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 5 and 6 of Chapter 577 of the 1991 Session Laws, as amended by S.L. 2007-527, are rewritten and recodified as Sections 2 and 3 of this act. This act does not affect the rights or liabilities of the county, a taxpayer, or another person arising under the law rewritten and recodified by this act before the effective date of this act, nor does it affect the right to any refund or credit of a tax that accrued under the law rewritten and recodified by this act before the effective date of this act.

SECTION 2. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of Rutherford County may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

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

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Rutherford County Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention



1 facilities in the county or to attract tourists or business travelers to the
2 county. The term includes tourism-related capital expenditures.

3 **SECTION 2.(d) Distribution and Use of Tax Revenue.** – Rutherford County shall,
4 on a quarterly basis, remit to the Rutherford County Tourism Development Authority the net
5 proceeds of the occupancy tax. Alternatively, Rutherford County may, at the request and on
6 behalf of the Authority, establish a separate fund to account for the management of all receipts
7 and disbursements of the Authority. In addition to the management of this separate fund, the
8 county may also provide services, including, but not limited to, finance, human resources,
9 legal, and information technology. Service fees will be assessed by the county for the indirect
10 costs related to these services. The Authority shall use at least two-thirds of the funds remitted
11 to it under this subsection to promote travel and tourism in Rutherford County and shall use the
12 remainder for tourism-related expenditures.

13 **SECTION 3. Tourism Development Authority.** – (a) Appointment and
14 Membership. – When the Board of Commissioners adopts a resolution levying a room
15 occupancy tax under this act, it shall also adopt a resolution creating the Rutherford County
16 Tourism Development Authority, which shall be a public authority under the Local
17 Government Budget and Fiscal Control Act. The resolution adopted by the Board of
18 Commissioners shall provide for the membership of the Authority, including the members'
19 terms of office, and for the filling of vacancies on the Authority. At least one-third of the
20 members shall be individuals who are affiliated with businesses that collect the tax in the
21 county, and at least one-half of the members shall be individuals who are currently active in the
22 promotion of travel and tourism in the county. The Board of Commissioners shall designate
23 one member of the Authority as chair and shall determine the compensation, if any, to be paid
24 to members of the Authority.

25 The Authority shall meet at the call of the chair and shall adopt rules of procedure to
26 govern its meetings. The Finance Officer for Rutherford County shall be the ex officio finance
27 officer of the Authority.

28 **SECTION 3.(b) Duties.** – The Authority shall expend the net proceeds of the tax
29 levied under this act for the purposes provided in Section 2 of this act. The Authority shall
30 promote travel, tourism, and conventions in the county, sponsor tourist-related events and
31 activities in the county, and finance tourist-related capital projects in the county.

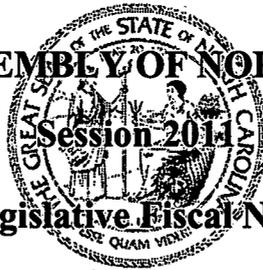
32 **SECTION 3.(c) Reports.** – The Authority shall report quarterly and at the close of
33 the fiscal year to the Rutherford County Board of Commissioners on its receipts and
34 expenditures for the preceding quarter and for the year in such detail as the Board of
35 Commissioners may require.

36 **SECTION 4. Administrative provisions.** – G.S. 153A-155(g) reads as rewritten:

37 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
38 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
39 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
40 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
41 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
42 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Madison, Martin, McDowell,
43 Montgomery, Nash, New Hanover, New Hanover County District U, Northampton,
44 Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan,
45 Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and
46 Wilson Counties, to Surry County District S, to Watauga County District U, to Wilkes County
47 District K, to Yadkin County District Y, and to the Township of Averagesboro in Harnett County
48 and the Ocracoke Township Taxing District."

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

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 414 (First Edition)

SHORT TITLE: Amend Rutherford County Occupancy Tax.

SPONSOR(S): Representative Hager

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES

****No Fiscal Impact****

EXPENDITURES

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Rutherford County

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

BILL SUMMARY:

House Bill 414 recodifies the existing law authorizing a room occupancy tax in Rutherford County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," "promote travel and tourism" and "tourism-related expenditures". The bill also makes the Rutherford County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

By conforming to the House Finance occupancy tax guidelines, Rutherford County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

ASSUMPTIONS AND METHODOLOGY:

There is no fiscal impact due to these changes.

SOURCES OF DATA: Committee Counsel

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: April 26, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 414: Amend Rutherford County Occupancy Tax

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Hager
Analysis of: First Edition

Date: April 28, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 414 recodifies the previously authorized Rutherford County occupancy tax to make it more uniform with current occupancy tax guidelines. By doing so, Rutherford County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.*

The bill would also allow the county, upon request of the TDA, to manage the TDA's receipts and disbursements and provide services related to the operation of the TDA, such as finance, human resources, legal and information technology. The county could charge service fees for the indirect costs related to these services.

CURRENT LAW: In 1991, the General Assembly authorized Rutherford County to levy an occupancy tax of up to 6%. The county must remit the net proceeds to the Rutherford Tourism Development Authority, and the net proceeds must be used only to promote travel, tourism, retirement, and conventions in the county.

BILL ANALYSIS: House Bill 414 would recodify the existing law authorizing a room occupancy tax in Rutherford County to more closely conform to the uniform guidelines currently used for occupancy taxes. The tax rate would remain the same. By conforming to the guidelines, Rutherford County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law. The bill also makes the Rutherford County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155.

The bill would also allow Rutherford County, at the request of the TDA, to establish a separate fund to account for the management of all receipts and disbursements of the TDA rather than remitting the proceeds to the TDA. In addition to management of the separate fund, the county may provide finance, human resources, legal, information technology and other services. The county would be authorized to assess service fees for the indirect costs related to these services.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,¹ which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the

¹ G.S. 153A-155 and G.S. 160A-215.
Research Division

House Bill 414

Page 2

legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term “net proceeds”, “promote travel and tourism”, and “tourism related expenditures” are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H414-SMSV-30(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 565

Short Title: Morehead City/Beaufort Boundary. (Local)

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

Referred to: Government, if favorable, Finance.

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A BOUNDARY LINE AGREEMENT AND LIMIT THE
EXTRATERRITORIAL JURISDICTION AND ANNEXATION AUTHORITY WHICH
MAY BE EXERCISED BY THE TOWNS OF MOREHEAD CITY AND BEAUFORT.

The General Assembly of North Carolina enacts:

SECTION 1. The Towns of Morehead City and Beaufort could have overlapping
extraterritorial planning jurisdictions under the provisions of Article 19 of Chapter 160A of the
General Statutes making a demarcation desirable beyond which the Towns shall not exercise
such jurisdiction and the boundary beyond which the Towns may not annex.

SECTION 2.(a) The boundary limiting the extraterritorial planning jurisdictions
and authority to annex by the Towns of Morehead City and Beaufort is hereby established as
follows:

BEGINNING at Bulkhead Light ("1BH") in Beaufort Channel at the South end of the
rock jetty at Radio Island, and runs thence with the centerline of Beaufort Channel as described
in Chapter 721 of the Session Laws of 1967 to point 8 as shown on the Map entitled "Morehead
City/Beaufort Channels Map" dated March 24, 2011, a copy of which is located in the offices
of the Town Clerks of Morehead City and Beaufort, and said point having coordinates on the
North Carolina Plane Grid System of Northing 359147.700 and Easting of 2697941.100, with a
0.00 elevation; thence northeastwardly to a point formed by the intersection of two lines, the
first being a line beginning at the southwest corner of the property of the United States of
America as shown on the map thereof entitled "Annexation Map of the National Oceanic &
Atmospheric Administration Facilities at Pivers Island - Beaufort, North Carolina" dated
September 25, 2001, prepared by Bob M. Jones, Professional Land Surveyor, and recorded in
Map Book 31, Page 171, Carteret County Registry and running thence with the extension of the
South property line of the United States of America South 79° 54' 00" West, and the second line
starting at the southeast corner of the property described in the deed from Jan Mitchell Hekhuis
et ux to June Mitchell Phillips et ux dated June 6, 2007, recorded in Book 1232, Page 51,
Carteret County Registry and running thence with the extension of the East property line of this
tract or lot South 4° West; thence from said point of intersection North 4° East to the South
right-of-way margin of Old Causeway Road (SR 1205); thence with that right-of-way margin
eastwardly to its intersection with the western right-of-way margin of Pivers Island Road;
thence with that margin extended northwardly to the centerline of present U.S. Highway 70;
thence with the centerline of present U.S. Highway 70 eastwardly to a point in the West side of
the marked Gallants Channel as shown on the said Map entitled Morehead City/Beaufort
Channels (hereafter "Marked Channel"); thence with the West margin of the Marked Channel



1 to its intersection with a projection eastwardly of the southern outside margin of the structure of
2 the proposed new highway bridge across Gallants Channel; thence southwestwardly with said
3 margin to its intersection with the North right-of-way margin of present U.S. Highway 70;
4 thence westwardly with said highway margin to its intersection with the northern outside
5 margin of the structure of the said new highway bridge across Gallants Channel; thence with
6 the said bridge margin eastwardly to its intersection with the West margin of the Marked
7 Channel; thence with said margin of the Marked Channel to a point in a line running due West
8 from the southwest corner of the Beaufort-Morehead City Airport property.

9 **SECTION 2.(b)** The Town of Beaufort shall not have authority to exercise any
10 planning jurisdiction under G.S. 160A-360 nor to annex anything west of the boundary set out
11 in subsection (a) of this section, and the Town of Morehead City shall not have authority to
12 exercise any planning jurisdiction under G.S. 160A-360 nor to annex anything east of the
13 boundary set out in subsection (a) of this section.

14 **SECTION 3.** This act does not make any annexation of any privately owned
15 property.

16 **SECTION 4.** In the event that private property is hereafter acquired by a
17 governmental unit within the corridor of Gallants Channel Bridge Project 3307, such property
18 shall be added to the respective boundaries of either Morehead City or Beaufort in accordance
19 with the boundary line established in Section 2(a) of this act by adoption of an ordinance of the
20 respective Town, which shall be recorded under G.S. 160A-39 or G.S. 160A-51 as appropriate.

21 **SECTION 5.** Nothing in this act shall be interpreted as establishing extraterritorial
22 planning jurisdictional areas for either Town, but only as establishing a boundary beyond which
23 the two Towns may not exercise either extraterritorial planning jurisdiction or annexation
24 authority.

25 **SECTION 6.** The western municipal limits of the Town of Beaufort shall be
26 coterminous with the boundary described in Section 2(a) of this act and shall extend from the
27 northern terminus of the boundary directly east to the southwest corner of the
28 Beaufort-Morehead City Airport property.

29 **SECTION 7.** The municipal limits of the Town of Morehead City shall be
30 coterminous with the boundary described in Section 2(a) of this act, and shall run from its
31 northern terminus westwardly along a straight line passing 500 feet North of Phillips Island to a
32 point in the present municipal limits of Morehead City, and shall run from the southern
33 terminus of the boundary described in Section 2(a) of this act to the southwest corner of the
34 property of the United States of America at the South end of Radio Island.

35 **SECTION 8.** Nothing in this act limits the authority of either Town to enter into
36 mutual aid agreements or other interlocal agreements authorized by law.

37 **SECTION 9.** This act is effective when it becomes law.



HOUSE BILL 565: Morehead City/Beaufort Boundary

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. McElraft
Analysis of: First Edition

Date: May 5, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *House Bill 565 establishes a boundary between the Towns of Morehead City and Beaufort limiting their extension of extraterritorial jurisdiction and annexation.*

BILL ANALYSIS: House Bill 565 would make the following changes:

- Establishes a described boundary line between the Towns of Morehead City and Beaufort beyond which the Towns shall not exercise extraterritorial jurisdiction and the boundary beyond which the Towns may not annex.
- Does not annex property and does not establish extraterritorial jurisdiction for either town.
- Does not limit the authority of either Town to enter into mutual aid agreements or other interlocal agreements authorized by law.

BACKGROUND: G.S. 160A-360(a) authorizes cities to exercise extraterritorial planning jurisdiction over an area extending 1 mile beyond the city's corporate limits. With the approval of the county board of commissioners, a city with a population of 10,000 to 25,000 may exercise extraterritorial jurisdiction over an area extending 2 miles beyond the city's corporate limits, and a city with a population over 25,000 may exercise extraterritorial jurisdiction over an area extending 3 miles beyond the city's corporate limits. The Towns of Morehead City and Beaufort could have overlapping extraterritorial jurisdictions. A city may annex territory that is within another city's extraterritorial jurisdiction.

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

Giles S. Perry, counsel to House Government, substantially contributed to this summary.

H565-SMTM-11(e1) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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D

SENATE BILL 288
PROPOSED HOUSE COMMITTEE SUBSTITUTE S288-CSTD-30 [v.1]

5/4/2011 6:41:11 PM

Short Title: Atlantic Beach/Beaufort/Parking. (Local)

Sponsors:

Referred to:

March 10, 2011

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A BILL TO BE ENTITLED
AN ACT EXPANDING THE PURPOSES FOR WHICH THE TOWNS OF ATLANTIC
BEACH AND BEAUFORT MAY USE THE PROCEEDS FROM ON-STREET
PARKING METERS, AND PROVIDING THAT PARKING METERS IN THE TOWNS
MAY BE ACTIVATED BY COMMERCIALY AVAILABLE MEANS OF
PREPAYMENT CREDIT.

The General Assembly of North Carolina enacts:

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

"§ 160A-301. Parking.

(a) On-Street Parking. -- A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city. When parking is permitted for a specified period of time at a particular location, a city may install a parking meter at that location and require any person parking a vehicle therein to place the meter in operation for the entire time that the vehicle remains in that location, up to the maximum time allowed for parking there. Parking meters may be activated by ~~coins or tokens~~ coins, tokens, or any other commercially available means of providing prepayment credit. Proceeds from the use of parking meters on public streets ~~must~~ may be used to defray the cost of enforcing and administering traffic and parking ordinances and ~~regulations~~ regulations and may be used in the same manner in which proceeds from off-street parking facilities are permitted under subsection (b) of this section."

SECTION 2. This act applies to the Towns of Atlantic Beach and Beaufort only.

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





SENATE BILL 288: Atlantic Beach/Beaufort/Parking

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Preston
Analysis of: PCS to First Edition
S288-CSTD-30

Date: May 11, 2011
Prepared by: Heather Fennell
Committee Counsel

SUMMARY: *Senate Bill 288 allows the Towns of Atlantic Beach and Beaufort to allow parking meters to be activated by commercially available prepayment credit and provides that the Towns may use the proceeds from parking meters for the same purposes that revenue from off street parking facilities are used. The PCS removes references to the retention of penalties from parking ordinance violations.*

CURRENT LAW: G.S. 160A-301 allows cities to regulate by ordinance on-street and off-street parking including installation of parking meters and operation of off-street parking facilities. Proceeds from parking meters are to be used only to defray the cost of enforcing and administering traffic and parking ordinances and regulations. Cities may charge fees for use of off-street parking facilities and may make it unlawful to park in these facilities without paying. Revenues from off-street facilities may be pledged to amortize bonds issued to finance such facilities or used for any public purpose.

BILL ANALYSIS: Senate Bill 288 amends G.S. 160A-301 to:

- Allow for the activation of parking meters by commercially available means of providing prepayment credit.
- Authorize the proceeds from the use of parking meters to be pledged to amortize bonds issued to finance parking facilities or any public purpose.

The act applies only to the Towns of Atlantic Beach and Beaufort.

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

BACKGROUND: The following town and cities have local legislation that permits a variance from the General Statutes in the use of funds from parking:

- Wrightsville Beach, Carolina Beach, Kure Beach, and Wilmington are authorized to use proceeds from the use of parking meters to be pledged to amortize bonds issued to finance parking facilities or any public purpose.
- Raleigh and Chapel Hill are authorized to use proceeds from the use of parking meters to operate parking programs and provide parking facilities.

Giles Perry, counsel to House Government, substantially contributed to this summary.

S288-SMTD-49(CSTD-30) v4

2011-2012

**HOUSE
FINANCE**

MINUTES



North Carolina General Assembly
House Committee on Finance

Minutes

May 18, 2011

The House Committee on Finance met on Wednesday, May 18, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chairs Lewis and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Ross, Samuelson, Stam, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Earl Coker and Garland Shephard. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Judy Collier, Heather Fennell, Trina Griffin, Sandra Johnson, Giles Perry, Greg Roney, and Brian Slivka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Setzer called the meeting to order at 8:30 am and recognized the eight (8) pages present: (1) Jordyn Peterson of Cleveland County sponsored by Representative Tillis; (2) Sarah Brooks of Cumberland County sponsored by Representative Glazier; (3) Sarah Jennings of Beaufort County sponsored by Representative Cook; (4) Katie Hovey of Pender County sponsored by Representative Justice; (5) Elizabeth Moore of Transylvania County sponsored by Representative Guice; (6) Katie Tate of Beaufort County sponsored by Representative Cook; (7) Holly Furches of Davie County sponsored by Representative Howard; and (8) Emily Jones of Davie County sponsored by Representative Howard.

The first bill to be heard by the Committee was **HB 573 Raleigh/Wake Forest Boundary** (see **attachment 3**). Chairman Setzer recognized Representative Avila to explain the bill. The Chair recognized Representative Howard who moved that HB 573 be given a favorable report. The motion carried.

The next bill considered by the Committee was **HB 453 Allow Salary Protection Insurance** (see **attachment 4**). Chairman Setzer recognized Representative Dockham to explain the bill. The Chair then recognized Representative Collins who moved that HB 453 be given a favorable report. The motion carried.

The next bill before the Committee was **HB 298 Insurance Amendments** (see **attachment 5**). The Chair recognized Representative Starnes who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer then recognized Representative Dockham to explain the proposed committee substitute. The following people were

recognized to offer comments on the bill: Rose Vaughn Williams, North Carolina Department of Insurance, Paul Stock, North Carolina Bankers Association, and John Bodie, Independent Insurance Agents. Chairman Setzer recognized Representative Starnes who moved that HB 298 be given a favorable report to the proposed committee substitute #2, unfavorable report to proposed committee substitute #1. The motion was set aside for further discussion. The Chair recognized Representative Howard who moved to send forth an amendment. The motion was set aside for further discussion. Representative Howard was again recognized for a motion to displace HB 298 until Thursday, May 19, 2011 at 8:30 am. The motion carried.

Next before the Committee was **HB 97 Union Fire Fee Sunset Repealed** (see attachment 6). Chairman Setzer recognized Representative Horn to explain the bill. The Chair then recognized Representative Warren who moved that HB 97 be given a favorable report. The motion carried.

The next bill before the Committee was **SB 247 Eliminate Means Test From 529 Deduction** (see attachment 7). Chairman Setzer recognized Senator Hartsell to explain the bill. The Chair then recognized Representative Ross who moved that SB 247 be given a favorable report. The motion carried.

Chairman Setzer then recognized Representative Guice to explain the next bill considered by the Committee: **HB 486 Tryon Deannexation** (see attachment 8). The Chair recognized Representative Lewis who moved that HB 486 be given a favorable report. The motion carried.

The next bill heard by the Committee was **HB 367 Roanoke Rapids Deannexation** (see attachment 9). The Chair recognized Representative Bradley to explain the bill. Chairman Setzer then recognized Representative McGee who moved that HB 367 be given a favorable report. The motion carried.

Next before the Committee was **HB 72 Community College Investment Flexibility** (see attachment 10). The Chair recognized Representative Moffitt who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer recognized Representative Crawford to explain the proposed committee substitute. The Chair then recognized Representative Faison who moved that HB 72 be given a favorable report to the proposed committee substitute #2, unfavorable report to proposed committee substitute #1. The motion carried.

Chairman Setzer then recognized Representative Wilkins to explain the next bill considered by the Committee: **HB 292 Incorporate Rougemont** (see attachment 11). The Chair then recognized Representative Luebke who moved that HB 292 be given a favorable report. The motion carried.

Next before the Committee was **HB 605 Expand Setoff Debt Collection Act** (see attachment 12). The Chair recognized Representative Jordan who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representative McElraft to explain the proposed committee substitute. The Chair then recognized

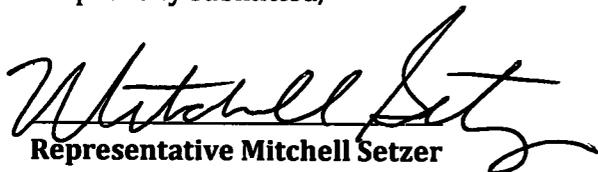
Rebecca Troutman, North Carolina Association of County Commissioners who spoke in favor of the bill. Chairman Setzer recognized Representative Starnes who moved that HB 605 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill heard by Committee was **HB 596 Transfer Surplus Prop. To Retirement System** (see **attachment 13**). Chairman Setzer recognized Representative Lewis who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representative Stam to explain the bill. The Chair recognized Christy Agner, North Carolina Department of Administration who spoke for the bill. Chairman Setzer then recognized Representative Stam who moved to displace the bill until Thursday, May 19, 2011 at 8:30 am. The motion carried.

Due to time, **HB 213 Alamance/Orange 9% Boundary** and **HB 214 Alamance/Orange Boundary** was not able to be heard.

There being no further business presently before the Committee, Chairman Setzer adjourned the meeting at 9:45 am.

Respectfully submitted,


Representative Mitchell Setzer
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 72 A BILL TO BE ENTITLED AN ACT GRANTING COMMUNITY COLLEGES
ADDITIONAL FLEXIBILITY WITH REGARD TO INVESTMENTS.

With a favorable report as to Committee substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 97 A BILL TO BE ENTITLED AN ACT TO REPEAL THE SUNSET ON FIRE
PROTECTION FEES IN UNION COUNTY.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 292 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF ROUGEMONT, SUBJECT TO A REFERENDUM.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 367 A BILL TO BE ENTITLED AN ACT TO DEANNEX CERTAIN PARCELS
PREVIOUSLY ANNEXED BY A LEGISLATIVE ANNEXATION.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 453 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE PLACEMENT AND
ISSUANCE OF SALARY PROTECTION INSURANCE UNDER THE SURPLUS LINES ACT.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 573 A BILL TO BE ENTITLED AN ACT TO REMOVE FROM THE CORPORATE LIMITS OF THE CITY OF RALEIGH AND ANNEX TO THE CORPORATE LIMITS OF THE TOWN OF WAKE FOREST PART OF THE RIGHT-OF-WAY OF THE HIGHWAY 98 BYPASS IN WAKE FOREST TOWNSHIP, AS REQUESTED BY THOSE MUNICIPALITIES.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 486 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED
PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF TRYON.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 605 A BILL TO BE ENTITLED AN ACT TO EXPAND THE DEFINITION OF LOCAL AGENCY FOR PURPOSES OF THE DEBT SETOFF COLLECTION ACT.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 247 A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE INCOME THRESHOLD FOR CONTRIBUTIONS TO AN ACCOUNT IN THE PARENTAL SAVINGS TRUST FUND OF THE STATE EDUCATION ASSISTANCE AUTHORITY.

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 _____.

AGENDA
House Finance Committee

Wednesday, May 18, 2011
8:30 am

Room 544 LOB

Chaired by: Representative Mitchell Setzer

Call to Order

Introduction of Pages

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Representative Crawford

HB 97 Union Fire Fee Sunset Repealed
Representatives Horn, Burr

HB 213 Alamance/Orange 9% Boundary
Representatives Ingle, Bordsen, Inkso, Faison

HB 214 Alamance/Orange Boundary
Representatives Ingle, Bordsen, Inkso, Faison

HB 292 Incorporate Rougemont
Representative Wilkins, Jr.

HB 298 Insurance Amendments – AB
Representative Dockham

HB 367 Roanoke Rapids Deannexation
Representative Bradley, Jr.

HB 453 Allow Salary Protection Insurance
Representative Dockham

HB 486 Tryon Deannexation
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HB 573 Raleigh/Wake Forest Boundary

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Representative McElraft

SB 247 Eliminate Means Test From 529 Deduction

Senator Hartsell

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAY 18, 2011 Room: 544

*Name: <u>Jordyn Peterson</u>	# <u>6</u>	<u>Katie Tate</u>
County: <u>Cleveland</u>		<u>Beaufort</u>
Sponsor: <u>Tillis</u>		

*Name: <u>Sarah Brooks</u>	# <u>7</u>	<u>Holly Furches</u>
County: <u>Cumberland</u>		<u>Davie</u>
Sponsor: <u>Rick Glazier</u>		<u>Howard</u>

*Name: <u>Sarah Jennings</u>	# <u>8</u>	<u>Emily Jones</u>
County: <u>Beaufort</u>		<u>Davie</u>
Sponsor: <u>Bill Cook</u>		<u>Julia Howard</u>

*Name: <u>Katie Hovey</u> ^{Ho-vey.}		
County: <u>Pender</u>		
Sponsor: <u>Caroline Justice</u>		

*Name: <u>Sherrill Manna</u>		
County: <u>Tanner</u>		
Sponsor: <u>Dennis</u>		

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: GARLAND SHEPHEARD

2. Name: JOHN BRANDON

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

May 18, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Doug Lassiter	NC STA
Lisa Piercy	Wassdale Piggott
DAN WOOD K LANT	WASSDALE LUMETT PINE
Kelley Erstine	FFANC
Grant Agan	NMRS
Carl Leonard	ACLI
Jess Hayes	NC HBA
Emily Grimm	MWC
Lisa Martin	NC HBA
Diane Viser	Clinton City BOE
E. R. Mason	Clinton City BOE
Dave H	

VISITOR REGISTRATION SHEET

House Finance

May 18, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kennon Briggs	NCLLS
Jamal Br Willis	NCLLS
Abbas Tamba	NCACC
W. W. Gerson	
Bill White	DOR
William Lake Creek	DOA
Christopher	DWA
D. Paul	BCS
STUART POWELL	IIANC
Bryan Heckle	NC DOI
Jon Alley	BEGINNINGS

VISITOR REGISTRATION SHEET

House Finance

May 18, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>[Signature]</i>	FCB
Sara Fender	IFNC
Jennifer Cohen	IFNC
MARK DOROSIN	Center for Civil Rights
Cathy Stuart	SLF
<i>[Signature]</i>	Tupac
Paul St	NCRBA
Mitch Leonard	SEANK
Bill Seaberg	TZ
SOLARI	DST
David Starling	DST

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 573
Committee Substitute Favorable 5/12/11

Short Title: Raleigh/Wake Forest Boundary. (Local)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE CORPORATE LIMITS OF THE CITY OF RALEIGH AND ANNEX TO THE CORPORATE LIMITS OF THE TOWN OF WAKE FOREST PART OF THE RIGHT-OF-WAY OF THE HIGHWAY 98 BYPASS IN WAKE FOREST TOWNSHIP, AS REQUESTED BY THOSE MUNICIPALITIES.

The General Assembly of North Carolina enacts:

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

BEGINNING at a corner in the southeastern right-of-way of Old NC 98 (State Road (SR) 1967), said point identified on Sheet 8 of NCDOT Project R-2809A as -Y2- 21+20/20 (65.62') (Right) and common with the northern corner of the "50' Average Width Natural Protective Yard" of Cedar Grove Phase 2 at Wakefield Plantation as described in Book of Maps 2005 Page 858, Wake County Registry (WCR), thence at a right angle from said corner N 33° 58' 18" W 100.62 Feet to a point in the old southeastern right-of-way of the Old NC 98 Highway, said point being on the Annexation Ordinance (1995)-700 line, thence following said right-of-way along said line, N 68° 47' 19" E 110.08 Feet more or less, thence leaving said right-of-way and following a line common with Book of Maps 1997 Page 124 WCR; S 61° 36' 37" E 1384.65 Feet to a point, thence following a line common with the Town of Wake Forest Line (Annexation Ordinance # 88-32) and Book of Maps 1989 Page 1633 WCR and Book of Maps 1990 Page 1-192 WCR; S 61° 38' 39" E 481.00 Feet, thence S 54° 25' 06" E 420.20 Feet, thence S 54° 24' 58" E 1554.66 Feet to a point inside the right-of-way of NC 98 (Dr. Calvin Jones Highway), thence leaving the aforementioned ordinance lines and following Sheet 11 of NCDOT project R-2809A; West by North 85 Feet more or less to a point identified as -L- (R-2809B) 31+80/23.000 (75.46') (Right), said point being in the southwestern right-of-way of NC 98 (Dr. Calvin Jones Highway) thence following Book of Maps 2000 Page 2220 along said right-of-way N 81° 16' 23" W 131.18 Feet, thence along a curve to the right with a Radius of 1369.98 Feet, a Length of 486.87 Feet, and a chord of N 72° 05' 08" W 484.32 Feet, thence N 58° 50' 33" W 129.00 Feet to a corner with the southeastern right-of-way of Wakefield Plantation Drive, thence crossing said drive and following Book of Maps 2000 Page 871-872; N 58° 50' 33" W 87.03 Feet, thence N 57° 16' 24" W 1.12 Feet to a corner with the northwestern right-of-way of Wakefield Plantation Drive, said corner being a "Control Corner" in the northeastern corner of Cedar Grove Phase 1 Wakefield Plantation as described in Book of Maps 2004 Page 1249, thence following said reference, N 57° 14' 57" W 1639.82 Feet, thence following Book of Maps 2005 Page 858; N 57° 14' 57" W 596.53 Feet, thence N 54° 53' 45" W 323.91 Feet, thence along a curve the right with a Radius of 1371.39 Feet, a Length of 276.32 Feet and a Chord of N 44° 30' 52" W 275.85 Feet, thence N 72° 21' 29" W 90.25 Feet to



1 the Point of BEGINNING, containing 21 Acres more or less and located in Wake Forest
2 Township, Wake County.

3 **SECTION 2.** The corporate limits of the Town of Wake Forest are increased by
4 adding the territory described in Section 1 of this act.

5 **SECTION 3.** This act becomes effective June 30, 2011.



HOUSE BILL 573: Raleigh/Wake Forest Boundary

2011-2012 General Assembly

Committee:	House Finance	Date:	May 18, 2011
Introduced by:	Rep. Avila	Prepared by:	Greg Roney
Analysis of:	Second Edition		Committee Counsel

SUMMARY: *House Bill 573 removes 21 acres from the City of Raleigh and adds the area to the Town of Wake Forest.*

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

The General Assembly enacted Article 4A of Chapter 160A of the General Statutes, authorizing municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to remove an area from its limits - that power remains with the General Assembly.

BILL ANALYSIS: House Bill 573 would deannex a described 21-acre area from the City of Raleigh, and add the same area to the Town of Wake Forest.

BACKGROUND: House Bill 573 would place a 21-acre corridor of Highway 98 Bypass into Wake Forest, giving Wake Forest jurisdiction over the entire Highway 98 Bypass for police and rescue services.

EFFECTIVE DATE: This act is effective June 30, 2011.

Giles S. Perry, counsel to House Government, substantially contributed to this summary.

H573-SMTM-14(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 453

Short Title: Allow Salary Protection Insurance. (Public)

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

Referred to: Insurance.

March 24, 2011

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE PLACEMENT AND ISSUANCE OF SALARY
PROTECTION INSURANCE UNDER THE SURPLUS LINES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-21-10 reads as rewritten:

"§ 58-21-10. Definitions.

As used in this Article:

- (1) "Admitted insurer" means an insurer licensed to do an insurance business in this State.
- (2) "Capital", as used in the financial requirements of G.S. 58-21-20, means funds paid in for stock or other evidence of ownership.
- (3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-21-20.
- (4) "Export" means to place surplus lines insurance with a nonadmitted insurer.
- (5) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this State. This definition includes insurance exchanges authorized under the laws of various states.
- (6) "Producing broker" means an agent or broker licensed under Article 33 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.
- (6a) "Salary protection insurance" means insurance against financial loss caused by the cessation of earned income because of disability from sickness, ailment, or bodily injury.
- (7) "Surplus", as used in the financial requirements of G.S. 58-21-20, means funds over and above liabilities and capital of the company for the protection of policyholders.
- (8) "Surplus lines insurance" means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than including salary protection insurance. The term does not include reinsurance, commercial aircraft insurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-28-5, life and accident or health insurance, and annuities.



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1 (9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to
2 place insurance on risks resident, located, or to be performed in this State
3 with nonadmitted insurers eligible to accept such insurance.

4 (10) "Wet marine and transportation insurance" means:

- 5 a. Insurance upon vessels, crafts, hulls and of interests therein or with
6 relation thereto;
7 b. Insurance of marine builder's risks, marine war risks and contracts of
8 marine protection and indemnity insurance;
9 c. Insurance of freights and disbursements pertaining to a subject of
10 insurance coming within this subsection; and
11 d. Insurance of personal property and interests therein, in the course of
12 exportation from or importation into any country, or in the course of
13 transportation coastwise or on inland waters including transportation
14 by land, water, or air from point of origin to final destination, in
15 connection with any and all risks or perils of navigation, transit or
16 transportation, and while being prepared for and while awaiting
17 shipment, and during any delays, transshipment, or reshipment
18 incident thereto."

19 SECTION 2. Article 21 of Chapter 58 is amended by adding a new section to read:

20 "**§ 58-21-22. Limitation on amount of salary protection insurance.**

21 When salary protection insurance benefits are payable to an individual or an individual's
22 beneficiary, the amount of salary protection insurance plus the amount of any in-force disability
23 income insurance, if the individual can obtain disability insurance from an admitted insurer,
24 shall not exceed seventy-five percent (75%) of the individual's annual earned income. As used
25 in this section, "disability income insurance" has the same meaning as "accident and health
26 insurance" in G.S. 58-7-15(3)."

27 SECTION 3. This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 17, 2011

TO: Representatives Howard, Starnes, and Setzer

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 453 (First Edition)

FISCAL IMPACT					
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:	<p>*No fiscal impact – gross premiums tax is already collected on salary protection insurance purchased directly from insurers. The tax will be collected at the same rate for policies sold by agents or purchasing groups as provided for under the bill.*</p>				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Insurance; NC Department of Revenue					
EFFECTIVE DATE: October 1, 2011					

BILL SUMMARY:

House Bill 453 authorizes surplus lines insurers to offer "salary protection insurance" that insures against the loss of earned income because of disability from sickness, ailment, or bodily injury. The maximum benefit payable to an individual (or an individual's beneficiary) from salary

protection insurance and any in-force disability income insurance is 75% of the individual's annual earned income.

Source: Committee Counsel Summary

ASSUMPTIONS AND METHODOLOGY:

According to the NC Department of Insurance, salary protection insurance can already be purchased directly from a surplus lines insurer. A gross premiums tax of 5% applies to surplus lines insurance policies. H453 would allow an agent or broker and purchasing groups to sell salary protection insurance as surplus lines insurers. The same gross premiums tax rate of 5% would apply to policies sold under these methods; therefore, the bill is expected to result in no fiscal impact.

SOURCES OF DATA: NC Department of Insurance

TECHNICAL CONSIDERATIONS: None



HOUSE BILL 453: Allow Salary Protection Insurance

2011-2012 General Assembly

Committee: House Finance	Date: May 12, 2011
Introduced by: Rep. Dockham	Prepared by: Greg Roney
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 453 authorizes surplus lines insurers to offer "salary protection insurance" that insures against the loss of earned income because of disability from sickness, ailment, or bodily injury. The maximum benefit payable to an individual (or an individual's beneficiary) from salary protection insurance and any in-force disability income insurance is 75% of the individual's annual earned income.*

CURRENT LAW: Surplus lines insurers are allowed to offer coverage that is not available from insurers licensed in the State, referred to as admitted insurers. G.S. 58-21-85 imposes a 5% tax on the gross premiums charged for surplus lines insurance. State law does not currently allow surplus lines insurers to offer salary protection insurance through normal channels such as agents for surplus lines insurers.

G.S. 58-28-5 allows individuals to independently procure (i.e., without the involvement of an agent, broker, or surplus lines licensee) salary protection insurance. Individuals who independently procure insurance must file a report and pay a 5% tax on the gross premiums.

G.S. 58-51-130 gives the standards for disability income insurance offered by admitted insurers.

BILL ANALYSIS: Section 1 of House Bill 453 would amend G.S. 58-21-10 to define "Salary protection insurance" as "insurance against financial loss caused by cessation of earned income because of disability from sickness, ailment, or bodily injury." The definition of "Surplus lines insurance" is expanded to specifically include salary protection insurance.

Section 2 of House Bill 453 would add a new section to Chapter 58 (G.S. 58-21-22) setting the maximum benefit payable to an individual (or an individual's beneficiary) from salary protection insurance and any in-force disability income insurance at 75% of the individual's annual earned income. For the 75% limit on annual earned income, disability income insurance from an admitted insurer is defined as "insurance against death or personal injury by accident or by any specified kinds of accident and insurance against sickness, ailment or bodily injury."

BACKGROUND: As an industry practice, admitted insurers offer disability insurance limited to 60% of an individual's earned income with a monthly maximum benefit of \$15,000. Extremely high earning individuals such as athletes and performers cannot purchase disability insurance sufficient to replace their monthly income due to the \$15,000 monthly maximum benefit. House Bill 453 would allow surplus lines insurers to offer salary protection insurance capped at a statutory maximum of 75% of the individual's annual earned income.

EFFECTIVE DATE: House Bill 453 would become effective October 1, 2011.

Kory Goldsmith, counsel to House Insurance, substantially contributed to this summary.

H453-SMTM-13(e1) v5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 298
Committee Substitute Favorable 4/27/11
PROPOSED COMMITTEE SUBSTITUTE H298-CSSvf-18 [v.2]

5/17/2011 2:40:18 PM

Short Title: Insurance Amendments.-AB

(Public)

Sponsors:

Referred to:

March 10, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES IN THE INSURANCE LAWS TO PRIVATIZE ONLINE
3 AND ADMINISTRATIVE PROCESSES FOR LICENSE APPLICANTS, CODIFY THE
4 EXISTING SENIORS' HEALTH INSURANCE INFORMATION PROGRAM, ENSURE
5 ACCURACY IN CERTIFICATES OF INSURANCE, REQUIRE PRIOR APPROVAL OF
6 SMALL GROUP HEALTH INSURANCE RATES AND ENCOURAGE THE SALE OF
7 CHILD-ONLY HEALTH INSURANCE POLICIES, AMEND THE RISK-BASED
8 CAPITAL LAW TO MAINTAIN NAIC ACCREDITATION, PROVIDE AN
9 EXEMPTION FOR LICENSING OF CLAIMS INPUT EMPLOYEES FOR PORTABLE
10 ELECTRONIC DEVICES, PROHIBIT FEDERAL PREEMPTION OF CROP
11 ADJUSTERS' REGULATION, AND EASE THE REGULATORY BURDEN ON THE
12 NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION AND THE
13 ASSOCIATION AGGREGATE SECURITY SYSTEM.

14 The General Assembly of North Carolina enacts:

15 SECTION 1. G.S. 58-2-69(g) reads as rewritten:

16 "(g) The Commissioner may contract with the NAIC or other persons for the provision
17 of online services to applicants and licensees, for the provision of administrative ~~services to~~
18 ~~licensees, or services, for the provision of license processing and support services, and for the~~
19 provision of regulatory data systems to the Commissioner. The NAIC or other person with
20 whom the Commissioner contracts may charge applicants and licensees a reasonable fee for ~~the~~
21 ~~costs associated with the licensees' use the provision of online services and services, the~~
22 provision of administrative services, services, the provision of license processing and support
23 services, and the provision of regulatory data systems to the Commissioner. The fee shall be
24 agreed to by the Commissioner and the other contracting party and shall be stated in the
25 contract. The fee is in addition to any applicable license application and renewal fees. Contracts
26 for the provision of online services, contracts for the provision of administrative services, and
27 contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8
28 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes.
29 However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts
30 for supplies, materials, printing, equipment, and contractual services that exceed one million
31 dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney
32 General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be



1 awarded by the Commissioner under this subsection a standard clause which provides that the
2 State Auditor and internal auditors of the Commissioner may audit the records of the contractor
3 during the term of the agreement or contract to verify accounts and data affecting fees and
4 performance. The Commissioner shall not award a cost plus percentage of cost agreement or
5 contract for any purpose."

6 **SECTION 2.** Article 2 of Chapter 58 of the General Statutes is amended by adding
7 the following new section to read:

8 **"§ 58-2-31. Seniors' Health Insurance Information Program.**

9 The Seniors' Health Insurance Information Program is established within the Department as
10 a statewide health benefits counseling program to provide the State's Medicare beneficiaries
11 with counseling in Medicare, Medicare supplement insurance, long-term care insurance, and
12 related health care coverage plans."

13 **SECTION 3.** G.S. 58-3-150 reads as rewritten:

14 **"§ 58-3-150. Forms to be approved by Commissioner.**

15 (a) It is unlawful for any insurance company licensed and admitted to do business in
16 this State to issue, sell, or dispose of any policy, contract, ~~or~~ certificate, or certificate of
17 insurance, or use applications in connection therewith, until the forms of the same have been
18 submitted to and approved by the Commissioner, and copies filed in the Department. If a policy
19 form filing is disapproved by the Commissioner, the Commissioner may return the filing to the
20 filer. As used in this section, "policy form" includes endorsements, riders, or amendments to
21 policies that have already been approved by the Commissioner.

22 (b) With respect to group and blanket accident and health insurance, group life
23 insurance, and group annuity policies issued and delivered to a trust or to an association outside
24 of this State and covering persons resident in this State, the group certificates to be delivered or
25 issued for delivery in this State shall be filed with and approved by the Commissioner pursuant
26 to subsection (a) of this section.

27 (c) If not submitted electronically, all contracts, literature, advertising materials, letters,
28 and other documents submitted to the Department to comply with the filing requirements of
29 this Chapter or an administrative rule adopted pursuant to this Chapter shall be submitted on
30 paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled
31 or bound.

32 (d) As used in this section, "certificate of insurance" means a document prepared or
33 issued by an insurance company or producer that is used to verify or evidence the existence of
34 property or casualty insurance coverage. "Certificate of insurance" shall not include a policy of
35 insurance or insurance binder.

36 (e) A certificate of insurance is not a policy of insurance and does not amend, extend,
37 or alter the coverage afforded by the policy to which the certificate of insurance makes
38 reference. A certificate of insurance shall not confer to a certificate of insurance holder new or
39 additional rights beyond what the referenced policy of insurance expressly provides.

40 (f) It is unlawful for any person to knowingly prepare, issue, request, or require a
41 certificate of insurance that meets any of the following criteria:

42 (1) Has not been filed with and approved by the Commissioner.

43 (2) Contains any false or misleading information concerning the policy of
44 insurance to which the certificate of insurance makes reference.

45 (3) Purports to alter, amend, or extend the coverage provided by the policy of
46 insurance to which the certificate of insurance makes reference.

47 (g) A holder of a certificate of insurance shall have a legal right to notice of
48 cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of
49 insurance only if the holder is named within the policy or any endorsement and the policy or
50 endorsement requires notice to be provided to the holder. The terms and conditions of the

1 notice, including the required timing of the notice, are governed by the policy of insurance and
2 cannot be altered by a certificate of insurance."

3 **SECTION 4.** Article 50 of Chapter 58 of the General Statutes is amended by
4 adding the following new section to read:

5 **"§ 58-50-131. Premium rates for health benefit plans; approval authority; hearing.**

6 (a) No schedule of premium rates for coverage for a health benefit plan subject to this
7 act, or any amendment to the schedule, shall be used in conjunction with any such health
8 benefit plan until a copy of the schedule of premium rates or premium rate amendment has
9 been filed with and approved by the Commissioner. Any schedule of premium rates or
10 premium rate amendment filed under this section shall be established in accordance with
11 G.S. 58-50-130(b). The schedule of premium rates shall not be excessive, unjustified,
12 inadequate, or unfairly discriminatory and shall exhibit a reasonable relationship to the benefits
13 provided by the contract of insurance. Each filing shall include a certification by an individual
14 who is a member in good standing with the Society of Actuaries.

15 (b) The Commissioner shall approve or disapprove a schedule of premium rates within
16 60 days of receipt of a complete filing. It shall be unlawful to use a schedule of premium rates
17 until approved. If the Commissioner disapproves the filing, the Commissioner shall notify the
18 filer, shall specify the reasons for disapproval, and shall provide an opportunity for refiling.

19 (c) The Commissioner shall adopt rules as necessary or proper (i) to prevent the federal
20 preemption of health insurance regulation in the State, (ii) to implement the provisions of this
21 section, and (iii) to establish minimum standards for loss ratios of policies subject to this
22 section in accordance with accepted actuarial principles and practices to assure that the benefits
23 are reasonable in relation to the premium charged. The Commissioner shall adopt rules to
24 require the submission of supporting data and any information that the Commissioner considers
25 necessary or proper to determine whether the filed schedule of premium rates meets the
26 standards set forth in this section."

27 **SECTION 5.** Article 3 of Chapter 58 of the General Statutes is amended by adding
28 the following new section to read:

29 **"§ 58-3-285. Nondependent child coverage defined; open enrollment.**

30 (a) As used in this section, the following definitions apply:

31 (1) "Health benefit plan" has the same meaning as G.S. 58-3-167(a)(1).

32 (2) "Individual market" has the same meaning as G.S. 58-68-25(a)(9).

33 (3) "Insurer" has the same meaning as G.S. 58-3-167(a)(2).

34 (4) "Nondependent child coverage" or "nondependent child policy" means an
35 individual health benefit plan which provides coverage to an individual
36 under age 19. This shall not include health benefit plans that cover children
37 under age 19 as dependents.

38 (5) "Open enrollment" means, with respect to "nondependent child coverage,"
39 the period of time during which any individual under age 19 has the
40 opportunity to apply for coverage under a health benefit plan offered by an
41 insurer and shall not be denied eligibility for coverage under the plan due to
42 factors relating to the individual's health status.

43 (b) An insurer who offers nondependent child coverage shall offer open enrollment
44 either continuously throughout the year or for the months of January and July of each year.
45 Coverage issued under this section shall be issued without any riders based on the health status
46 of the child. Nothing in this section shall require an insurer to offer nondependent child
47 coverage or maternity coverage within an offer of nondependent child coverage.

48 (c) The Commissioner shall adopt rules as necessary or proper to implement the
49 provisions of this section.

1 (d) Nothing in this section shall prohibit an insurer from adjusting the initial premium
2 charged an individual afforded coverage under this section based upon medical underwriting to
3 the extent that such an adjustment is in compliance with the applicable product's current rate
4 filing approved by the Commissioner."

5 SECTION 6. G.S. 58-12-2 reads as rewritten:

6 "§ 58-12-2. Definitions.

7 As used in this Article, the following terms have the following meanings:

- 8 (1) Adjusted risk-based capital report. – A risk-based capital report that has been
9 adjusted by the Commissioner under G.S. 58-12-6.
- 10 (2) Corrective order. – An order issued by the Commissioner specifying
11 corrective actions that the Commissioner has determined are required.
- 12 (3) Domestic insurer. – Any insurance company or health organization
13 organized in this State under ~~Article 7~~, Article 7 of this Chapter as specified
14 in subdivisions (4b) and (5a) of this section or under Article 15, 65, or 67 of
15 this Chapter.
- 16 (4) Foreign insurer. – Any insurance company or health organization that is
17 admitted to do business in this State under Article 16 or 67 of this Chapter
18 but is not domiciled in this State.
- 19 (4a) Health organization. – Any insurer which is required by the Commissioner
20 to use the NAIC Health Annual Statement Blank when filing the annual
21 statement prescribed by G.S. 58-2-165 or any health maintenance
22 organization, limited health service organization, dental or vision plan,
23 hospital, medical, or dental indemnity or service corporation, or other
24 organization licensed under Article 65 or 67 of this Chapter. "Health
25 organization" does not include an insurer that is licensed as either a life or
26 health insurer or a property or casualty insurer under this Chapter and that is
27 otherwise subject to either the life or property and casualty risk-based capital
28 requirements.
- 29 (4b) Life or health insurer. – Any insurance company licensed to write the kinds
30 of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed property
31 and casualty insurer writing only the kinds of insurance specified in
32 G.S. 58-7-15(3). "Life or health insurer" does not mean any insurer that is
33 required by the Commissioner to use the NAIC Health Annual Statement
34 Blank when it files the annual statement prescribed by G.S. 58-2-165.
- 35 (5) Negative trend. – A negative trend, with respect to a life or health insurer,
36 over a period of time, as determined in accordance with the "trend test
37 calculation" included in the risk-based capital instructions.
- 38 (5a) Property or casualty insurer. – Any insurance company licensed to write the
39 kinds of insurance specified in G.S. 58-7-15(4) through (22); but not
40 monoline mortgage guaranty insurers, financial guaranty insurers, or title
41 ~~insurers-insurers~~; nor any insurer that is required by the Commissioner to use
42 the NAIC Health Annual Statement Blank when filing the annual statement
43 prescribed by G.S. 58-2-165.
- 44 (6) Risk-based capital instructions. – The risk-based capital report including
45 risk-based capital instructions adopted by the NAIC, as those risk-based
46 capital instructions may be amended by the NAIC from time to time in
47 accordance with the procedures adopted by the NAIC.
- 48 (7) Risk-based capital level. – An insurer's company action level risk-based
49 capital, regulatory action level risk-based capital, authorized control level
50 risk-based capital, or mandatory control level risk-based capital where:

- 1 a. "Company action level risk-based capital" means, with respect to any
- 2 insurer, the product of 2.0 and its authorized control level risk-based
- 3 capital.
- 4 b. "Regulatory action level risk-based capital" means the product of 1.5
- 5 and its authorized control level risk-based capital.
- 6 c. "Authorized control level risk-based capital" means the number
- 7 determined under the risk-based capital formula in accordance with
- 8 the risk-based capital instructions.
- 9 d. "Mandatory control level risk-based capital" means the product of
- 10 .70 and the authorized control level risk-based capital.
- 11 (8) Risk-based capital plan. – A comprehensive financial plan containing the
- 12 elements specified in G.S. 58-12-11(b). If the Commissioner rejects the
- 13 risk-based capital plan, and it is revised by the insurer, with or without the
- 14 Commissioner's recommendation, the plan shall be called the "revised
- 15 risk-based capital plan".
- 16 (9) Risk-based capital report. – The report required in G.S. 58-12-6.
- 17 (10) Total adjusted capital. – The sum of:
- 18 a. An insurer's statutory capital and surplus, as determined in
- 19 accordance with the statutory accounting applicable to the annual
- 20 financial statements required under G.S. 58-2-165; and
- 21 b. Such other items, if any, as the risk-based capital instructions may
- 22 provide."

SECTION 7. G.S. 58-12-11(a) reads as rewritten:

- 23
- 24 "(a) "Company action level event" means any of the following events:
- 25 (1) The filing of a risk-based capital report by an insurer that indicates that:
- 26 a. The insurer's total adjusted capital is greater than or equal to its
- 27 regulatory action level risk-based capital but less than its company
- 28 action level risk-based capital, ~~if the insurer is a property or casualty~~
- 29 ~~insurer or a health organization;~~ capital; or
- 30 b. ~~The~~ In the case of a life or health insurer, the insurer has total
- 31 adjusted capital that is greater than or equal to its company action
- 32 level risk-based capital but less than the product of its authorized
- 33 control level risk-based capital and 2.5 and has a negative trend, if
- 34 the insurer is a life or health insurer; ~~trend; or~~
- 35 c. In the case of a property or casualty insurer or a health organization,
- 36 the insurer has total adjusted capital that is greater than or equal to its
- 37 company action level risk-based capital but less than the product of
- 38 its authorized control level risk-based capital and 3.0 and triggers the
- 39 trend test determined in accordance with the trend test calculation
- 40 included in the property and casualty or health organization
- 41 risk-based capital instructions.
- 42 (2) The notification by the Commissioner to the insurer of an adjusted ~~risk bases~~
- 43 risk-based capital report that indicates the event in sub-subdivision (1)a. or
- 44 ~~b.(1)a., (1)b., or (1)c.~~ b.(1)a., (1)b., or (1)c. of this subsection if the insurer does not challenge the
- 45 adjusted risk-based capital report under G.S. 58-12-30.
- 46 (3) If the insurer challenges an adjusted risk-based capital report that indicates
- 47 the event in sub-subdivision (1)a. ~~or b.(1)a., (1)b., or (1)c.~~ of this subsection
- 48 under G.S. 58-12-30, the notification by the Commissioner to the insurer that
- 49 the Commissioner has rejected the insurer's challenge."

1 **SECTION 8.** Article 33 of Chapter 58 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 58-33-27. Claims handling for portable consumer electronic devices.**

4 **(a) As used in this section, the following definitions apply:**

5 **(1) "Automated claims adjudication system" means a preprogrammed computer**
6 **system designed for the collection, data entry, calculation, and**
7 **system-generated final resolution of claims on insurance policies that cover**
8 **only portable consumer electronic devices, which system shall meet the**
9 **following criteria:**

10 **a. Be utilized only by a licensed adjuster, licensed agent, or supervised**
11 **individuals operating pursuant to this section.**

12 **b. Comply with all claims payment requirements of this Chapter.**

13 **c. Be certified as compliant with this section by a licensed adjuster who**
14 **is an officer of a licensed business entity under this Chapter.**

15 **(2) "Portable consumer electronic devices" include the following, which must be**
16 **easily carried or conveyed by hand: smartphones, navigation devices,**
17 **cellular phones, personal digital assistants, iPads, iPhones, Androids, video**
18 **games, wireless reading devices, laptops, tablets, netbooks, MP3 players,**
19 **digital cameras, and other electronic devices that are portable in nature, their**
20 **accessories, and services related to the use of the device.**

21 **(b) No adjuster license is required for an individual who, in connection with insurance**
22 **covering only portable consumer electronic devices as defined in subdivision (a)(2) of this**
23 **section, collects claim information from or furnishes claim information to insureds, who**
24 **conducts data entry, including entering data into an automated claims adjudication system, and**
25 **who does not exercise any discretion in the disposition of the portable consumer electronic**
26 **device claim; provided that the individual is supervised by a licensed adjuster or licensed agent**
27 **and there are no more than 25 individuals who may adjust claims under the supervision of the**
28 **licensed adjuster or licensed agent. No agent acting as a supervisor pursuant to this section is**
29 **required to be licensed as an adjuster.**

30 **(c) If other property losses occur in conjunction with the loss associated with the**
31 **portable consumer electronic device, the individual who performs duties as described in**
32 **G.S. 58-33-10(2) on the total loss, including the loss associated with the portable consumer**
33 **electronic device, must hold an adjuster's license."**

34 **SECTION 9.** G.S. 58-33-30(e) reads as rewritten:

35 **"(e) Examination.**

36 **(1) After completion and filing of the application with the Commissioner, the**
37 **Commissioner shall require each applicant for license as an agent or an**
38 **adjuster to take an examination as to the applicant's competence to be**
39 **licensed. The applicant must take and pass the examination according to**
40 **requirements prescribed by the Commissioner. This subsection shall not**
41 **apply to adjusters who adjust only federal crop insurance claims and are**
42 **certified in accordance with subdivision (2a) of this subsection.**

43 **(2) The Commissioner may require any licensed agent, adjuster, or motor**
44 **vehicle damage appraiser to take and successfully pass an examination in**
45 **writing, testing his competence and qualifications as a condition to the**
46 **continuance or renewal of his license, if the licensee has been found guilty of**
47 **any violation of any provision of this Chapter. If an individual fails to pass**
48 **such an examination, the Commissioner shall revoke all licenses issued in**
49 **his name and no license shall be issued until such individual has passed an**
50 **examination as provided in this Article.**

- 1 (2a) Adjusters who adjust federal crop insurance claims shall be certified as
2 having passed a proficiency examination approved by the federal Risk
3 Management Agency (RMA) as a condition of obtaining an adjuster's license
4 under this Chapter or another proficiency examination approved by the
5 Commissioner. An adjuster who intends to adjust crop insurance claims shall
6 furnish the Commissioner proof that the adjuster is certified as having
7 passed the required examination pursuant to this section.
- 8 (3) Each examination shall be as the Commissioner prescribes and shall be of
9 sufficient scope to test the applicant's knowledge of:
- 10 a. The terms and provisions of the policies or contracts of insurance the
11 applicant proposes to effect; or
12 b. The types of claims or losses the applicant proposes to adjust; and
13 c. The duties and responsibilities of the license; and
14 d. The current laws of this State applicable to the license.
- 15 (4) The answers of the applicant to the examination shall be provided by the
16 applicant under the Commissioner's supervision. The Commissioner shall
17 give examinations at such times and places within this State as the
18 Commissioner considers necessary reasonably to serve the convenience of
19 both the Commissioner and applicants: Provided that the Commissioner may
20 contract directly with persons for the processing of examination application
21 forms and for the administration and grading of the examinations required
22 by this section; the Commissioner may charge a reasonable fee in addition to
23 the registration fee charged under G.S. 58-33-125, to offset the cost of the
24 examination contract authorized by this subsection; and such contracts shall
25 not be subject to Article 3 of Chapter 143 of the General Statutes. However,
26 the Commissioner shall: (i) submit all proposed statewide and agency term
27 agreements or contracts for supplies, materials, printing, equipment, and
28 contractual services that exceed one million dollars (\$1,000,000) authorized
29 by this subdivision to the Attorney General or the Attorney General's
30 designee for review as provided in G.S. 114-8.3; and (ii) include in all
31 contracts to be awarded by the Commissioner under this subdivision a
32 standard clause which provides that the State Auditor and internal auditors
33 of the Commissioner may audit the records of the contractor during the term
34 of the contract to verify accounts and data affecting fees and performance.
35 The Commissioner shall not award a cost plus percentage of cost contract for
36 any purpose.
- 37 (5) The Commissioner shall collect in advance the examination and registration
38 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The
39 Commissioner shall make or cause to be made available to all applicants, for
40 a reasonable fee to offset the costs of production, materials that he considers
41 necessary for the applicants' proper preparation for examinations. The
42 Commissioner may contract directly with publishers and other suppliers for
43 the production of the preparatory materials, and contracts so let by the
44 Commissioner shall not be subject to Article 3 of Chapter 143 of the General
45 Statutes. However, the Commissioner shall: (i) submit all proposed
46 statewide and agency term contracts for supplies, materials, printing,
47 equipment, and contractual services that exceed one million dollars
48 (\$1,000,000) authorized by this subdivision to the Attorney General or the
49 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)
50 include in all contracts to be awarded by the Commissioner under this

subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

(6) In addition to the examinations for the kinds of insurance specified in G.S. 58-33-25(c)(1) and (2), before any resident may sell Medicare supplement or long-term care insurance policies defined respectively in Articles 54 and 55 of this Chapter, the resident must take and pass a supplemental written examination according to requirements prescribed by the Commissioner.

(7) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination."

SECTION 10. Article 4 of Chapter 97 of the General Statutes reads as rewritten:

"Article 4.

"North Carolina Self-Insurance Security Association.

"§ 97-130. Definitions.

As used in this Article:

(1) "Association" means the North Carolina Self-Insurance Security Association established by G.S. 97-131.

(1a) "Association Aggregate Security System" means the security system established by the Association under G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured workers' compensation liabilities through the North Carolina Self-Insurance Security Association.

(2) "Board" means the Board of Directors of the Association established by G.S. 97-132.

(3) "Commissioner" means the North Carolina Commissioner of Insurance.

(4) "Covered claim" means an unpaid claim against an insolvent individual self-insurer or group self-insurer that relates to an injury that occurs while the individual self-insurer or group self-insurer is a member of the Association and that is compensable under this Chapter.

(5) "Fund" means the North Carolina Self-Insurance Security Fund established by G.S. 97-133.

(5a) "Group" or "Group self-insurer" means a group self-insurer licensed by the Commissioner under Part 1, Article 47 of Chapter 58 of the General Statutes.

(5b) "Individual self-insurer" means an individual employer licensed by the Commissioner under Article 5 of this Chapter.

(6) "Member self-insurer" or "member" means an individual self-insurer or group self-insurer that is required to be a member of the Association under this Article or Part 1, Article 47 of Chapter 58 of the General Statutes.

(7) "Plan" means the Plan of Operation authorized by G.S. 97-134.

(8) Repealed by Session Laws 2005-400, s. 1.2, effective January 1, 2006.

(9) "Servicing facility" means those persons delegated by the Board ~~and approved by the Commissioner~~ to settle or compromise claims and to expend Fund assets to pay claims.

"§ 97-131. Creation.

...

1 (b) All individual self-insurers and group self-insurers shall be and remain members of
2 the Association as a condition of being licensed to self-insure in this State. The Association
3 shall perform its functions under a Plan of Operation established or amended, or both, by the
4 ~~Board and approved by the Commissioner, Board~~ and shall exercise its powers through the
5 Board.

- 6 (1) An individual self-insurer or a group self-insurer shall be deemed to be a
7 member of the Association for purposes of another member's insolvency, as
8 defined in G.S. 97-135, when:
9 a. The individual self-insurer or group self-insurer is a member of the
10 Association when an insolvency occurs, or
11 b. The individual self-insurer or group self-insurer has been a member
12 of the Association at some point in time during the 12-month period
13 immediately preceding the insolvency in question.
14 (2) An individual self-insurer or a group self-insurer shall be deemed to be a
15 member of the Association for purposes of its own insolvency if it is a
16 member when the compensable injury occurs.
17 (3) In determining the membership of the Association for the purposes of
18 subdivisions (1) and (2) of this subsection for any date after the effective
19 date of this Article, no individual self-insurer or group self-insurer may be
20 deemed to be a member of the Association on any date after the effective
21 date of this Article, unless that employer is on that date licensed as an
22 individual self-insurer by the Commissioner under Article 5 of this Chapter
23 or a group of employers is at that time licensed as a group self-insurer by the
24 Commissioner under Article 47 of Chapter 58 of the General Statutes.

25 **"§ 97-132. Board of directors.**

26 The Board shall consist of not less than nine directors serving terms as established in the
27 Plan. The directors shall be selected by the members of the Association, ~~subject to the approval~~
28 ~~of the Commissioner, Association~~ and shall serve for three-year terms and until a successor is
29 elected and qualified. There is no limitation on the number of terms a director may serve. ~~In~~
30 ~~approving selections to the Board, the Commissioner shall consider, among other things,~~
31 ~~whether individual self-insurers and group self-insurers are fairly represented.~~ Directors may be
32 reimbursed from the assets of the Association for expenses incurred by them as directors.

33 **"§ 97-133. Powers and duties of the Association.**

34 (a) The Association shall:

- 35 (1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.
36 (1a) Administer a fund, to be known as the North Carolina Self-Insurance
37 Security Fund, which shall receive the assets of the North Carolina
38 Self-Insurance Guaranty Fund previously established under subdivision (2)
39 of this subsection, the assessments required by subdivisions (2a) and (3a) of
40 this subsection and any other sums received by the Association. ~~In its~~
41 ~~discretion, the Board may determine that the assets of the Fund should be~~
42 ~~segregated or that a separate accounting shall be made in order to identify~~
43 ~~that portion of the Fund which represents assessments paid by individual~~
44 ~~self-insurers and that portion of the Fund which represents assessments paid~~
45 ~~by group self-insurers. If the Board segregates the Fund in this manner, the~~
46 ~~Association shall thereafter pay covered claims against individual member~~
47 ~~self-insurers from that portion of the Fund that represents assessments~~
48 ~~against individual self-insurers and shall thereafter pay covered claims~~
49 ~~against group member self-insurers from that portion of the Fund that~~
50 ~~represents assessments against group self-insurers.~~ The costs of

1 administering the Association shall be borne by the Fund. The Association is
2 authorized to secure insurance, primary excess insurance, reinsurance,
3 bonds, other insurance, financial guarantees and related financial instruments
4 to effectuate the purposes of the Association. The Board will invest the Fund
5 assets pursuant to an investment policy adopted by the Board and reviewed
6 and approved annually by the Department of the State Treasurer. The
7 earnings from investment of Fund assets shall be placed in or credited to the
8 Fund.

9 (2) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

10 (2a) ~~Establish, operate, and maintain~~ Establish and operate the Association
11 Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as
12 follows:

13 a. ~~The Association shall annually prepare and submit to the~~
14 ~~Commissioner a written plan to operate and provide an Association~~
15 ~~Aggregate Security System through a combination of cash on deposit~~
16 ~~in the Fund, securities, surety bonds, irrevocable letters of credit,~~
17 ~~insurance insurance, reinsurance, or other financial instruments or~~
18 ~~guarantees owned or entered into by the Association and acceptable~~
19 ~~to the Commissioner. Association. The written plan shall include, but~~
20 ~~not be limited to, (i) a description of the institutions that will issue or~~
21 ~~guarantee the securities, surety bonds, irrevocable letters of credit,~~
22 ~~insurance or other financial instruments or guarantees, including, but~~
23 ~~not limited to, the credit rating, financial strength, and AM best~~
24 ~~rating, if applicable to the institutions (ii) applicable cash flow~~
25 ~~information and financial assumptions (iii) a description of the~~
26 ~~methodology to be used by the Association to assess and collect the~~
27 ~~Association Aggregate Security System assessments to be made~~
28 ~~pursuant to subdivision (3a) of this subsection and (iv) a proposed~~
29 ~~timetable for the release of existing individual company deposits~~
30 ~~posted pursuant to G.S. 97-185(e), provided, however, that no~~
31 ~~individual company deposits posted pursuant to G.S. 97-185(e) shall~~
32 ~~be released without the written consent of the Commissioner. The~~
33 ~~noncash elements of the composite security may be one year or~~
34 ~~multiple year instruments.~~

35 b. ~~Within 90 days following the submission of the initial plan under~~
36 ~~sub-subdivision a. of this subdivision, the Commissioner shall either~~
37 ~~approve or disapprove the initial plan and shall notify the Association~~
38 ~~in writing. If the Commissioner does not approve or disapprove the~~
39 ~~initial plan within 90 days following submission, then the initial plan~~
40 ~~shall be deemed to be approved by the Commissioner. All~~
41 ~~subsequent plans shall be either approved or disapproved within 60~~
42 ~~days following submission.~~

43 e. ~~The Commissioner shall also determine the total undiscounted claims~~
44 ~~liability of each individual self insurer that will participate in the~~
45 ~~Association Aggregate Security System as well as the aggregate total~~
46 ~~undiscounted outstanding claims liabilities of all the individual~~
47 ~~self insurers that are to participate in the Association Aggregate~~
48 ~~Security System and shall notify the Association of this~~
49 ~~determination.~~

- 1 d. ~~Upon approval by the Commissioner of the Association's plan for the~~
2 ~~Association Aggregate Security System, the~~ The Association shall
3 assess the individual self-insurers that participate in the Association
4 Aggregate Security System pursuant to subdivision (3a) of this
5 subsection.
- 6 e. ~~If the Commissioner disapproves the plan for any year, If the~~
7 Association determines it is not feasible or practical to operate the
8 Association Aggregate Security System in any given year, it may
9 terminate or suspend the Association Aggregate Security System and
10 shall notify the Commissioner at least 90 days prior to the
11 termination or suspension of the Association Aggregate Security
12 System for that particular year. During any period that the Associate
13 Aggregate Security System is terminated or suspended, every
14 self-insurer shall deposit with the Commissioner, or continue to
15 deposit, the amount required by G.S. 97-185(b3) in the manner
16 prescribed by G.S. 97-185(c).
- 17 f. Group self-insurers shall not participate in the Association Aggregate
18 Security System.

19 (3) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

20 (3a) Assess members of the Association as follows:

- 21 a. Association Aggregate Security System assessments. – The
22 Association shall assess each individual self-insurer participating in
23 the Association Aggregate Security System a security system
24 assessment. The amount of the security system assessment charged to
25 each individual self-insurer participating in the Association
26 Aggregate Security System shall be based on the Association's
27 reasonable consideration of all of the following factors:
- 28 1. The total amount of assessments necessary to provide
29 aggregate security for all participating individual
30 self-insurers.
 - 31 2. The individual self-insurer's total workers' compensation
32 liabilities under the Act.
 - 33 3. The financial strength and creditworthiness of the
34 participating individual self-insurer.
 - 35 4. Any other relevant factors.
- 36 b. Special assessment. – In the event that there are covered claims
37 against an insolvent member or members and the assets of the Fund
38 are not sufficient to pay the obligations of the Association, then the
39 Association may collect a special assessment from the members in an
40 amount sufficient to pay the aggregate value of such covered claims.
41 Each member's special assessment shall be determined by the Board
42 and shall be based on the proportion of the member's total obligations
43 under the Act to the aggregate total of all members' obligations under
44 the Act.
- 45 c. Initial assessments. – An individual self-insurer that becomes a
46 member and does not initially participate in the Association
47 Aggregate Security System shall pay an initial assessment to the
48 Association in an amount determined by the Board. A group
49 self-insurer, upon receiving its initial license from the Commissioner,

- 1 shall pay an initial assessment to the Association in an amount
2 determined by the Board.
- 3 d. Each member shall be notified of assessments no later than 30 days
4 before the assessment is due.
- 5 e. Delinquent assessments, except as otherwise provided, shall bear
6 interest at a rate to be established by the Board.
- 7 f. Group assessments. – The Association may annually assess each
8 member group self-insurer in an amount not to exceed two percent
9 (2%) of the group self-insurer's annual gross premiums for the
10 preceding calendar year, as determined under G.S. 105-228.5(b),
11 (b1), and (c).
- 12 (4) Be obligated to pay covered claims.
- 13 (5) After paying any covered claim, be subrogated to the rights of the injured
14 employee and dependents and be entitled to enforce liability against the
15 self-insurer or any third party by any appropriate action brought in its own
16 name or in the name of the injured employee and dependents.
- 17 (6) Expend Fund assets in amounts necessary to pay all of the following:
- 18 a. The obligations of the Association under this Article subsequent to
19 an insolvency.
- 20 b. The expenses of handling covered claims subsequent to an
21 insolvency.
- 22 c. The cost of examinations under G.S. 97-137.
- 23 d. The costs of implementing and operating the Association Aggregate
24 Security System.
- 25 e. All other expenses authorized by this Article.
- 26 (7) Investigate claims brought against the Association and adjust, compromise,
27 settle, and pay covered claims to the extent of the Association's obligation;
28 and deny all other claims. The Association may review settlements to which
29 the insolvent member was a party to determine the extent to which such
30 settlements may be properly contested.
- 31 (8) Notify such persons as the Commissioner directs under G.S. 97-136.
- 32 (9) Handle claims through its directors, its employees, or through one or more
33 members or other persons designated as servicing facilities. ~~Designation of a~~
34 ~~servicing facility is subject to the approval of the Commissioner, but~~
35 ~~designation~~ of a member as a servicing facility may be declined by such
36 member.
- 37 (10) Reimburse each servicing facility for obligations of the Association paid by
38 the facility and for expenses incurred by the facility while handling claims
39 on behalf of the Association.
- 40 (11) Pay any other expenses of the Association authorized by this section.
- 41 (12) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 42 (13) Require each member to annually determine its total undiscounted workers'
43 compensation claims liability and require each member to notify the
44 Association of this determination.
- 45 (b) The Association may:
- 46 (1) Employ or retain such persons, including, but not limited to, adjustors,
47 brokers, accountants, attorneys, financial advisors, investment bankers,
48 placement agents, and consultants, as the Board may determine are
49 necessary to handle claims, perform other duties of, provide services to, and
50 consult with the Association.

- 1 (2) Borrow funds necessary to effect the purposes of this Article in accord with
2 the Plan, including entering into standby lines of credit.
3 (3) Sue or be sued.
4 (4) Negotiate and become a party to such contracts as are necessary to carry out
5 the purpose of this section.
6 (5) Perform such other acts as are necessary or proper to effectuate the purpose
7 of this section.
8 (6) ~~Reimburse the Department of Insurance up to twenty thousand dollars~~
9 ~~(\$20,000) for consultants retained by the Department to review the initial~~
10 ~~plan submitted pursuant to G.S. 97-133(a)(2a).~~
11 (c) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
12 (c1) The Association shall provide in its Plan that the functions of administration and
13 adjusting claims shall not be performed by the same entity that provides legal representation to
14 the Association for claims.
15 (d) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

16 **"§ 97-134. Plan of Operation.**

17 The Plan is as follows:

- 18 (1) ~~The Association Board shall submit to the Commissioner adopt a Plan of~~
19 ~~Operation and any amendments necessary or suitable to assure the fair,~~
20 ~~reasonable, and equitable administration of the Association. The Plan and~~
21 ~~any amendments become effective upon approval in writing by the~~
22 ~~Commissioner. If the Association at any time fails to submit a suitable Plan~~
23 ~~or suitable amendment to the Plan the Commissioner shall, after notice and~~
24 ~~hearing, adopt such reasonable rules as are necessary or advisable to~~
25 ~~effectuate this Article. The rules shall continue in force until modified by the~~
26 ~~Commissioner or superseded by a Plan submitted by the Association and~~
27 ~~approved by the Commissioner.~~
28 (2) All member self-insurers shall comply with the Plan.
29 (3) The Plan shall:
30 a. Establish the procedures whereby all the powers and duties of the
31 Association under G.S. 97-133 will be performed.
32 b. Establish procedures for investing and managing Fund assets.
33 c. Adopt a reasonable mechanism and procedure to achieve equity in
34 assessing members under G.S. 97-133.
35 d. Establish the amount and method of reimbursing members of the
36 Board under G.S. 97-132.
37 e. Establish procedures by which claims may be filed with the
38 Association and establish acceptable forms of proof of covered
39 claims.
40 f. Establish regular places and times for meetings of the Board.
41 g. Establish procedures for records to be kept of all financial
42 transactions of the Association, its agents, and the Board.
43 h. Provide that any member self-insurer aggrieved by any final action or
44 decision of the Association may appeal to the Commissioner within
45 30 days after the action or decision.
46 i. ~~Establish the procedures whereby selections for the Board shall be~~
47 ~~submitted to the Commissioner.~~
48 j. Contain additional provisions necessary or proper for the execution
49 of the powers and duties of the Association.
50 ...

"§ 97-136. Powers and duties of the Commissioner.

(a) The Commissioner shall:

- (1) Notify the Association of the existence of an insolvent member self-insurer not later than 30 days after he receives notice of an insolvency pursuant to the standards set forth in G.S. 97-135.
- (2) ~~Approve or disapprove the plan for an Association Aggregate Security System as required under G.S. 97-133(a)(2a)b. and notify the Association of the information required under G.S. 97-133(a)(2a)c.~~

"§ 97-137. Examination of the Association.

The Association shall be subject to examination and regulation by the Commissioner. The Board shall submit, not later than ~~March 30~~ June 1 of each year, a financial report for the preceding calendar year in a form approved by the Commissioner.

...."

SECTION 11. G.S. 97-185(a1) reads as rewritten:

"(a1) All individual self-insurers as defined in G.S. 97-130(5b) shall participate in the Association Aggregate Security System established under G.S. 97-131 unless excluded by the Board of Directors of the North Carolina Self-Insurance Security Association. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all of the following from the Association Aggregate Security System:

- (1) Individual self-insurers whose licenses have previously been revoked by the Commissioner.
- (2) Individual self-insurers with a debt rating as established by Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum Standard & Poor's ~~and or~~ Moody's ratings if a minimum debt rating has been established in the written plan by the Board of Directors of the North Carolina Self-Insurance Security Association for the Association Aggregate Security System submitted by the Association and approved by the Commissioner under G.S. 97-133(a)(2a) System.
- (3) Individual self-insurers that have defaulted on the payment of their self-insured workers' compensation liabilities.
- (4) Individual self-insurers that fail to submit sufficient financial information to enable the Association to determine their total outstanding workers' compensation liabilities, or their creditworthiness, or both.

The Board of Directors of the North Carolina Self-Insurance Security Association shall notify the Commissioner of the individual self-insurers that are excluded from participating in the Association Aggregate Security System."

SECTION 12. Article 8 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-8-36. Administrative fees.

Statewide multiline limited assessable mutual insurance companies are not subject to the provisions of G.S. 58-33-85(b)."

SECTION 13. G.S. 58-64-85 reads as rewritten:

"§ 58-64-85. Other licensing or regulation.

(a) Nothing in this Article affects the authority of the Department of Health and Human Services or any successor agency otherwise provided by law to license or regulate any health service facility or domiciliary service facility.

(b) Facilities and providers licensed under this Article that also are subject to the provisions of the North Carolina Condominium Act under Chapter 47C of the General Statutes shall not be subject to the provisions of Chapter 39A of the General Statutes, provided that the

1 facility's declaration of condominium does not require the payment of any fee or charge not
2 otherwise provided for in a resident's contract for continuing care, or other separate contract for
3 the provisions of membership or services."

4 **SECTION 14.** Sections 1, 4, 10, and 11 of this act become effective July 1, 2011.
5 Sections 3, 5, 6, and 7 of this act become effective October 1, 2011. Section 8 of this act
6 becomes effective July 1, 2012, and applies to licenses issued on or after that date. The
7 remainder of this act is effective when it becomes law.

BILL SUMMARY:

The Proposed Committee Substitute to the Second Edition of House Bill 298 makes the following changes:

Section 1 authorizes the Commissioner of Insurance to contract with the National Association of Insurance Commissioners (NAIC) and other third parties to provide online license processing and support services to license applicants. The bill also authorizes the third party to charge a reasonable fee, as agreed to by the Commissioner, for these services.

Section 2 codifies the existing Senior Health Insurance Information Program (SHIIP) in Chapter 58 of the General Statutes governing insurance. Currently, this Program is referenced in the Administrative Code (11 NCAC 17).

Section 3 makes it unlawful to prepare or issue a certificate of insurance that: (1) is in a form not approved by the Commissioner; (2) contains any false or misleading information; or (3) purports to alter or amend the coverage provided by the policy. A certificate of insurance is a short summary of a policy provided by an insurer upon request to verify the existence of coverage.

Section 4 grants the Commissioner the authority to approve or disapprove rates filed by insurers for small group coverage prior to an insurer's use of the filed rates. This is known as "prior approval." Prior approval is needed to avoid possible federal intervention in the approval of rates if the State does not have this authority.

Section 5 creates a defined open enrollment period in the months of January and July of each year for nondependent child coverage, also known as "child only" coverage. An insurer is not required, however, to offer child only coverage, or maternity coverage as part of an offer of child only coverage.

Sections 6 and 7 adopt NAIC model language implementing a new "trend test" calculation. The trend test is currently used to allow the Department to identify a company with insufficient capital in light of the company's assumed risk. The Department can then require the development of a comprehensive financial plan by the company. Failure to adopt the new NAIC Model trend test language could result in loss of state accreditation by the NAIC.

Section 8 exempts from adjuster licensing requirements those individuals who, in connection solely with insurance covering only portable consumer electronic devices, collect claims information and conduct data entry, and exercise no discretion in the disposition of the portable electronic device claim. For the exemption to apply, the individual must be supervised by a licensed adjuster or licensed agent who supervises no more than 25 individuals adjusting claims.

Section 9 exempts crop loss adjusters from the examination requirements applicable to property and casualty adjusters if: (1) the crop adjuster adjusts only federal crop insurance claims; and (2) the adjuster passes a proficiency examination approved by the federal Risk Management Agency or the Commissioner.

Sections 10 and 11 make changes to ease Department regulation of the Association Aggregate Security System (System) of the North Carolina Self-Insurance Guaranty Association (Association). The Association provides for the payment of Workers' Compensation claims against member self-insurers in the case of insolvency of one of its members. The System was established by the Association to allow individual self-insurers to collectively secure workers' compensation liabilities through the Association. The Association submits its Plan of Operation to the Commissioner for approval and also must annually submit its plan for the System to the Commissioner for approval. The bill makes the following changes:

- Deletes language requiring the Commissioner's approval of the Association's Board of Directors (G.S. 97-132), the Association's Plan of Operation (G.S. 97-134), the System's plan (G.S. 97-133(a)(2a), and the Association's servicing facility (G.S. 97-133(a)(9)).
- Removes language allowing separation of the Association's Self-Insurance Security Fund into separate funds for group self-insurers and individual self-insurers (G.S. 97-133(a)(1a)).
- Requires each member of the Association to annually determine and report its total undiscounted workers compensation claims liability to the Association (G.S. 97-133(a)(13)).
- Allows the Board to set its own minimum debt rating for participation in the System.

Section 12 exempts multiline limited assessable mutual insurance companies from requirement that application and policy fees may not be charged by an insurer without the insured's prior written consent. Under current law, these mutual insurance companies are generally exempt from Department regulatory requirements.

Section 13 provides that a fee charged by a licensed continuing care facility in a facility's declaration of condominium which is also provided in a resident's contract for continuing care with the facility is not a transfer fee for the purposes of Chapter 39A of the General Statutes. Chapter 39A prohibits the enforcement of transfer fee covenants running with a title to real property.

Source: Bill Summary, Research Division (May 17, 2011)

ASSUMPTIONS AND METHODOLOGY:

Revenue

Section 8

This section of the bill exempts from adjuster licensing requirements those individuals who, in connection solely with insurance covering only portable consumer electronic devices, collect claims information and conduct data entry, and exercise no discretion in the disposition of the portable electronic device claim.

The Department of Insurance (DOI) reports that there could be a reduction in revenue as a result of this exemption, but DOI is not aware of any adjuster who is only adjusting portable electronic device claims. The Agent Services Division within DOI has no way of determining the population

or number of adjusters that would fall into this category. As a result, Fiscal Research is not able to estimate the potential reduction in revenue to the State.

Expenditures

DOI estimates that House Bill 298 would have no fiscal impact on its current operations. Any additional workload required by the bill would be absorbed by current DOI staff. DOI also anticipates that the bill would not result in any savings to the State.

Section 1

This section of the bill authorizes the Commissioner of Insurance to contract with the National Association of Insurance Commissioners (NAIC) and other third parties to provide online license processing and support services to license applicants. The bill also authorizes the third party to charge a reasonable fee, as agreed to by the Commissioner, for these services. This section of the bill will have no fiscal impact on DOI because the administrative fee would be charged to the licensee and does not have a fiscal impact on DOI.

Sections 4, 5, 6, 7, 10, and 11

DOI anticipates that it would absorb the additional workload required by these sections of the bill. With respect Sections 10 and 11, DOI does not expect any savings from the review of the Association Aggregate Security System.

Section 9 exempts crop loss adjusters from the examination requirements applicable to property and casualty adjusters under certain circumstances. The hail adjuster exam exemption does not have a fiscal impact on DOI because the adjusters would still be required to be licensed and would have to pay the annual license fees.

SOURCES OF DATA: Department of Insurance

TECHNICAL CONSIDERATIONS: None



HOUSE BILL 298: Insurance Amendments.-AB

2011-2012 General Assembly

Committee: House Finance	Date: May 18, 2011
Introduced by: Rep. Dockham	Prepared by: Trina Griffin
Analysis of: PCS to Second Edition H298-CSSVf-18	Committee Counsel

SUMMARY: *House Bill 298 makes various changes to the insurance laws including laws governing licensing requirements, the provision of services for license applicants, certificates of insurance, health insurance, risk-based capital requirements for insurers, and Department oversight of the Association Aggregate Security System for workers compensation self-insurers.*

The PCS makes only one technical change on page 3, line 22 by adding the phrase "in accordance."

BILL SUMMARY: House Bill 298 makes the following changes:

Section 1 authorizes the Commissioner of Insurance to contract with the National Association of Insurance Commissioners (NAIC) and other third parties to provide online license processing and support services to license applicants. The bill also authorizes the third party to charge a reasonable fee, as agreed to by the Commissioner, for these services.

Section 2 codifies the existing Senior Health Insurance Information Program (SHIIP) in Chapter 58 of the General Statutes governing insurance. Currently, this Program is referenced in the Administrative Code (11 NCAC 17).

Section 3 makes it unlawful to prepare or issue a certificate of insurance that: (1) is in a form not approved by the Commissioner; (2) contains any false or misleading information; or (3) purports to alter or amend the coverage provided by the policy. A certificate of insurance is a short summary of a policy provided by an insurer upon request to verify the existence of coverage.

Section 4 grants the Commissioner the authority to approve or disapprove rates filed by insurers for small group coverage prior to an insurer's use of the filed rates. This is known as "prior approval." Prior approval is needed to avoid possible federal intervention in the approval of rates if the State does not have this authority.

Section 5 creates a defined open enrollment period in the months of January and July of each year for nondependent child coverage, also known as "child only" coverage. An insurer is not required, however, to offer child only coverage, or maternity coverage as part of an offer of child only coverage.

Sections 6 and 7 adopt NAIC model language implementing a new "trend test" calculation. The trend test is currently used to allow the Department to identify a company with insufficient capital in light of the company's assumed risk. The Department can then require the development of a comprehensive financial plan by the company. Failure to adopt the new NAIC Model trend test language could result in loss of state accreditation by the NAIC.

Section 8 exempts from adjuster licensing requirements those individuals who, in connection solely with insurance covering only portable consumer electronic devices, collect claims information and conduct data entry, and exercise no discretion in the disposition of the portable electronic device claim. For the exemption to apply, the individual must be supervised by a licensed adjuster or licensed agent who supervises no more than 25 individuals adjusting claims.

House PCS 298

Page 2

Section 9 exempts crop loss adjusters from the examination requirements applicable to property and casualty adjusters if: (1) the crop adjuster adjusts only federal crop insurance claims; and (2) the adjuster passes a proficiency examination approved by the federal Risk Management Agency or the Commissioner.

Sections 10 and 11 make changes to ease Department regulation of the Association Aggregate Security System (System) of the North Carolina Self-Insurance Guaranty Association (Association). The Association provides for the payment of Workers' Compensation claims against member self-insurers in the case of insolvency of one of its members. The System was established by the Association to allow individual self-insurers to collectively secure workers' compensation liabilities through the Association. The Association submits its Plan of Operation to the Commissioner for approval and also must annually submit its plan for the System to the Commissioner for approval. The bill makes the following changes:

- Deletes language requiring the Commissioner's approval of the Association's Board of Directors (G.S. 97-132), the Association's Plan of Operation (G.S. 97-134), the System's plan (G.S. 97-133(a)(2a), and the Association's servicing facility (G.S. 97-133(a)(9)).
- Removes language allowing separation of the Association's Self-Insurance Security Fund into separate funds for group self-insurers and individual self-insurers (G.S. 97-133(a)(1a)).
- Requires each member of the Association to annually determine and report its total undiscounted workers compensation claims liability to the Association (G.S. 97-133(a)(13)).
- Allows the Board to set its own minimum debt rating for participation in the System (Section 11).

Section 12 exempts multiline limited assessable mutual insurance companies from requirement that application and policy fees may not be charged by an insurer without the insured's prior written consent. Under current law, these mutual insurance companies are generally exempt from Department regulatory requirements.

Section 13 provides that a fee charged by a licensed continuing care facility in a facility's declaration of condominium which is also provided in a resident's contract for continuing care with the facility is not a transfer fee for the purposes of Chapter 39A of the General Statutes. Chapter 39A prohibits the enforcement of transfer fee covenants running with a title to real property.

EFFECTIVE DATE: Sections 1, 4, 10 and 11 become effective July 1, 2011. Sections 3, 5, 6, and 7 become effective October 1, 2011. Section 8 becomes effective July 1, 2012 and applies to licenses issued on or after that date. The remainder of the act is effective when it becomes law.

Tim Hovis, counsel to House Insurance, substantially contributed to this summary.

H298-SMSV-42(CSSVf-18) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 97*

Short Title: Union Fire Fee Sunset Repealed. (Local)

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

Referred to: Government, if favorable, Finance.

February 16, 2011

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A BILL TO BE ENTITLED
AN ACT TO REPEAL THE SUNSET ON FIRE PROTECTION FEES IN UNION COUNTY.
The General Assembly of North Carolina enacts:
SECTION 1. Section 2 of S.L. 2010-84 is repealed.
SECTION 2. This act is effective when it becomes law.





HOUSE BILL 97: Union Fire Fee Sunset Repealed

2011-2012 General Assembly

Committee: House Finance	Date: May 18, 2011
Introduced by: Reps. Horn, Burr	Prepared by: Trina Griffin
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 97 repeals the sunset on Union County's authorization to impose specified fees for fire protection services provided in fee-based fire protection districts.*

[As introduced, this bill was identical to S19, as introduced by Sen. Tucker, which is currently in House Government, if favorable, Finance.]

CURRENT LAW: S.L. 1991-883 authorized Union County to create fire protection districts funded by fees rather than by taxes. The act provides fees may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property benefiting from the availability of fire protection. The Union County fire protection fees originally established in 1991 were:

- \$50 per year for a single family dwelling, manufactured home, or duplex.
- \$75 per year for a triplex.
- \$100 per year for any other multiple-family dwelling.
- \$10 per year for animal or horticultural operations.
- \$50 per year for other commercial facilities with structures encompassing less than 5,000 square feet.
- \$100 per year for other commercial facilities with structures exceeding 5,000 square feet.
- \$50 per year on any other class of property.

S.L. 2010-84 permitted Union County to increase its fire protection fees in excess of the limits set by 1991 local act, but the increase may not exceed twice the amount of the maximum fee amounts for each class of property. The board of county commissioners is authorized effectuate the increase by including the increased amounts in its budget ordinance adopted under Article 3 of Chapter 159 of the General Statutes. Under that Article, the board must hold a public hearing before adopting the budget ordinance.

S.L. 2010-84 also provided that Union County's fee-based fire protection district authority, not just the fee increases authorized by that act, would expire on July 1, 2012.

BILL ANALYSIS: House Bill 97 would repeal the sunset on S.L. 2010-84. By repealing the sunset, Union County would maintain its current authority to assess fees for fire protection up to twice the amount of the maximum fee amounts for each class of property set out in the 1991 legislation.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: This bill is a request of the Union County Board of Commissioners. According to the resolution they passed, the sunset provision limits the county's flexibility in funding fire protection services and cause additional strain on property taxpayers through the imposition of ad valorem taxes as the only alternative revenue source for funding fire protection services. There are 18 fire departments throughout the county, five of which impose a fire tax and the remainder of which charge the annual fire fee.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

H97-SMSV-43(e1) v1

Research Division

O. Walker Reagan, Director

(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 247

Short Title: Eliminate Means Test From 529 Deduction. (Public)

Sponsors: Senators Hartsell; Atwater and Rucho.

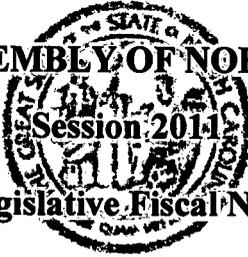
Referred to: Finance.

March 8, 2011

1 A BILL TO BE ENTITLED
 2 AN ACT TO ELIMINATE THE INCOME THRESHOLD FOR CONTRIBUTIONS TO AN
 3 ACCOUNT IN THE PARENTAL SAVINGS TRUST FUND OF THE STATE
 4 EDUCATION ASSISTANCE AUTHORITY.
 5 The General Assembly of North Carolina enacts:
 6 SECTION 1. Section 31.19(d) of S.L. 2007-323 is repealed.
 7 SECTION 2. This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 247 (First Edition)

SHORT TITLE: Eliminate Means Test From 529 Deduction

SPONSOR(S): Senators Hartsell, Atwater, and Rucho

FISCAL IMPACT					
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES: (\$ millions)	-6	-1.3	-1.3	-1.3	-1.3
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Dept. of Revenue					
EFFECTIVE DATE: Effective when it becomes law					

BILL SUMMARY: Senate Bill 247 eliminates the income threshold for the tax deduction for contributions to an account in the Parental Savings Trust Fund of the State Educational Assistance Authority (NC-529 Plan.) The threshold was eliminated by SL 2007-323 but was scheduled to be reinstated for taxable years beginning on or after January 1, 2012.

ASSUMPTIONS AND METHODOLOGY: Fiscal Research reviewed 2008 tax return data on the NC-529 plan and identified the total amount of deduction by filing status and by federal adjusted gross income that would be impacted by the elimination of the threshold. These amounts were multiplied by the approximate effective tax rate by filing status to estimate the tax year impact. Adjustments were made to convert the estimated tax year impact to the State's fiscal year.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division



DATE: May 2, 2011

Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 247: Eliminate Means Test From 529 Deduction

2011-2012 General Assembly

Committee:	House Finance	Date:	May 17, 2011
Introduced by:	Sen. Hartsell	Prepared by:	Cindy Avrette
Analysis of:	First Edition		Committee Counsel

SUMMARY: *Senate Bill 247 would permanently remove the income limitations from the income tax deduction for contributions made to the Parental Savings Trust Fund, North Carolina's National College Savings Program. Under current law, the deduction is not limited by an income threshold; however, applicable for taxable years beginning on and after January 1, 2012, there will be an income limitation on a taxpayer's ability to claim this deduction.*

CURRENT LAW: In 1996, the General Assembly established the Parental Savings Trust Fund. The Fund is maintained by the State Education Assistance Authority, a political subdivision of the State, and is administered by the College Foundation of North Carolina as agent of the Authority. The Fund was established to enable qualified parents to save funds to meet the costs of the postsecondary education expenses of eligible students. Anyone may contribute to the Fund. Because the Fund meets the qualifications of a qualified tuition program under Section 529 of the Internal Revenue Code, distributions from the Fund are excludable from taxable income to the extent the distributions are used to pay for qualified higher education expenses. Interest earned on the Fund is also tax-exempt.

Every state offers a state Section 529 plan, and at least twenty-five states allow for a full or partial income tax deduction for contributions to the state's own plan. Effective for the 2006 taxable year, North Carolina began allowing an individual income tax deduction for contributions by a taxpayer to an account in the State's plan: the Parental Savings Trust Fund. The maximum amounts that may be deducted are \$2,500 for an individual and \$5,000 for a married couple filing jointly.¹ The Parental Savings Trust Fund deduction must be added back to taxable income if the amount withdrawn from the Fund was not used to pay for qualified higher education expenses of the designated beneficiary. An exception is made if the withdrawal was made due to the death or permanent disability of the beneficiary.

BILL ANALYSIS: As enacted in 2006, the income tax deduction for contributions made to the Parental Savings Trust Fund was only allowed to taxpayers whose adjusted gross income did not exceed a stated statutory amount. The income limitations of the deduction were the same income limitations a taxpayer must meet to qualify for the higher personal exemption amount and the \$100 tax credit for each dependent child: \$100,000 for married filing jointly; \$80,000 for head of household; \$60,000 for single; and \$50,000 for married filing separately. The General Assembly removed the income limitations for taxable years 2007 through 2011. **Senate Bill 247** would remove the sunset on the removal of the limitations, meaning that the deduction would not have an income threshold.

Since the removal of the income limitations in 2007, the number of new accounts and the total number of contributions to the Parental Savings Trust Fund have increased considerably. Before the

¹ The maximum amounts have increased over time as follows: for the 2006 taxable year the maximum amounts were \$750 and \$1,500; for the 2007 taxable year the maximum amounts were \$2,000 and \$4,000; and for taxable years beginning on or after 2008, the maximum amounts are \$2,500 and \$5,000.

Senate Bill 247

Page 2

enactment of the deduction in 2006, the Program averaged 224 new accounts per month with an average contribution amount of \$160. After the enactment of the deduction with the income limitations, the Program averaged 748 new accounts per month with an average contribution amount of \$254. Since the sunset of the income limitations, the Program has averaged 1,327 new accounts per month with an average contribution amount of \$239. Eighty-three percent (83%) of the Program's participants voluntarily disclose their income level. Of those 83% account holders, 73% are below the \$100,000 means test for married filing jointly and 62% are below the means test for heads of household. The average account size for all 87,397 accounts in the Program as of March 31, 2011, is \$8,659.²

EFFECTIVE DATE: Senate Bill 247 would become effective when it becomes law.

S247-SMRB-51(e1) v1

² Information provided by the College Foundation of North Carolina, North Carolina's National College Savings Program.
Research Division *O. Walker Reagan, Director* (919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 486

Short Title: Tryon Deannexation. (Local)

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

Referred to: Government, if favorable, Finance.

March 29, 2011

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE
LIMITS OF THE TOWN OF TRYON.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate
limits of the Town of Tryon:

Tracts 1, 2, 5, and 6 as shown and delineated upon a plat entitled "Subdivision of
Property of Blandina A. Shields, Tryon Township, Polk County, North Carolina," made by
H.B. Frankenfield, Jr., Forest Engineer and Surveyor, dated November 19, 1963, and reference
is hereby had to said plat in aid of the foregoing description, said plat being a matter of public
record in the Office of the Register of Deeds for Polk County on Map Slide A-51, Page 191,
referenced in Book 235, Page 1453, for full and complete metes and bounds descriptions of
said tracts, pursuant to North Carolina General Statutes Section 47-30(g).

SECTION 2. This act shall not affect the duty to pay taxes for any prior year and
shall not eliminate any liens for taxes for prior years.

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





HOUSE BILL 486: Tryon Deannexation

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Guice
Analysis of: First Edition

Date: May 18, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 486 deannexes a described area from the Town of Tryon.*

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

Pursuant to this Section, the General Assembly enacted Article 4A of Chapter 160A of the General Statutes, which authorize municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to *deannex* property -- that power remains with the General Assembly.

BILL ANALYSIS: House Bill 486 deannexes four described tracts, listed in the bill, from the Town of Tryon. The property is owned by a single owner who has requested the deannexation. This request has been approved by the Town in a resolution. The bill would also provide that the deannexation does not affect the duty to pay taxes for any prior year and does not eliminate any liens for taxes for any prior year.

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

BACKGROUND: In 2006, the Town of Tryon explored the possibility of creating a tax incentive financing (TIF) district and encouraged certain property owners in the area to petition the Town for voluntary annexation of their properties to the Town so that they could benefit from the installation of sidewalks and street lighting within and funded by tax revenue from the TIF district. One property owner petitioned the Town for voluntary contiguous annexation of his property, which consists of the tracts described in this legislation.

After the property was annexed, the Town determined that it would not try to form the TIF district. Consequently, the property owner requested his property be deannexed because the TIF district was never formed and the improvements have never been made. The Town Board of Commissioners adopted a resolution on December 16, 2010 approving the request.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H486-SMSV-45(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 367*

Short Title: Roanoke Rapids Deannexation. (Local)

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

Referred to: Government, if favorable, Finance.

March 16, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO DEANNEX CERTAIN PARCELS PREVIOUSLY ANNEXED BY A
3 LEGISLATIVE ANNEXATION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The following properties, which were annexed to the City of
6 Roanoke Rapids by S.L. 2005-9, are removed from the corporate limits of the City of Roanoke
7 Rapids, referenced below by Halifax County Tax Office Parcel ID:

- 8 1203642
- 9 1203645
- 10 1203646
- 11 1203647
- 12 1203649
- 13 1203650
- 14 1203658
- 15 1203228
- 16 1203400
- 17 1203401
- 18 1203402
- 19 1203403
- 20 1203404
- 21 1203405
- 22 1203406
- 23 1203409
- 24 1203438
- 25 1203439
- 26 1203591
- 27 1220045
- 28 1220049

29 SECTION 2. The City of Roanoke Rapids may exercise all the powers granted by
30 Article 19 of Chapter 160A of the General Statutes in areas removed from the corporate limits
31 by Section 1 of this act.

32 SECTION 3. This act is effective June 30, 2011.





HOUSE BILL 367: Roanoke Rapids Deannexation

2011-2012 General Assembly

Committee: House Finance	Date: May 18, 2011
Introduced by: Reps. Bradley, Bryant	Prepared by: Greg Roney
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 367 deannexes 21 parcels from the City of Roanoke Rapids.*

[As introduced, this bill was identical to S313, as introduced by Sen. Jones, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: Under Section 1 of Article VII of the N.C. Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable."

The General Assembly enacted Article 4A of Chapter 160A of the General Statutes, authorizing municipalities to enact ordinances to add territory to their municipal limits by annexation.

The General Assembly has not enacted any method for municipalities to remove an area from its limits – that power remains with the General Assembly.

BILL ANALYSIS: House Bill 367 would deannex 21 parcels, listed in the bill, in the City of Roanoke Rapids. The bill provides that the City may exercise planning and zoning authority over the parcels deannexed.

BACKGROUND: The 21 parcels deannexed by House Bill 367 were annexed by S.L. 2005-9. The parcels were expected to become part of the Roanoke Rapids entertainment district.

EFFECTIVE DATE: This act is effective July 30, 2011.

Giles S. Perry, counsel to House Government, substantially contributed to this summary.

H367-SMTM-16(e1) v1



City of Roanoke Rapids

Office of the Mayor - Emery G. Doughtie

P. O. Box 38 1040 Roanoke Avenue

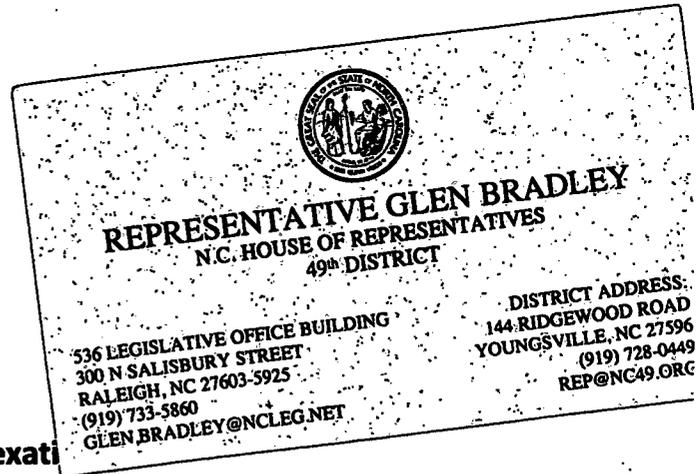
Roanoke Rapids, N. C. 27870

(252) 533-2840 (252) 537-1139

email: edoughtie@roanokerapidsnc.com

April 14, 2011

The Honorable Glen Bradley
49th District Representative
300 N. Salisbury Street, Room 536
Raleigh, North Carolina 27603-5925



Reference: S313 & H367—Roanoke Rapids De-Annexation

Dear Representative Bradley:

At the April 12, 2011 regular meeting of the Roanoke Rapids City Council, action was taken to support legislation (S313 & H367) for the de-annexation of the Brandy Creek/Wallace Fork community.

Thank you for your consideration and for all you do for our community.

Sincerely,

Emery G. Doughtie

Mayor

Best regards,
Emery G. Doughtie

Reference: S313 & H367—Roanoke Rapids De-Annexation



REPRESENTATIVE GLEN BRADLEY
N.C. HOUSE OF REPRESENTATIVES
49th DISTRICT

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DISTRICT ADDRESS:
144 RIDGEWOOD ROAD
YOUNGSVILLE, NC 27396
(919) 728-0449
REP@NC49.ORG

TO: Representative Glen Bradley
Representative Angela Bryant
Senator Ed Jones

FROM: Peter Gilbert, UNC Center for Civil Rights

DATE: April 20, 2011

RE: De-annexation of Brandy Creek/Wallace Fork Community

I. BACKGROUND INFORMATION

Brandy Creek/Wallace Fork Community

- Annexed into corporate limits of Roanoke Rapids in 2005 via legislative annexation (House Bill 446/SL 2005-9)
- Following annexation, Rock River Falls, LLC, purchased 32 parcels of land for development from Water Properties/Anne Marie Edwards; families living on those parcels were forced to move out of community.
- Approximately 21 families remain; it is a predominantly low-income, African American community.
- Property was re-valued in 2007.
 - Residents experienced a 695% - 1446% increase in property taxes during the 2007 revaluation (an average increase of 772%).
- Property revaluation in 2010 corrected the 2007 inflated valuation.

II. THE CASE FOR DEANNEXATION

Equity Considerations

- When seeking the support and vote of NC legislators, the legislative annexation of the Brandy Creek/Wallace Fork community was incorrectly characterized as a "voluntary annexation."
 - Characterization of annexation as voluntary gives the impression that property owners have requested the annexation and are willing participants in the process.
 - However, residents of the Brandy Creek/Wallace Fork community did not learn of the annexation until several days after passage of House Bill 446.
- Residents experienced an unjustified 695% - 1446% increase in property taxes during the 2007 revaluation (an average increase of 772%).

- **Average Percentage Increase in Property Values 2006-2007**
 - i. **Roanoke Rapids: 34%**
 - ii. **County: 19%**
 - iii. **Area adjacent to Brandy Creek but not annexed: 33%**
 - iv. **Brandy Creek: 772%**

- **Development plans and drawings of the future Roanoke Rapids entertainment district did not incorporate the homes of the Brandy Creek/Wallace Fork community, leading to the conclusion residents were to sell their homes and move elsewhere. Due to the financial troubles of the theater as well as the downturn in the economy, the larger entertainment district has remained mostly vacant leaving these families in an undesirable area of town and unable to sell their homes. De-annexation would provide residents with relief from property taxes while the city of Roanoke Rapids works to correct the situation and build momentum for the entertainment and shopping district. Once the area is primed for development, private developers may again become interested in purchasing property in the area.**

Economic Impact: Roanoke Rapids

- **FY 2010-2011 Budget: \$13,683,273.00 (general fund)**

- **Property Tax Revenue for 2010: \$6,570,985**

- **Property Tax Revenue from Brandy Creek community: \$6,990.92**
 - **Represents 0.05% of the general fund**
 - **Represents 0.11% of anticipated property tax revenue**

- **Additional savings to City from discontinuation of municipal services (solid waste, street maintenance, and street lighting)**

Economic Impact: Brandy Creek/Wallace Fork Community

- **Average property value: \$53,349.52**

- **Average savings of \$332.90/year/family with removal of Roanoke Rapids property tax**



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City Council talks of de-annexation near Carolina Crossroads

Posted: Thursday, June 3, 2010 12:00 am

By Roger Bell

The Daily Herald Staff Writer

ROANOKE RAPIDS— On April 19, 2005, the City of Roanoke Rapids grew larger with the annexation of Brandy Creek and Wallace Forks near Carolina Crossroads. However, members of city council feel the annexation was done unfairly, and hope to one day downsize that area from city control.

"They didn't get to vote on it," stated Roanoke Rapids Mayor Emery Doughtie. "It was involuntary. Those people weren't treated right."

"I was told one morning and advised that the subdivision area along Wallace Forks had been annexed in an act of the General Assembly," recalled Councilman Greg Lawson, who was Roanoke Rapids Police Chief in 2005. "I was challenged to go out there and meet with those folks and tell them they were now in the city limits."

Lawson recalls most people in the area weren't too happy with being annexed. "The manner in which it was done, with no warning and no input from them; they were very upset that they hadn't known about it."

Of course, with the Carolina Crossroads entertainment district being in the same area, there was another impact felt by the new city residents.

"Through the development of Carolina Crossroads," Lawson said, "their property taxes went up tremendously."

Doughtie agrees with Lawson's assessment. While building values in the area didn't seem affected by the change, Doughtie produced numbers from three parcels in Brandy Creek which showed dramatic increases in land value between 2006 and 2007, increases which would lead to punishing changes in taxes.

One of the parcels showed the land valued at \$16,930 in 2006 and in 2007 the same parcel of land was valued at \$78,270. Another parcel had the land valued at \$11,710 in 2006, but in 2007 the same parcel of land had a \$93,090 value. The third parcel rose from \$8,120 in value in 2006, and jumped to \$41,870 in 2007.

"So those residents," Doughtie illustrated, "were paying, say, 62 cents per \$100 one day, then they're annexed and suddenly they're paying another 63 cents per \$100. Then in 2007, that same property owner is paying \$1.25 per \$100, but he's paying it on \$93,090."

While the three parcels have seen land values go down to 2006 levels, those previous increases, some officials feel, presented a bit too much for the residents.

"I wouldn't want my taxes to go up whatever percentage theirs went up," Councilwoman Suetta Scarbrough stated. "Nobody wants that."

Doughtie feels many at the time believed residents in the area would leave. "When all this happened everybody felt those few people would roll up their shades and move out of there," Doughtie, who was not mayor at the time, said. "But for people out there, that's home. For people that money isn't the most important thing, they didn't move."

"There were some (residents) who wanted to sell their properties to the developer," recalled Mayor Pro Tem Carl Ferebee, the most senior member of council and one of only two current council members serving at the time of the annexation — the other being Ernest Bobbitt. "At the time it was projected to be growing a little differently. Some people were okay with that and some were not," Ferebee shared.

Former Roanoke Rapids Mayor Drewery Beale remembers the annexation and feels the residents in the area benefitted from it. "It was a unanimous decision by the House and Senate," Beale said. "We approached them and told them what we thought was going to happen and how much the land was going to be worth."

While Beale admits citizen input was not sought for the annexation, he believes the benefits the area received, in the form of police protection, fire protection and other city services, helped the area tremendously.

"They had one fire hydrant out there and we took it over," Beale recalled. "We put fire hydrants in, we turned the street lights on; we reworked the roads — we didn't pave the roads, but we worked on them — and gave them garbage pickup right in front of their homes."

"Even if you involuntarily annex," Doughtie countered, "you still have to give them the chance to voice their opinion."

Members of council seem to agree with Doughtie. "The Carolina Crossroads concept, while a great idea, there it gets back to the public and these folks were never informed about 'Hey, we're going to annex you in,'" Lawson said. "The way it was done created negativity toward the city and its government and it created hard feelings. I don't know anybody who would think that was fair."

"Hindsight says it could have been done differently," Ferebee stated. "We probably could have done it differently."

"I think it was unfairly done," Scarbrough said.

"I believe the residents of that particular neighborhood feel as if they were caught up in the Randy Parton Theatre debacle," stated Councilman Ed Liverman. "Obviously if the theater concept would have had immediate success, things would probably appear quite differently."

Given the circumstances under which the area came into city control, and given the circumstances in which the entertainment district finds itself, many on Council feel the area would be better served if the city de-annexed it.

"Under the circumstances, I have to support their efforts to de-annex," Lawson said. "These people are having to pay taxes they can't afford. A lot of folks out there are elderly and on fixed incomes and a lot of them are just hard-working folks trying to make it."

"I know we'll lose tax money, but we also won't have to provide services out there," Doughtie stated. "It's the right thing to do."

"I am for de-annexing them," Scarbrough said. "Getting them back to where they were."

Because annexation was done by the General Assembly, it will take an act by the General Assembly to undo it.

Find out what residents have to say about the deannexation of Brandy Creek and Wallace Forks in Sunday's edition of The Daily Herald.

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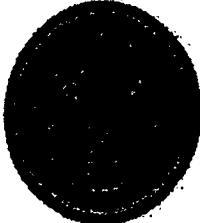
Excerpt from April 12, 2011 City Council Minutes

Support of De-Annexation of the Brandy Creek/Wallace Fork Community

Councilman Lawson stated under the circumstances in which the people in this community were annexed, he feels it would be right for the City Council to support the House and Senate Bills that have been introduced to de-annex this community.

Motion was made by Councilman Lawson and seconded by Mayor Pro Tem Ferebee to support legislation to de-annex the Brandy Creek/Wallace Fork Community.

Upon being put to a vote, Councilman Lawson, Mayor Pro Tem Ferebee, Councilwoman Scarbrough and Councilman Bobbitt voted in favor of the motion. Councilman Liverman voted against the motion. Mayor Doughtie declared the motion carried by a 4 to 1 vote.



Lisa B. Vincent, MMC, City Clerk
City of Roanoke Rapids
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The best and most beautiful things in this world cannot be seen or even heard, but must be felt with the heart. - Helen Keller

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 72
Committee Substitute Favorable 3/22/11
PROPOSED COMMITTEE SUBSTITUTE H72-CSR-38 [v.2]

5/17/2011 6:53:25 PM

Short Title: Community College Investment Flexibility.

(Public)

Sponsors:

Referred to:

February 14, 2011

1 A BILL TO BE ENTITLED
2 AN ACT GRANTING CERTAIN COMMUNITY COLLEGES ADDITIONAL
3 FLEXIBILITY WITH REGARD TO INVESTMENTS.
4 The General Assembly of North Carolina enacts:
5 SECTION 1.(a) Definitions. – The definitions in G.S. 115D-2 apply in this section.
6 SECTION 1.(b) Additional Investment Flexibility. – The board of trustees of an
7 institution may invest moneys held in the institution's fund accounts as provided in this section.
8 The investment options provided in this section are in addition to the investment options
9 available to institutions under G.S. 115D-58.6. The board of trustees must exercise the
10 following duties when managing and investing institutional funds under this section:
11 (1) Investment decisions must be based solely upon the interest of the college,
12 and the students, faculty, and staff of the college.
13 (2) Investments must be made for the exclusive purpose of providing an
14 adequate return on investment to the college.
15 (3) Investments must be made with the care, skill, and caution under the
16 circumstances then prevailing which a prudent person acting in a like
17 capacity and familiar with those matters would use in the conduct of an
18 activity of like character and purpose.
19 (4) Investment decisions must be made impartially, taking into account the best
20 interest of the college, with special attention to conflicts of interest or
21 potential conflicts of interest.
22 (5) Investments may incur only those costs that are appropriate and reasonable.
23 SECTION 1.(c) Investment Committee. – The board of trustees of an institution
24 may appoint an Investment Committee. The Committee must consist of a minimum of three
25 people who have sufficient financial background to review and evaluate investment options.
26 These individuals should have experience in institutional or retail investment management with
27 knowledge of fixed income and public equities. This Committee must make recommendations
28 to the board of trustees on investment options and must monitor the performance of
29 investments made.
30 SECTION 1.(d) Form of Investment. – The board of trustees of an institution,
31 based upon the recommendations of its Investment Committee, may invest moneys held in its



1 institutional fund accounts in any form of investment established or maintained by an
2 investment advisor who meets both of the following conditions:

3 (1) Is registered and in good standing with either the Securities and Exchange
4 Commission or the North Carolina Secretary of State, Securities Division.

5 (2) Is a member of the Securities Investor Protection Corporation."

6 **SECTION 2.** This act only applies to the following community colleges:

7 (1) Caldwell Community College and Technical Institute.

8 (2) Davidson County Community College.

9 (3) Isothermal Community College.

10 (4) Southeastern Community College.

11 (5) Vance-Granville Community College.

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



HOUSE BILL 72: Community College Investment Flexibility

2011-2012 General Assembly

Committee:	House Finance	Date:	May 17, 2011
Introduced by:	Rep. Crawford	Prepared by:	Cindy Avrette
Analysis of:	PCS to Second Edition H72-CSR-38		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 72 would grant five community colleges greater investment flexibility with their institutional funds. The original bill applied to all community colleges.*

CURRENT LAW: A community college institution must deposit its institutional funds in a bank or other financial institution designated by its board of trustees. An example of funds held by a community college as institutional funds include grants, student fees, revenue generated from its student stores, and gifts and bequests made directly to the institution. The board of trustees may invest these funds in those securities allowable for county governments under G.S. 159-30(c), which is primarily limited to fixed income assets. The institution may also invest money in an endowment fund with the State Treasurer.

BILL ANALYSIS: Under the current law, a community college institution may not invest its idle institutional funds in investment assets such as mutual funds. The private, nonprofit foundations that support the institution may invest its funds in equity securities, as can the institutions of the University of North Carolina. The PCS for House Bill 72 would allow five community college institutions the flexibility to invest in assets other than fixed income assets. To avail itself of this investment flexibility, the community college institution must create an Investment Committee composed of at least three members who have sufficient financial background to review and evaluate investment options. The Investment Committee must recommend to the board of trustees the appropriate investment options and must monitor the performance of the investments made. The board of trustees may invest its institution's idle funds in any form of investment recommended the Investment Committee so long as the investment is established or monitored by an investment advisor who is a member of the Securities Investor Protection Corporation and who is registered and in good standing with either the Securities and Exchange Commission or the North Carolina Secretary of State, Securities Division.

The bill would only apply to the following community college institutions: Caldwell Community College and Technical Institute, Davidson County Community College, Isothermal Community College, Southeastern Community College, and Vance-Granville Community College.

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

H72-SMRB-57(CSRB-38) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 292

Short Title: Incorporate Rougemont. (Local)

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

Referred to: Government.

March 10, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE TOWN OF ROUGEMONT, SUBJECT TO A
3 REFERENDUM.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. A Charter for the Town of Rougemont is enacted to read:
6 "CHARTER OF THE TOWN OF ROUGEMONT.
7 "ARTICLE I. INCORPORATION AND CORPORATE POWERS.
8 "Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of
9 Rougemont are a body corporate politic under the name 'Town of Rougemont.' Under that
10 name they shall have all the powers, duties, rights, privileges, and immunities conferred and
11 imposed on cities by the general law of North Carolina.
12 "ARTICLE II. CORPORATE BOUNDARIES.
13 "Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries
14 of the Town of Rougemont are as follows:
15 Beginning at the intersection of the Flat River and Red Mountain Road, thence in an easterly
16 direction following the Flat River north and west to the northeast corner of PIN 190702, thence
17 in a southerly direction along the eastern boundary of aforementioned parcel, thence in a
18 westerly direction along the southern boundary of aforementioned parcel, thence in a northerly
19 direction along the eastern boundary of PIN 190703, thence in a westerly direction along the
20 northern boundaries of aforementioned parcel and PIN 190701 to the eastern boundary of PIN
21 196596, thence in a northerly direction along the western boundary of PIN 190700, thence in
22 an easterly direction along the northern boundary of aforementioned property to the Flat River,
23 thence in a northerly, westerly, and southwesterly direction following the Flat River to the
24 northeast corner of PIN 190725, thence in a southerly direction along the eastern boundary of
25 aforementioned parcel, thence in a westerly direction following Bowen Road to its intersection
26 with Moore's Mill Road, thence in a southerly direction along Moore's Mill Road to the
27 northeast corner of PIN 190584, thence in a westerly direction along the northern boundary of
28 aforementioned parcel, thence in a southerly direction along the western boundary of
29 aforementioned parcel, thence in a westerly direction along the southern boundary of PIN
30 190585, thence in a northerly direction along the western boundaries of PIN 190585, PIN
31 190586, PIN 190717, PIN 190715, PIN 190714, PIN 190712, and PIN 190713 to the
32 Durham/Person County line, thence in a westerly direction following the Durham/Person
33 County line to the northwest corner of PIN 190783, thence in a southerly direction along the
34 western boundaries of PIN 190783, PIN 190784, PIN 190785, PIN 190786, PIN 190787, and
35 PIN 190788, thence in a westerly direction and along the northern boundaries of PIN 190788



1 and PIN 190803, thence in a southerly direction along the eastern boundary of PIN 189591 to
2 the northwest corner of PIN 189592, thence in an easterly direction along the northern
3 boundary of PIN 189592, thence in a southerly direction along the eastern boundary of
4 aforementioned parcel, thence in a westerly direction along the southern boundary of
5 aforementioned parcel to PIN 189593, thence in a southerly direction along the eastern
6 boundary of PIN 189593, thence in a westerly direction along the southern boundary of PIN
7 189593 to the northwest corner of PIN 190804, thence in an easterly direction along the
8 northern boundary of aforementioned property, thence in a southerly direction along the eastern
9 boundary of aforementioned property, thence in a westerly direction along the southern
10 boundary of aforementioned property, thence in a northwesterly direction along the western
11 boundary of aforementioned property and the eastern boundary of PIN 190768, thence in a
12 westerly direction along the southern boundary of PIN 189593 to Equestrian Chase, thence in a
13 southerly direction along the western boundary of Equestrian Chase to the southeastern
14 boundary of PIN 190812, thence in a southwesterly direction along the eastern boundary of
15 aforementioned property, thence in a northerly direction along the western boundary of
16 aforementioned property and PIN 189595 and continuing northerly along the western boundary
17 of PIN 189594 to PIN 189599, thence in an easterly direction along the southern boundary of
18 aforementioned parcel, thence in a northerly direction along the eastern boundary of
19 aforementioned parcel, thence in a westerly direction along the northern boundary of
20 aforementioned parcel, thence in a northerly direction along the western boundaries of PIN
21 189590 and PIN 189589 to Harris Mill Road, thence in a northerly direction along the eastern
22 boundary of the Norfolk Southern Railroad right-of-way to the Durham/Person County line,
23 thence in a westerly direction along the Durham/Person County line to the western right-of-way
24 of U.S. Highway 501, thence in a southerly direction along the western right-of-way of U.S.
25 Highway 501 to PIN 189580, thence in an easterly direction along the southern boundary of
26 PIN 189580 to the northwest corner of PIN 189542, thence in a southerly direction along the
27 western boundary of PIN 189542, thence in an easterly direction along the southern boundary
28 of aforementioned parcel to the western boundary of right-of-way of U.S. Highway 501, thence
29 in a southerly direction along the western boundary of U.S. Highway 501 right-of-way to the
30 northeast corner of PIN 189662, thence in a westerly direction along the northern boundary of
31 PIN 189662, thence in an easterly direction along the southern boundary of aforementioned
32 parcel to the western boundary of the U.S. Highway 501 right-of-way, thence in a southerly
33 direction along the western boundary of U.S. Highway 501 right-of-way to northeast corner of
34 PIN 189657, thence in a southwesterly direction along the northern boundary of
35 aforementioned parcel, thence in a southeasterly direction along the western boundary of
36 aforementioned parcel, thence in a westerly direction along the northern boundary of PIN
37 189656, thence in a southerly direction along the western boundaries of PIN 189656 and PIN
38 189655, thence in a westerly direction along the northern boundaries of PIN 189654 and PIN
39 189636, thence in a southerly direction along the western boundary of PIN 189636, thence in a
40 westerly direction along the northern boundary of PIN 189653, thence in a northwesterly
41 direction along the eastern boundary of PIN 189665, thence in a westerly direction along the
42 northern boundary of aforementioned parcel, thence in a southerly direction along the western
43 boundary of aforementioned parcel to the northern right-of-way of Bacon Road, thence in a
44 westerly direction along the northern right-of-way of Bacon Road to the intersection of the
45 southern section (between Bacon Road and Bill Poole Road) of Chambers Road, thence in a
46 southerly direction along the western boundary of the right-of-way of Chambers Road to the
47 northeast corner of PIN 189521, thence in a westerly direction along the northern boundary of
48 the aforementioned parcel, thence in a southerly direction along the western boundary of
49 aforementioned parcel, thence in an easterly direction along the southern boundary of
50 aforementioned parcel to the western boundary of the Chambers Road right-of-way, thence in a
51 southerly direction along the western boundary of the Chambers Road right-of-way to the

1 northeast corner of PIN 189519, thence in a westerly direction along the northern boundary of
2 the aforementioned parcel, thence in a southerly direction along the western boundary of
3 aforementioned parcel, thence in a westerly direction along the northern boundary of PIN
4 189517, thence in a southerly direction along the western boundary of aforementioned parcel,
5 thence in an easterly direction along the southern boundary of aforementioned parcel to the
6 western boundary of the Chambers Road right-of-way, thence in a southerly direction along the
7 western boundary of the Chambers Road right-of-way to the northeast corner of PIN 189515,
8 thence in a westerly direction along the northern boundary of aforementioned parcel, thence in
9 a southerly direction along the eastern boundary of PIN 189511 to the northern boundary of the
10 Cothran Road right-of-way, thence in a westerly direction along the northern boundary of the
11 Cothran Road right-of-way to the southeast corner of PIN 189507, thence in a northerly
12 direction along the eastern boundary of aforementioned parcel, thence in a westerly direction
13 along the northern boundary of aforementioned parcel, thence in a southerly direction along the
14 western boundary of aforementioned parcel and PIN 189484, thence in an easterly direction
15 along the southern boundary of PIN 189484, thence in a southerly direction along the western
16 boundaries of PIN 189483, PIN 189488, and PIN 189489 to the northern boundary of the Bill
17 Poole Road right-of-way, thence in a southwesterly direction along the northern boundary of
18 the Bill Poole Road right-of-way to its intersection with Rougemont Road, thence in a
19 southerly direction along the western boundary of the Rougemont Road right-of-way to the
20 southwest corner of PIN 189890, thence in an easterly direction along the southern boundary of
21 aforementioned parcel, thence in a northerly direction along the eastern boundary of
22 aforementioned parcel, thence in an easterly direction along the southern boundary of PIN
23 189498, thence in a southeasterly direction along the western boundary of PIN 189494, thence
24 in an easterly direction along the southern boundary of aforementioned parcel, thence in a
25 northerly direction along the eastern boundaries of aforementioned parcel and PIN 189493,
26 thence in an easterly direction along the southern boundaries of PIN 189885 and PIN 189886 to
27 the western boundary of the Harris Road right-of-way, thence in a northerly direction along the
28 western boundary of the right-of-way of Harris Road to the northern boundary of the Bill Poole
29 Road right-of-way, thence in a northeasterly direction along the northern right-of-way of Bill
30 Poole Road to the southeastern corner of PIN 189884, thence in a northwesterly direction along
31 the eastern boundary of aforementioned parcel, thence in a southwesterly direction along the
32 northern boundaries of aforementioned parcel to PIN 189879, thence in a northwesterly
33 direction along the eastern boundary of aforementioned parcel, thence in a northerly direction
34 along the western boundary of PIN 189848, thence in an easterly direction along the northern
35 boundary of aforementioned parcel, thence in a southerly direction along the eastern boundary
36 of aforementioned parcel, thence in a southwesterly direction along the northwest boundary of
37 PIN 197183, thence in a southeasterly direction along the southwest boundary of
38 aforementioned parcel and crossing Bill Poole Road, thence in a westerly direction along the
39 southern right-of-way of Bill Poole Road to the western boundary of PIN 189847, thence in a
40 southerly direction along the western boundary of aforementioned parcel, thence in an easterly
41 direction along the southern boundary of aforementioned parcel and continuing in an easterly
42 direction along the southern boundaries of parcels through PIN 189831 to the northwest corner
43 of PIN 189830, thence in a southerly direction along the western boundary of aforementioned
44 parcel, thence in an easterly direction along the southern boundary of aforementioned parcel to
45 the western right-of-way of U.S. Highway 501, thence in a southerly direction along the
46 western boundary of the U.S. Highway 501 right-of-way to PIN 189824, thence in a westerly
47 direction along the northern boundary of aforementioned parcel, thence in a southerly direction
48 along the eastern boundaries of PIN 189834, PIN 189835, and PIN 189867, thence in a
49 southeasterly direction along the northern boundary of PIN 190517, thence in a southeasterly
50 direction along the southwest boundary of PIN 190513, thence in a northeasterly direction
51 along the southeast boundary of aforementioned parcel to the western right-of-way of U.S.

1 Highway 501, thence crossing U.S. Highway 501 and continuing along the southeastern
2 boundary of PIN 190530, thence in a northwesterly direction along the northeast boundary of
3 aforementioned parcel, thence in a southwesterly direction along the northwestern boundary of
4 aforementioned parcel to the northeastern boundary of the U.S. Highway 501 right-of-way,
5 thence in a northwesterly and then northerly direction along the eastern right-of-way of U.S.
6 Highway 501 to the southwestern corner of PIN 189820, thence in a northeasterly direction
7 along the southeastern boundary of aforementioned parcel to the western boundary of the
8 Norfolk Southern Railroad right-of-way, thence in a southerly direction along the western
9 boundary of the Norfolk Southern Railroad right-of-way to the southwest corner of PIN
10 189793, thence in an easterly direction along the southern boundary of aforementioned parcel,
11 thence in a southeasterly direction along the northeastern boundary of PIN 190625, thence in a
12 southerly direction along the northeastern boundary of PIN 190512, thence in a southeasterly
13 and then easterly direction along the northern boundary of aforementioned parcel to the
14 southeast corner of PIN 190645, thence in a northerly direction along the eastern boundary of
15 aforementioned parcel to the southern right-of-way of Lake Winds Trail, thence in an easterly
16 direction along the southern right-of-way of Lake Winds Trail, thence in a southerly direction
17 along the western boundary of PIN 190644, thence in an easterly direction along the southern
18 boundary of aforementioned parcel and continuing in an easterly direction to the western
19 right-of-way of Moore's Mill Road, thence in a northerly direction crossing Lake Winds Trail
20 to the northeast corner of PIN 190663, thence in a westerly direction along the northern
21 boundary of aforementioned parcel and continuing in a westerly direction to the northwest
22 corner of PIN 190677, thence in a southerly direction along the western boundary of
23 aforementioned parcel to the northern right-of-way of Lake Winds Trail, thence in a westerly
24 direction along the northern right-of-way of Lake Winds Trail to the southeastern corner of PIN
25 190665, thence in a northerly direction along the eastern boundary of aforementioned parcel,
26 thence in a westerly direction along the northern boundary of aforementioned parcel and
27 continuing to the northeastern boundary of PIN 190671, thence in a northerly direction and
28 continuing to the northeast corner of PIN 190627 (located north of PIN 190628), thence in a
29 westerly direction along the northern boundary of aforementioned parcel and continuing in a
30 westerly direction to PIN 190697, thence in a northeasterly direction along the eastern
31 boundary of aforementioned parcel, thence in a northwesterly direction along the northeastern
32 boundary of aforementioned parcel, thence in a southwesterly direction along the northwestern
33 boundary of aforementioned parcel, thence in a northwesterly direction along the eastern
34 right-of-way of Lake Winds Trail, thence in a southwesterly direction crossing Lake Winds
35 Trail and continuing to the northwest corner of PIN 190688, thence in a southeasterly direction
36 along the western boundary of aforementioned parcel, thence in a westerly direction along the
37 northern boundary of PIN 190627 (located west of PIN 190688) to the southeast corner of PIN
38 189793, thence in a northerly direction along the eastern boundary of aforementioned parcel
39 and continuing to the southwest corner of PIN 190638, thence in an easterly direction along the
40 southern boundary of aforementioned parcel and continuing in an easterly direction to the
41 northwest corner of PIN 190629, thence in a southerly direction along the western boundary of
42 aforementioned parcel, thence in an easterly direction along the southern boundary of
43 aforementioned parcel to the western right-of-way of Moore's Mill Road, thence in a northerly
44 direction along the western right-of-way of Moore's Mill Road to the northwest corner of PIN
45 190706, thence in an easterly direction along the northern boundary of aforementioned parcel,
46 thence in a southerly direction along the eastern boundary of aforementioned parcel and
47 continuing across Red Mountain Road along the western boundary of PIN 190587, thence in an
48 easterly direction along the southern boundary of aforementioned parcel, thence in a northerly
49 direction along the eastern boundary of aforementioned parcel, thence in an easterly direction
50 along the southern boundary of PIN 190704 and continuing in an easterly direction to the Flat
51 River, thence in a northerly and northeasterly direction along the Flat River to the bridge over

1 the Flat River on Red Mountain Road. PIN 190576 and PIN 189728 are located within the
2 contiguous outer boundaries of the Town of Rougemont, but are excluded from the corporate
3 boundaries of the Town.

4 "ARTICLE III. GOVERNING BODY.

5 "Section 3.1. **Structure of Governing Body; Number of Members.** The governing body
6 of the Town of Rougemont is the Town Council, which shall consist of a Mayor and four
7 members.

8 "Section 3.2. **Manner of Electing Town Council.** The qualified voters of the entire Town
9 shall elect the members of the Town Council and, except as provided in this section, they shall
10 serve four-year terms. In 2011, the three candidates receiving the highest numbers of votes
11 shall be elected to four-year terms and the two candidates receiving the next highest numbers of
12 votes shall be elected to two-year terms. In 2013, and quadrennially thereafter, two members
13 shall be elected to four-year terms. In 2015, and quadrennially thereafter, three members shall
14 be elected to four-year terms.

15 "Section 3.3. **Manner of Electing Mayor; Term of Office; Duties.** At the organizational
16 meeting following each municipal election, the Town Council shall elect one of its members as
17 Mayor, and the Mayor shall serve at the pleasure of the Town Council. The Mayor shall be the
18 official head of Town government, shall preside at all meetings of the Town Council, shall
19 have the right to vote only when there is an equal division on any question or matter before the
20 Town Council, and shall exercise the powers and duties conferred by law or as directed by the
21 Town Council.

22 "Section 3.4. **Residency Requirement.** Members of the governing body of the Town of
23 Rougemont, whether elected or appointed, must be qualified voters who reside within the
24 corporate limits of the Town in order to qualify to take, hold, and continue in office.

25 "ARTICLE IV. ELECTIONS.

26 "Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan
27 basis and the results determined by a plurality as provided in G.S. 163-292.

28 "Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter
29 163 of the General Statutes, with the first regular municipal election to be held on November 8,
30 2011.

31 "Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be
32 held only as provided by the general law of North Carolina, local acts of the General Assembly,
33 or as provided for in this Charter.

34 "ARTICLE V. ADMINISTRATION.

35 "Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town shall operate
36 under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter
37 160A of the General Statutes.

38 "Section 5.2. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed
39 to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the
40 Town, advise Town officials, and perform other duties as required by law or as directed by the
41 Town Council.

42 "Section 5.3. **Town Clerk.** The Town Council shall appoint a Town Clerk who shall
43 perform duties as required by law or as directed by the Town Council. The Town Clerk shall
44 serve at the pleasure of the Town Council.

45 "Section 5.4. **Other Officers and Employees.** The Town Council may appoint other
46 officers and positions as deemed appropriate, subject to the requirements of general law.

47 "Section 5.5. **Consolidation of Functions.** Where positions are not incompatible, the Town
48 Council may combine in one person the powers and duties of two or more officers created or
49 authorized by this Charter.

50 "Section 5.6. **Compensation for Mayor and Town Council Members.** The Mayor and
51 members of the Town Council shall be reimbursed for ordinary and necessary expenses and

1 may receive salary and honoraria only upon a majority vote of the qualified voters of the Town
2 who vote on the question in a special referendum.

3 "ARTICLE VI. TAXES AND BUDGET ORDINANCE.

4 "Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and
5 fees authorized by general law. An affirmative vote equal to a majority of all the members of
6 the Town Council shall be required to change the ad valorem tax from that rate established
7 during the prior fiscal year.

8 "Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2011, the citizens
9 and property in the Town of Rougemont shall be subject to municipal taxes levied for the year
10 beginning July 1, 2011, and for that purpose the Town shall obtain from Durham County a
11 record of property in the area herein incorporated which was listed for property taxes as of
12 January 1, 2011.

13 "Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2011-2012
14 without following the timetable in the Local Government Budget and Fiscal Control Act, but
15 shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year
16 2011-2012, ad valorem taxes may be paid at par or face amount within 90 days of the adoption
17 of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360.

18 "Section 6.4. **Ad Valorem Taxes.** The Town Council shall not levy an ad valorem tax at a
19 rate more than \$0.05/\$100.00 valuation, except for fire protection services, without the
20 approval of the qualified voters of the Town of Rougemont. The election on the question of
21 increasing the ad valorem tax rate shall be conducted in accordance with G.S. 160A-209.

22 "ARTICLE VII. ORDINANCES.

23 "Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of
24 Rougemont is authorized to adopt such ordinances as the Town Council deems necessary for
25 the governance of the Town.

26 "ARTICLE VIII. MISCELLANEOUS.

27 "Section 8.1. **Enlargement of Town Council.** The qualified voters of the Town of
28 Rougemont may seek to enlarge the number of members of the Town Council by submitting a
29 petition to that effect signed by twenty percent (20%) of the qualified voters. Upon the passage
30 of a resolution as provided in G.S. 160A-102 or upon receipt of a valid petition, the Town
31 Council shall immediately take steps as provided in Part 4 of Article 5 of Chapter 160A of the
32 General Statutes to determine by referendum whether the number of members of the Town
33 Council should be increased. If a majority of the votes cast in the referendum are in the
34 affirmative, a special election shall be held at the earliest possible date to elect the additional
35 members required to enlarge the Town Council to the number set forth in the referendum.

36 "Section 8.2. **Amendments to Charter.** The Town Council may propose and enact
37 amendments to this Charter in accordance with Part 4 of Article 5 of Chapter 160A of the
38 General Statutes. No amendment to this Charter shall become effective until public notice is
39 given and a public hearing is held to receive comments on the proposed Charter amendment.
40 Notwithstanding G.S. 160A-103, upon receipt of a referendum petition bearing the signatures
41 and residence addresses of twenty percent (20%) of the qualified voters of the Town, the Town
42 Council shall submit ordinances adopted under G.S. 160A-102 to a vote of the people.

43 "Section 8.3. **Provision of Services and Administration of Functions.** The Town Council
44 may enter into agreements with other governmental bodies and private enterprises for the
45 provision of services and administration of corporate functions in order to provide the services
46 and administer the functions in the most efficient and cost-effective manner.

47 "Section 8.4. **Conflict of Interest.** No person, or a member of the person's immediate
48 family, who is employed by or is an official of the Town of Rougemont shall do business with
49 the Town unless the Town Council specifically approves the activity. All appointed officials of
50 the Town must inform the Town Council of any conflicts of interest and the failure to so inform
51 shall constitute grounds for immediate dismissal for cause. No official of the Town may accept

1 any gratuity from any business, person, or other official if the gratuity is related to his or her
2 official duties.

3 "Section 8.5. **Nepotism.** No person who is an immediate family member of an elected
4 official of the Town of Rougemont shall be appointed to or employed in a position within
5 Town government unless the appointment or employment is approved by the entire Town
6 Council.

7 "Section 8.6. **Annexation.** The Town of Rougemont shall not extend its boundaries into an
8 adjoining county.

9 "Section 8.7. **Planning and Regulation of Development.** (a) Notwithstanding any other
10 provision of this Charter or general law, including the provisions of Article 19 of Chapter 160A
11 of the General Statutes, the Town shall not adopt any ordinance creating a planning agency,
12 regulating or restricting the subdivision, zoning, or use of any land, or providing for building
13 inspections. All planning duties, regulation of development, and building inspections within the
14 jurisdiction of the Town shall be conducted as if the area was not in the corporate limits of any
15 municipality.

16 (b) The provisions of subsection (a) of this section shall not apply if the County of Durham
17 and the City of Durham, by amendment to their zoning ordinances, agree to allow the Town to
18 adopt and enforce ordinances under Article 19 of Chapter 160A of the General Statutes.

19 "ARTICLE IX. SPECIAL PROVISIONS.

20 "Section 9.1. **Fire Protection.** The Town of Rougemont shall contract with the Bahama
21 Volunteer Fire, Rescue, and EMS Company, Inc., to provide fire protection for the Town. The
22 contract terms and amount paid by the Town of Rougemont to the Bahama Volunteer Fire,
23 Rescue, and EMS Company, Inc., shall be mutually agreed upon and annually renewed by the
24 Board of Directors of the Bahama Volunteer Fire, Rescue, EMS Company, Inc., and the Town
25 Council.

26 "Section 9.2. **Safety Protection.** The Town of Rougemont shall contract with the Durham
27 County Sheriff's Department to provide safety protection for the Town. The contract terms and
28 amount paid by the Town of Rougemont to the Durham County Sheriff's Department shall be
29 mutually agreed upon and annually renewed by the Durham County Commissioners and the
30 Town Council."

31 **SECTION 2.** The Durham County Board of Elections shall conduct an election on
32 November 8, 2011, for the purpose of submission to the qualified voters for the area described
33 in Section 2.1 of the Charter of the Town of Rougemont the question of whether or not the area
34 shall be incorporated as the Town of Rougemont. Registration for the election shall be
35 conducted in accordance with G.S. 163-288.2.

36 **SECTION 3.** In the election, the question on the ballot shall be:

37 " [] FOR [] AGAINST

38 Incorporation of the Town of Rougemont."

39 **SECTION 4.** In the election, if a majority of the votes are cast "FOR Incorporation
40 of the Town of Rougemont," Section 1 of this act shall become effective on the date that the
41 Durham County Board of Elections certifies the results of the election. Otherwise, Section 1 of
42 this act shall have no force and effect.

43 **SECTION 5.** At the same time as the election held under Section 2 of this act, the
44 Durham County Board of Elections shall hold an election for the initial Town Council as
45 provided in Articles III and IV of the proposed Charter of the Town of Rougemont. If the
46 majority of votes is not cast "FOR Incorporation of the Town of Rougemont," the election of
47 officers is null and void. The filing period for candidacies is the same as provided by
48 G.S. 163-294.

49 **SECTION 6.** If the Charter of the Town of Rougemont, as enacted by Section 1 of
50 this act, becomes effective, and the City of Durham and Durham County subsequently become
51 a unified government under the provisions of any general or local law, the Town of

1 Rougemont's Charter shall be repealed and the Town shall comply with any and all
2 requirements prescribed by the North Carolina General Assembly to ensure that the unified
3 government of the City of Durham and Durham County assume all the powers, duties,
4 functions, rights, privileges, and immunities authorized by general or local law over the area
5 described in Section 2.1 of the Charter of the Town of Rougemont, as enacted by Section 1 of
6 this act.

7 **SECTION 7.** This act is effective when it becomes law.



HOUSE BILL 292: Incorporate Rougemont

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Wilkins
Analysis of: First Edition

Date: May 18, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 292 incorporates the Town of Rougemont in Durham County, subject to a referendum.*

CURRENT LAW: Municipalities may be created by the General Assembly, with powers and duties it deems advisable, pursuant to Article VII, Section 1 of the North Carolina Constitution. Rule 35.1(b) of the House Rules requires that a legislative proposal proposing incorporation must have attached to its bill jacket a report of the Joint Municipal Incorporations Commission prior to a favorable report by a committee of the House. Article 20 of Chapter 120 of the General Statutes creates the Joint Municipal Incorporation Commission and sets forth the criteria for review of a proposed incorporation.

BILL ANALYSIS: House Bill 292 would incorporate the Town of Rougemont in Durham County, subject to a referendum on November 8, 2011.

The proposed Charter of Rougemont includes standard incorporation provisions and provides:

- A Town Council of four members and a Mayor. The Council members shall be elected on a nonpartisan, at-large basis for staggered four-year terms. The mayor is to be elected for a two-year term.
- The Mayor and Town Council may receive a salary only if approved by a majority of the town voters in a special referendum.
- Ad valorem taxes are limited to \$0.05/\$100, except for fire protection, unless approved by a majority of the town voters.
- Annexation into an adjoining county is prohibited.
- The Town shall not adopt any ordinance creating a planning agency, regulating or restricting the subdivision, zoning, or use of any land, or providing for building inspections unless the County of Durham and the City of Durham, by amendment to their zoning ordinances, agree to allow the Town to adopt and enforce ordinances under Article 19 (Planning and Regulation of Development) of Chapter 160A of the General Statutes.
- The Town shall contract with the Bahama Volunteer Fire, Rescue, and EMS Company, Inc., to provide fire protection for the Town.
- The Town of Rougemont shall contract with the Durham County Sheriff's Department to provide safety protection for the Town.

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

BACKGROUND: The proposed incorporation of the Town of Rougemont received a favorable recommendation from the Joint Legislative Commission on Municipal Incorporation in its report, dated July 13, 2005, revised as to development only, May 30, 2007.

Giles Perry, counsel to House Government, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 605
PROPOSED COMMITTEE SUBSTITUTE H605-CSSV-19 [v.1]

5/17/2011 8:17:48 PM

Short Title: Expand Setoff Debt Collection Act.

(Public)

Sponsors:

Referred to:

April 5, 2011

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A BILL TO BE ENTITLED
AN ACT TO EXPAND THE DEFINITION OF LOCAL AGENCY FOR PURPOSES OF THE
DEBT SETOFF COLLECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105A-2 reads as rewritten:

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

- ...
 - (6) Local agency. – Any of the following:
 - a. A county, to the extent it is not considered a State agency.
 - b. A municipality.
 - c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
 - d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.
 - e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes or other authorizing legislation.
 - f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
 - g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.
 - h. A regional solid waste management authority created under Article 22 of Chapter 153A of the General Statutes.

...."

SECTION 2. This act becomes effective January 1, 2011, and applies to tax refunds determined by the Department on or after that date.





HOUSE BILL 605: Expand Setoff Debt Collection Act

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. McElraft
Analysis of: First Edition

Date: May 18, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 605 would add a regional solid waste management authority to the list of local agencies authorized under the Setoff Debt Collection Act to collect debts owed to them by obtaining a setoff against a debtor's North Carolina tax refund. The PCS corrects the effective date to reflect the fact that the Setoff Debt Collection Act was expanded in 2010 to apply to any type of tax refund.*

CURRENT LAW: The Setoff Debt Collection Act authorizes State and local agencies to collect debts by diverting part or all of a debtor's North Carolina tax refund to pay a debt that an individual or a business owes to a particular agency. Before January 1, 2001, the setoff program was open only to State agencies. Now, counties and municipalities participate through a clearinghouse. Because there are so many local agencies, funneling their claims through a clearinghouse avoids an undue administrative burden on the Department of Revenue. A \$15.00 collection assistance fee is added to each local agency debt submitted for setoff, which is remitted to the clearinghouse that submitted the debt. The fee does not, however, apply to child support debts. While the use of debt setoff for State agencies is mandatory, usage by local agencies is optional. The Act also only applies to debts that are at least \$50 and to a refund that is at least this same amount. Local agencies are required to give written notice to the debtor of the intent to submit the debt for setoff, explaining the basis for the agency's claim, that the agency intends to apply the debtor's refund against the debt, and that an administrative fee of \$15 will be charged.

Currently, local agencies include:

- A county
- A municipality
- A water and sewer authority
- A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both
- A public health authority
- A metropolitan sewerage district
- A sanitary district

BILL ANALYSIS: This bill would allow a regional solid waste management authority created under Article 22 of Chapter 153A of the General Statutes to participate under the Setoff Debt Collection Act in the same manner as counties and cities. Like counties and cities, these agencies would be authorized to submit their debts for collection by setoff through a local clearinghouse only after providing the debtor with notice, an opportunity to be heard before the authority, and an appeal process pursuant to the Administrative Procedure Act.

Under G.S. 153A-421, any two or more local government agencies can create a regional solid waste management authority by adopting substantially identical resolutions creating the authority, which is generally referred to as the authority's charter. According to G.S. 153A-422, the purpose of a regional solid waste management authority is to provide environmentally sound, cost effective management of

House Bill 605

Page 2

solid waste, including storage, collection, transporting, separation, processing, recycling, and disposal of solid waste in order to protect public safety, health and welfare.

G.S. 153A-427 enumerates the powers of a regional solid waste management authority, including the power to set and collect reasonable fees and charges to offset operating costs, debt service, and capital reserve requirements of the authority.

EFFECTIVE DATE: This act is effective January 1, 2011, and applies to tax refunds determined by the Department on or after that date.

Kelly Quick, Research Assistant to House Government, substantially contributed to this summary.

H605-SMSV-46(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 596
PROPOSED COMMITTEE SUBSTITUTE H596-CSTM-6 [v.4]

5/17/2011 8:59:29 PM

Short Title: Transfer Surplus Prop. to Retirement System.

(Public)

Sponsors:

Referred to:

April 5, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THAT THE PROCEEDS OF CERTAIN DISPOSITIONS OF
3 STATE-OWNED REAL PROPERTY BE USED IN PART TO SUPPORT THE
4 GENERAL FUND, IN PART TO SUPPORT THE TEACHERS' AND STATE
5 EMPLOYEES' RETIREMENT SYSTEM OF NORTH CAROLINA, AND IN PART TO
6 SUPPORT THE AGENCIES TO WHICH THE PROPERTY WAS ALLOCATED; AND
7 TO APPROPRIATE FUNDS FOR THESE PURPOSES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 146-30(a) reads as rewritten:

10 "§ 146-30. Application of net proceeds.

11 (a) The net proceeds of any disposition made in accordance with this Subchapter shall
12 be handled in accordance with the following priority: First, in accordance with the provisions
13 of any trust or other instrument of title whereby title to such real property was heretofore
14 acquired or is hereafter acquired; second, as provided by any other act of the General
15 Assembly; third, ~~the net proceeds shall be deposited with the State Treasurer. Provided,~~
16 ~~however, nothing herein shall be construed as prohibiting the disposition of any State lands by~~
17 ~~exchange for other lands, but if the appraised value in fee simple of any property involved in~~
18 ~~the exchange is at least twenty five thousand dollars (\$25,000), then such exchange may not be~~
19 ~~made without consultation with the Joint Legislative Commission on Governmental~~
20 ~~Operations as follows:~~

- 21 (1) 25% to the State agency to which the property was allocated. These funds
22 may be used for any purpose authorized by law and are hereby appropriated.
- 23 (2) 25% to the State Treasurer to support the General Fund.
- 24 (3) 50% to the State Treasurer to be deposited in the Teachers' and State
25 Employees' Retirement System of North Carolina. These funds are hereby
26 appropriated."

27 SECTION 2. G.S. 146-30 is amended by adding a new subsection to read:

28 "(a1) Nothing in this section shall be construed to prohibit the disposition of any State
29 lands by exchange for other lands, but if the appraised value in fee simple of any property
30 involved in the exchange is at least twenty-five thousand dollars (\$25,000), then such exchange
31 may not be made without consultation with the Joint Legislative Commission on Governmental
32 Operations."

33 SECTION 3. This act becomes effective July 1, 2011, and expires January 1, 2016.





HOUSE BILL 596: Transfer Surplus Prop. to Retirement System

2011-2012 General Assembly

Committee:	House Finance	Date:	May 17, 2011
Introduced by:	Reps. Hastings, Stam, Crawford	Prepared by:	Greg Roney
Analysis of:	PCS to First Edition H596-CSTM-6		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 596 would modify the allocation of the proceeds from the disposition of surplus real property by dividing it as follows: 25% to the State agency allocated the property, 25% to the General Fund, and 50% to the Teachers' and State Employees' Retirement System.*

CURRENT LAW: G.S. 146-27 authorizes the Department of Administration to initiate proceedings to dispose of surplus land. G.S. 146-28 provides that State agencies may voluntarily file an application with the Department of Administration to initiate the disposition of surplus land. The Department of Administration completes the disposition with the approval the Governor and the Council of State. For proposed dispositions of surplus land with an appraised value of \$25,000 or more, consultation with the Joint Legislative Commission on Governmental Operations is required. The net proceeds from the disposition of surplus land is paid into the General Fund.

BILL ANALYSIS: The PCS for House Bill 596 would pay 25% of the net proceeds from the sale of surplus land to the General Fund and redirect the remaining 75% of the net proceeds to the State agency currently allocated the land (25%) and the Teachers' and State Employees' Retirement System (50%).

BACKGROUND: The PCS for House Bill 596 creates an incentive for State agencies to voluntarily identify surplus land. The benefit of any increase in the disposition of surplus land is paid to the Teachers' and State Employees' Retirement System which will receive 50% of the net proceeds.

EFFECTIVE DATE: House Bill 596 (proposed committee substitute) is effective July 1, 2011 and sunsets January 1, 2016.

H596-SMTM-15(CSTM-6) v2



North Carolina General Assembly
House Committee on Finance

Minutes

~
May 19, 2011

The House Committee on Finance met on Thursday, May 19, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chair Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Earl Coker and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Judy Collier, Heather Fennell, Trina Griffin, Sandra Johnson, Giles Perry, Greg Roney, and Brian Slivka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Setzer called the meeting to order at 8:30 am and recognized the four (4) pages present: (1) Katie Hovey of Pender County sponsored by Representative Justice; (2) Elizabeth Moore of Transylvania County sponsored by Representative Guice; (3) Holly Furches of Davie County sponsored by Representative Howard; and (4) Emily Jones of Davie County sponsored by Representative Howard.

The first bill to be heard by the Committee was **SB 200 Alamance/Orange 9% Boundary** (see **attachment 3**). Chairman Setzer recognized Representative Ingle to explain the bill. The Chair recognized Representative Faison who moved that SB 200 be given a favorable report. The motion carried.

The next bill considered by the Committee was **SB 201 Alamance/Orange Boundary** (see **attachment 4**). Chairman Setzer recognized Representative Ingle to explain the bill. The Chair then recognized Representative Faison who moved that SB 201 be given a favorable report. The motion carried.

Next before the Committee was **HB 206 Modify Property Tax Base Exclusions** (see **attachment 5**). Chairman Setzer recognized Representative Ross to explain the bill. The Chair then recognized Representative Carney who moved that HB 206 be given a favorable report. The motion carried.

The next bill before the Committee was **HB 30 Allow Wage Garnishment to Satisfy Judgments** (see **attachment 6**). Chairman Setzer recognized Representative McGee who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then

recognized Representative Moore to explain the proposed committee substitute. The Chair then recognized Representative McGee who moved that HB 30 be given a favorable report to the proposed committee substitute #2, unfavorable report to committee substitute #1. The motion carried.

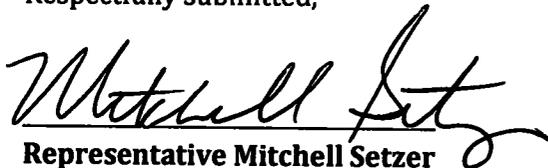
The next bill before the Committee was **HB 298 Insurance Amendments** (see attachment 7). The Chair recognized Representative Ross who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer then recognized Representative Dockham to explain the proposed committee substitute. The Chair recognized John Bodie, Independent Insurance Agents who spoke in favor of the bill. Chairman Setzer recognized Representative Ross who moved that HB 298 be given a favorable report to the proposed committee substitute #2, unfavorable report to committee substitute #1. The motion carried.

The next bill heard by Committee was **HB 596 Transfer Surplus Prop. To Retirement System** (see attachment 8). Chairman Setzer recognized Representative Carney who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representative Stam to explain the bill. The Chair then recognized Representative Hackney who sent forth amendment 1 that moved to amend the bill on page 1, line 21 and on page 1, lines 24-25 (see attachment 9). Being no further discussion or debate, the Chair called for the ayes and noes on amendment 1. The motion to adopt amendment 1 passed. The motion carried. Chairman Setzer then recognized Representative Stam who moved that HB 596 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

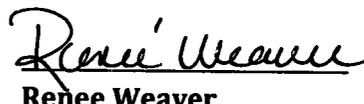
Chairman Setzer then stated that the next bill **HB 867 Google for Education** (see attachment 10) was before the Committee only for discussion purposes only and that there would be no vote on the bill. Representative Starnes was called upon to explain the bill. Representative Starnes answered questions from members. Chairman Setzer brought the discussion to an end with the reminder that no vote was to be taken on the bill.

There being no further business presently before the Committee, Chairman Setzer adjourned the meeting at 9:45 am.

Respectfully submitted,



Representative Mitchell Setzer
Presiding Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 30 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS.

With a favorable report as to Committee substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 206 A BILL TO BE ENTITLED AN ACT TO MODIFY THE PROPERTY TAX BASE EXCLUSIONS.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 298 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES IN THE INSURANCE LAWS TO PRIVATIZE ONLINE AND ADMINISTRATIVE PROCESSES FOR LICENSE APPLICANTS, CODIFY THE EXISTING SENIORS' HEALTH INSURANCE INFORMATION PROGRAM, ENSURE ACCURACY IN CERTIFICATES OF INSURANCE, REQUIRE PRIOR APPROVAL OF SMALL GROUP HEALTH INSURANCE RATES AND ENCOURAGE THE SALE OF CHILD-ONLY HEALTH INSURANCE POLICIES, AMEND THE RISK-BASED CAPITAL LAW TO MAINTAIN NAIC ACCREDITATION, PROVIDE AN EXEMPTION FOR LICENSING OF CLAIMS INPUT EMPLOYEES FOR PORTABLE ELECTRONIC DEVICES, PROHIBIT FEDERAL PREEMPTION OF CROP ADJUSTERS' REGULATION, AND EASE THE REGULATORY BURDEN ON THE NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION AND THE ASSOCIATION AGGREGATE SECURITY SYSTEM.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 596 A BILL TO BE ENTITLED AN ACT TO FACILITATE THE IDENTIFICATION OF SURPLUS STATE-OWNED REAL PROPERTY; TO REQUIRE THAT THE OWNERSHIP OF THAT PROPERTY BE TRANSFERRED TO THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; TO REQUIRE THE STATE TREASURER TO MANAGE THAT PROPERTY FOR THE BENEFIT OF THE STATE RETIREMENT SYSTEM; AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 200 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ALAMANCE COUNTY AND ORANGE COUNTY TO RECOMMEND THE LOCATION OF NINE PERCENT OF THE COMMON BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY SUBSEQUENT TO THE 2010/2011 RESURVEY OF THE HISTORIC ORANGE COUNTY/ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING ALAMANCE COUNTY.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 201 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE COMMON BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY SUBSEQUENT TO THE 2010/2011 RESURVEYS OF THE TRANSITIONED PROPERTIES, AS AUTHORIZED BY THE NORTH CAROLINA GENERAL ASSEMBLY BY SESSION LAW 2010-61 ENABLING THE CHANGES IN THE HISTORIC ORANGE COUNTY/ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING ALAMANCE COUNTY, AND TO AMEND SOME SECTIONS OF SESSION LAW 2010-61.

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 _____.

AGENDA
House Finance Committee

Thursday, May 19, 2011
8:30 am

Room 544 LOB

Chaired by: Representative Mitchell Setzer

Call to Order

Introduction of Pages

Bills:

HB 30 Allow Wage Garnishment To Satisfy Judgments
Representative T. Moore

HB 206 Modify Property Tax Base Exclusion
Representatives Ross, Jackson, Gill

HB 298 Insurance Amendments - AB
Representative Dockham

HB 596 Transfer Surplus Prop. To Retirement System
Representatives Hastings, Stam, Crawford

HB 867 Repeal Remote Retailer Click-Through
Representative Starnes

SB 200 Alamance/Orange 9% Boundary
Senators Gunn, Kinnaird

SB 201 Alamance/Orange Boundary
Senators Gunn, Kinnaird

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAY 19, 2011 Room: 544

*Name: Holly Furches

County: Davie

Sponsor: Howard

*Name: Emily Jones

County: Davie

Sponsor: Howard

*Name: Elizabeth Moore

County: Trampham

Sponsor: Diana

*Name: Katie Hovey

County: Pender

Sponsor: Caroline Justice

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: KEN KIRBY

2. Name: JOHN BRANDON

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

May 19, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mitch Leonard	SEANK
Doug Miskew	PSG
Barbara Moore	Conf of Clerks of Spct
Tony Brasley	Town of Garner / GEDC
Katie Hallaway	LOWE'S
Andy Ellen	NCRMA
Paul St	NCBA
Monte Ray	NMRS
Jodie Cashlon	NC Chamber
Allison Cooper	Bailey & Davis
Bill Scobbin	ITC
Rick Zechini	Progress Energy

VISITOR REGISTRATION SHEET

House Finance

May 19, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
<i>McSauer</i>	<i>DCE</i>

VISITOR REGISTRATION SHEET

House Finance

May 19, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Solari	DST
David Starling	DST
John Harcher	MA&S
Cathy Smith	SCF
William Zeke Creech	DOA
Chris Agner	DOA
Annaliese Bolph	DKNC
David Baker	NCOR
Paul H. Johnson	Tulane
Zed Bay	Smith Moore
Mildred Spearman	NCAOC

VISITOR REGISTRATION SHEET

House Finance

May 19, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Canaan Huie	NC DOR
TARA FIELDS	Benchmark
J Bode	BCS
STUART POWELL	11AUC
John McCallan	MFS
Justin Brackett	Rep. T. Moore
Laehelle Pulliam	Dmr Wainwright's office
Bob Heath	McGuire Woods
Jessi Hayes	NEHBA
Bryan Heckle	NC DOT
Rose Williams	NC DOT

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 200*

Short Title: Alamance/Orange 9% Boundary. (Local)

Sponsors: Senators Gunn and Kinnaird.

Referred to: State and Local Government.

March 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE ALAMANCE COUNTY AND ORANGE COUNTY TO
3 RECOMMEND THE LOCATION OF NINE PERCENT OF THE COMMON
4 BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY
5 SUBSEQUENT TO THE 2010/2011 RESURVEY OF THE HISTORIC ORANGE
6 COUNTY/ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849
7 SURVEY ESTABLISHING ALAMANCE COUNTY.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. The historic boundary line forming Alamance County from Orange
10 County was described and surveyed in 1849. In the subsequent 160 years, this line became
11 uncertain, resulting in unintentional modifications to the boundary line affecting taxation,
12 school attendance, zoning maps, and elections within and among Alamance County, Orange
13 County, and the Town of Mebane, North Carolina. Pursuant to G.S. 153A-18(a) entitled
14 "Uncertain or Disputed Boundary," both county boards of commissioners passed resolutions
15 (Alamance County, December 17, 2007, and Orange County, January 18, 2008) to request that
16 North Carolina Geodetic Survey (NCGS) perform a preliminary resurvey and present a
17 proposed map for consideration by both counties.

18 SECTION 2. The Alamance County Board of Commissioners agreed, by vote on
19 April 21, 2008, and the Orange County Board of Commissioners on May 20, 2008, to approve
20 authorizing NCGS to conduct the preliminary survey and the placing of monuments by NCGS
21 consistent with their research to form a boundary baseline. On July 8, 2010, the North Carolina
22 General Assembly enacted S.L. 2010-61, which enabled Alamance County and Orange County
23 to transition properties between the two counties for the purpose of recommending to the North
24 Carolina General Assembly a mutually agreed upon boundary line between the two counties.

25 SECTION 3. Following an extended process pursuant to the terms of S.L.
26 2010-61, Alamance County and Orange County have agreed upon and have recommended the
27 General Assembly, through a separate local act, establish and adopt ninety-one percent (91%)
28 of the boundary line separating Alamance County and Orange County.

29 SECTION 4. The Alamance County and Orange County Boards of Commissioners
30 require further time to determine the most appropriate location of the final nine percent (9%) of
31 the boundary line separating Alamance County and Orange County in order to make a final
32 recommendation to the General Assembly. The Alamance County Board of Commissioners at
33 its regular meeting December 6, 2010, and the Orange County Board of Commissioners at its
34 regular meeting December 14, 2010, mutually agreed upon ninety-one percent (91%) of the
35 boundary line. The remaining nine percent (9%) portion of the boundary line not described and



1 approved by the county commissioners at their respective meetings December 6, 2010, and
2 December 14, 2010, shall be resurveyed as set out in Section 5(b) of this act.

3 **SECTION 5.(a)** The Alamance County and Orange County Boards of
4 Commissioners may review the remaining nine percent (9%) of the boundary separating the
5 two counties and shall determine, in their discretion, the most appropriate location for a
6 boundary line separating the two counties along the remaining nine percent (9%) of the
7 boundary area. The Boards of Commissioners shall make the determination of the most
8 appropriate location for a boundary line on or before October 31, 2011.

9 **SECTION 5.(b)** Alamance County and Orange County shall cause areas within the
10 nine percent (9%) of the boundary area to be surveyed for purposes of locating a boundary line.
11 The counties shall not be responsible for the costs of such surveys where owners of property
12 located within the remaining nine percent (9%) of the boundary area request their property, or
13 any portion thereof, be located within a specific county. All such surveys shall be completed
14 by January 31, 2012. A lien in the form of a tax lien under Chapter 105 of the General Statutes
15 may be placed on an owner's property to recover the costs of any surveys for which the
16 counties have advanced funds, and said lien may be enforced under the laws available for the
17 collection of taxes. A lien for this purpose may also be placed on any property involved in a
18 transition in whole or in part from one county to the other pursuant to S.L. 2010-61 or any other
19 local act regarding the establishment of the Alamance County/Orange County boundary line.

20 **SECTION 5.(c)** The Alamance County and Orange County Boards of
21 Commissioners shall, prior to the reconvening of the 2011 Regular Session of the General
22 Assembly in 2012, submit a recommendation in the form of a local bill for the location of a
23 final boundary line along the remaining nine percent (9%) of the area separating the two
24 counties.

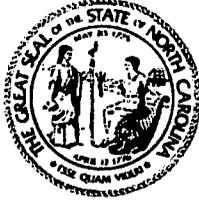
25 **SECTION 5.(d)** All owners of property within the remaining nine percent (9%) of
26 the boundary area shall be notified in writing via first class United States mail not less than 30
27 days prior to a public hearing being conducted

28 **SECTION 5.(e)** Any such owners of property shall have the right to address the
29 Alamance County and Orange County Boards of Commissioners regarding the status of their
30 property located within the nine percent (9%) area, as that status relates to the Alamance
31 County/Orange County boundary, at any public regularly scheduled meeting at which public
32 comment is traditionally accepted.

33 **SECTION 6.** The establishment of a county boundary line is, pursuant to Section 1
34 of Article VII of the North Carolina Constitution, the responsibility of the North Carolina
35 General Assembly. Further, it is vital to the State of North Carolina and all affected local
36 governments that county boundary lines be fixed and any uncertainty as to the location of
37 county boundary lines be resolved. For this reason and in the interest of justice, neither
38 Alamance County nor Orange County, nor any agent, employee, or appointed or elected
39 official, shall be liable to any individual, group, organization, for-profit or not-for-profit
40 business entity of any kind, of governmental entity or agency of any type or kind for any
41 damages, costs, fees, or fines, and no court action shall be maintained against said counties,
42 agents, employees, or officials for any recommendation, act, failure to act, or conduct related to
43 S.L. 2010-61, any pending local bill which subsequently becomes law related to the location of
44 the Alamance County/Orange County Boundary Line, this act, or the adoption of a fixed
45 boundary line separating the two counties. Effective upon this act becoming law, Alamance
46 County and Orange County, their officials, employees, and agents are released from all liability
47 for any claims made, and no court action shall be maintained against said counties, officials,
48 employees, and agents for any act or failure to act pursuant to the terms of this act or S.L.
49 2010-61, and no further relief shall be granted or cause of action sustained except as provided
50 herein.

1 **SECTION 7.** Pending the establishment of a final boundary line separating
2 Alamance County and Orange County, the two counties shall maintain, in the nine percent
3 (9%) boundary area, the currently recognized boundary line for all governmental purposes,
4 including, but not limited to, taxation, elections, emergency services, zoning, and education.

5 **SECTION 8.** This act is effective when it becomes law.



SENATE BILL 200: Alamance/Orange 9% Boundary

2011-2012 General Assembly

Committee: House Finance	Date: May 17, 2011
Introduced by: Sens. Gunn, Kinnaird	Prepared by: Cindy Avrette
Analysis of: First Edition	Committee Counsel

SUMMARY: *Senate Bill 200 would authorize Alamance County and Orange County to recommend the location of 9% of the common boundary between the two counties subsequent to the 2010/2011 resurvey of the historic common boundary line as described in the 1849 survey establishing Alamance County. This bill is identical to House Bill 213, sponsored by Representatives Ingle, Bordsen, Insko, and Faison. House Bill 213 received a favorable report from the House Committee on Government on May 5, 2011.*

BILL ANALYSIS:

Section 1 notes that the historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. In the subsequent 160 years, this line became uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections.

Section 2 notes that both boards of commissioners authorized the North Carolina Geodetic Survey (NCGS) to conduct a preliminary resurvey. Through the passage of S.L. 2010-61, the General Assembly enabled Alamance County and Orange County to transition properties between the two counties and to recommend a mutually agreed upon boundary line between the two counties.

Section 3 explains that the counties have agreed upon and have recommended that the General Assembly, through a separate local act, establish and adopt 91% of the boundary line separating the counties. Senate Bill 201 addresses this issue.

Section 4 notes that the boards need more time to determine the most appropriate location of the final 9% of the boundary line. The boards mutually agreed on 91% of the boundary line. The remaining 9% of the boundary line not described and approved by the county commissioners at their respective meetings must be resurveyed as set out in Section 5(b) of this act.

Section 5.(a) provides that the boards may review the remaining 9% of the boundary separating the counties and shall determine, in their discretion, the most appropriate location for a boundary line separating the two counties along the remaining 9% of the boundary area. The boards must make the determination of the most appropriate location for a boundary line on or before October 31, 2011.

Section 5.(b) requires Alamance County and Orange County to have areas within the 9% of the boundary area to be surveyed. The counties are not responsible for the costs of the surveys where owners of property located within the remaining nine percent (9%) of the boundary area request that their property be located within a specific county. All surveys must be completed by January 31, 2012. A tax lien may be placed on an owner's property to recover the costs of any surveys for which the counties have advanced funds, and the lien may be enforced under the laws available for the collection of taxes.

Section 5.(c) provides that the boards must, prior to the reconvening of the 2011 Regular Session of the General Assembly in 2012, submit a recommendation in the form of a local bill for the location of a final boundary line along the 9% of the area separating the two counties.

Senate Bill 200

Page 2

Section 5.(d) provides that all owners of property within the remaining 9% of the boundary area must be notified in writing via first class United States mail not less than 30 days prior to a public hearing being conducted.

Section 5.(e) provides that the property owners will have the right to address the Alamance County and Orange County Boards of Commissioners regarding the status of their property located within the 9% area at any regularly scheduled meeting at which public comment is accepted.

Section 6 gives immunity to the counties, their agents, employees, and elected or appointed officials from suits in connection with local bills related to the location of the boundary line. It also releases the same individuals from all liability for any claims made against them for any act or failure to act pursuant to the terms of this act or S.L. 2010-61.

Section 7 provides that pending the establishment of a final boundary line, the two counties must maintain, in the 9% boundary area, the currently recognized boundary line for all governmental purposes, including taxation, elections, emergency services, zoning, and education.

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

Brad Krehely, counsel to State and Local Government, substantially contributed to this summary.

S200-SMRB-55(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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2

SENATE BILL 201*
State and Local Government Committee Substitute Adopted 4/14/11

Short Title: Alamance/Orange Boundary.

(Local)

Sponsors:

Referred to:

March 7, 2011

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH THE COMMON BOUNDARY BETWEEN ALAMANCE
2 COUNTY AND ORANGE COUNTY SUBSEQUENT TO THE 2010/2011 RESURVEYS
3 OF THE TRANSITIONED PROPERTIES, AS AUTHORIZED BY THE NORTH
4 CAROLINA GENERAL ASSEMBLY BY SESSION LAW 2010-61 ENABLING THE
5 CHANGES IN THE HISTORIC ORANGE COUNTY/ALAMANCE COUNTY
6 BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING
7 ALAMANCE COUNTY, AND TO AMEND SOME SECTIONS OF SESSION LAW
8 2010-61.
9

10 The General Assembly of North Carolina enacts:

11 SECTION 1. The historic boundary line forming Alamance County from Orange
12 County was described and surveyed in 1849. In the subsequent 160 years, this line became
13 uncertain, resulting in unintentional modifications to the boundary line affecting taxation,
14 school attendance, zoning maps, and elections within and among Alamance County, Orange
15 County, and the Town of Mebane, North Carolina. Pursuant to G.S. 153A-18, entitled
16 "Uncertain or Disputed Boundary," both county commissions passed resolutions (Alamance
17 County, December 17, 2007, and Orange County, January 18, 2008) to request that North
18 Carolina Geodetic Survey (NCGS) perform a preliminary resurvey and present a proposed map
19 for consideration by both counties.

20 SECTION 2. The Alamance County Board of Commissioners agreed by vote on
21 April 21, 2008, and Orange County on May 20, 2008, to approve authorizing NCGS to conduct
22 the preliminary survey and the placing of monuments by NCGS consistent with their research
23 to form a boundary baseline. On July 8, 2010, the North Carolina General Assembly enacted
24 S.L. 2010-61, which enabled Alamance County and Orange County to transition properties
25 between the two counties for the purpose of recommending to the North Carolina General
26 Assembly a mutually agreed upon boundary line between the two counties.

27 SECTION 3. Section 3 of S.L. 2010-61 reads as rewritten:

28 "SECTION 3. In the 160 years since the initial survey of the Alamance County/Orange
29 County boundary line, Alamance and Orange Counties have entered into multiple taxing
30 agreements that have resulted in properties being taxed in one county by the adjoining county.
31 Other situations have arisen in which children of one county attend school in the adjoining
32 county and voters in one county have voted in the adjoining county. The General Assembly
33 recognizes the difficulties in addressing these issues and authorizes Alamance County and
34 Orange County to maintain the current taxing, elections, education, and any other recognized
35 government functions in place until July 1, 2011, 2012."
36

SECTION 4. Section 4 of S.L. 2010-61 reads as rewritten:



1 ~~"SECTION 4.(a) On and after July 1, 2011, all papers, documents, and instruments~~
2 ~~required or permitted to be filed or registered that involve residents and property located in~~
3 ~~areas affected by the resurvey of the boundary line that previously may have been recorded in~~
4 ~~the adjoining counties shall be recorded in the county to which the property has been annexed.~~
5 Except as otherwise provided in this act, on and after January 1, 2012, all papers, documents,
6 and instruments required or permitted to be filed or registered, involving residents and property
7 in areas affected by the resurvey of the boundary line, that previously may have been recorded
8 in the adjoining counties shall be recorded in the county to which the property has been
9 reassigned by this act.

10 "SECTION 4.(b) All public records related to residents and property located in areas
11 affected by the resurvey of the boundary line that were filed or recorded prior to July 1, 2011,
12 in the adjoining counties shall remain in those respective adjoining counties where filed or
13 recorded, and such records shall be valid public records as to the property and persons
14 involved, even though they are recorded in an adjoining county which is a county where the
15 property is no longer located as evidenced by the 2008 North Carolina Geodetic Survey and the
16 subsequent partial resurvey pursuant to Section 7 of this act.

17 ~~"SECTION 4.(c) On and after July 1, 2011, all real and personal property located in areas~~
18 ~~affected by the resurvey of the boundary line that was subject to ad valorem taxation on~~
19 ~~January 1, 2011, shall be subject to ad valorem taxes in the county to which the property is~~
20 ~~annexed for the fiscal year beginning July 1, 2011, to the same extent as it would have been had~~
21 ~~it been correctly recognized by the tax departments of each county on January 1, 2011, except~~
22 ~~as hereinafter provided with respect to classified registered motor vehicles. On July 1, 2011, the~~
23 ~~tax administrators of the adjoining counties shall transfer to the respective county tax assessors~~
24 ~~the ad valorem tax listings and valuations for all real and personal property subject to ad~~
25 ~~valorem taxation in areas affected by the resurvey of the boundary line, except classified motor~~
26 ~~vehicles that were registered in the adjoining counties prior to July 1, 2011. For the fiscal year~~
27 ~~that begins July 1, 2011, all real and personal property located in areas affected by the resurvey~~
28 ~~of the boundary line that was subject to ad valorem taxation in that area on January 1, 2011,~~
29 ~~shall be assessed and taxed as follows:~~

30 (1) ~~The ad valorem property taxes assessed on all classified registered motor~~
31 ~~vehicles registered or listed in adjoining counties between January 1, 2011,~~
32 ~~and June 30, 2011, shall be collected by the appropriate adjoining county tax~~
33 ~~collector, and all such taxes shall be retained by that adjoining county. The~~
34 ~~taxes on all classified registered motor vehicles registered after June 30,~~
35 ~~2011, shall be assessed and collected by the county tax department in the~~
36 ~~county to which the real property wherein the classified registered motor~~
37 ~~vehicles are situated has been annexed.~~

38 (2) ~~The values established by the particular adjoining county tax administrator~~
39 ~~on all personal property other than classified registered motor vehicles shall~~
40 ~~be used by the county tax assessor without adjustment in computing taxes~~
41 ~~due for the fiscal year beginning July 1, 2011. All such taxes shall be~~
42 ~~assessed and collected by the appropriate county tax department.~~

43 (3) ~~For the interim time period between the annexation of properties into their~~
44 ~~respective counties and until such time as the next regularly scheduled~~
45 ~~revaluation period, Alamance County and Orange County may select either~~
46 ~~of two methods of valuating the property annexed into their respective~~
47 ~~county by this act. The selection of either method by a county shall not give~~
48 ~~any individual or entity grounds for challenging such temporary valuation.~~
49 ~~Such methods are delineated as follows:~~

50 a. ~~The values established by the adjoining counties' tax administrators~~
51 ~~on all real property formerly taxed in their respective county shall be~~

1 ~~adjusted by the appropriate county tax assessor by applying the~~
2 ~~difference between one hundred percent (100%) of such values and~~
3 ~~the appropriate county median ratio, as established by the Sales~~
4 ~~Assessment Ratio Study compiled by the North Carolina Department~~
5 ~~of Revenue as of January 1, 2012. The taxes determined by applying~~
6 ~~this method will be collected and retained by the appropriate county~~
7 ~~tax collector. The value of such property shall then be revalued~~
8 ~~according to the regularly scheduled revaluation period for each~~
9 ~~county.~~

10 ~~b. The values established by the adjoining counties' tax administrators~~
11 ~~on all real property formerly taxed in their respective county shall be~~
12 ~~adopted by the appropriate county tax assessor upon the transition of~~
13 ~~property to the adjoining county. The valuation of such property shall~~
14 ~~then be revalued according to the regularly scheduled revaluation~~
15 ~~period for each county.~~

16 ~~(4) Beginning January 1, 2012, all property in areas affected by the resurvey of~~
17 ~~the boundary line that is subject to ad valorem taxation shall be listed,~~
18 ~~assessed, and taxed by the appropriate county tax administrator in the same~~
19 ~~manner as is prescribed by law for all other property located within each~~
20 ~~county.~~

21 ~~(5) The final tax values of property subject to ad valorem taxation in areas~~
22 ~~affected by the resurvey of the boundary line as of January 1, 2011, shall be~~
23 ~~determined by the adjoining county tax administrator. Appeals to the North~~
24 ~~Carolina Property Tax Commission or to the courts by property owners of~~
25 ~~properties affected by the boundary line change shall be defended by both~~
26 ~~counties, and both counties shall be responsible for their costs and expenses,~~
27 ~~including attorneys' fees, incurred in connection with such appeals.~~

28 ~~(6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 2011, or for~~
29 ~~prior years on property subject to taxation in areas affected by the resurvey~~
30 ~~of the boundary line shall continue to be valid and enforceable by the~~
31 ~~respective adjoining county, including (i) the foreclosure remedies provided~~
32 ~~for in G.S. 105-374 and G.S. 105-375 and (ii) the remedies of attachment~~
33 ~~and garnishment provided for in G.S. 105-366 through G.S. 105-368. The~~
34 ~~Alamance County and Orange County tax administrators shall supply one~~
35 ~~another with a list of unpaid taxes as of July 1, 2011. Any such taxes~~
36 ~~collected by either county shall be promptly paid to the appropriate~~
37 ~~adjoining county, including accrued interest. The provisions of~~
38 ~~G.S. 105-352(d) shall not apply to: those areas in an adjoining county~~
39 ~~previously taxed by either county outside the areas affected by the resurvey~~
40 ~~of the boundary line that shall forthwith be properly listed and taxed in the~~
41 ~~county to which they have been annexed; and those areas within each county~~
42 ~~that were in the past improperly listed and taxed by the adjoining county due~~
43 ~~to uncertainty as to the exact location of the true historic Alamance~~
44 ~~County/Orange County boundary line. Under the discovery process, each~~
45 ~~county may waive any interest and penalties accrued for tax years~~
46 ~~2006-2011 in its sole discretion.~~

47 "SECTION 4.(c) On and after January 1, 2012, all real and personal property in areas
48 affected by the resurvey of the boundary line which was subject to ad valorem taxation on
49 January 1, 2012, shall be subject to ad valorem taxes in the county to which the property is
50 reassigned for the fiscal year beginning July 1, 2012, to the same extent as it would have been
51 had it been correctly recognized by the tax departments of each county on March 1, 2012,

1 except as hereinafter provided with respect to classified registered motor vehicles. On July 1,
2 2011, the adjoining county tax administrators shall transfer to the respective county tax
3 assessors the ad valorem tax listings and valuations for all real and personal property subject to
4 ad valorem taxation in areas affected by the resurvey of the boundary line except classified
5 motor vehicles which were registered in the adjoining counties prior to July 1, 2011. For the
6 fiscal year which begins July 1, 2011, all real and personal property in areas affected by the
7 resurvey of the boundary line which was subject to ad valorem taxation in that area on January
8 1, 2012, shall be assessed and taxed as follows:

9 (1) The ad valorem property taxes assessed on all classified registered motor
10 vehicles registered or listed in adjoining counties between January 1, 2011,
11 and March 1, 2012, shall be collected by the appropriate adjoining county
12 tax collector, and all such taxes shall be retained by that adjoining county.
13 The taxes on all classified registered motor vehicles registered after March 1,
14 2012, shall be assessed and collected by the county tax department in the
15 county to which the real property wherein the classified registered motor
16 vehicles are situated has been reassigned.

17 (2) The values established by the particular adjoining county tax administrator
18 on all personal property other than classified registered motor vehicles shall
19 be used by each county tax assessor without adjustment in computing taxes
20 due for the fiscal year beginning July 1, 2012. All such taxes shall be
21 assessed and collected by the appropriate county tax department.

22 (3) For the interim time period between the reassignment of properties into their
23 respective counties and until such time as the next regularly scheduled
24 revaluation period, Alamance County and Orange County may select either
25 of two methods of valuating the property reassigned into their respective
26 counties by this act. The selection of either method by a county shall not
27 give any individual or entity grounds for challenging such temporary
28 valuation. Such methods are delineated as follows:

29 a. The values established by the adjoining county tax administrators on
30 all real property formerly taxed in their county shall be adjusted by
31 the appropriate county tax assessor by applying the difference
32 between one hundred percent (100%) of such values and the
33 appropriate county median ratio, as established by the Sales
34 Assessment Ratio Study compiled by the North Carolina Department
35 of Revenue as of January 1, 2009. The taxes determined by applying
36 this method will be collected and retained by the appropriate county
37 tax collector. The value of such property shall then be revalued
38 according to the regularly scheduled revaluation period for each
39 county.

40 b. The values established by the adjoining county tax administrators on
41 all real property formerly taxed in their county shall be adopted by
42 the appropriate county tax assessor upon the transition of property to
43 the adjoining county. The valuation of such property shall then be
44 revalued according to the regularly scheduled revaluation period for
45 each county.

46 (4) Beginning January 1, 2013, all property in areas affected by the resurvey of
47 the boundary line which is subject to ad valorem taxation, shall be listed,
48 assessed, and taxed by the appropriate county tax administrator in the same
49 manner as is prescribed by law for all other property located within each
50 county.

1 (5) The final tax values of property subject to ad valorem taxation in areas
2 affected by the resurvey of the boundary line as of January 1, 2013, shall be
3 determined by the adjoining county tax administrator. Appeals to the North
4 Carolina Property Tax Commission or to the courts by property owners of
5 properties affected by the boundary line change shall be defended by both
6 counties, and both counties shall be responsible for their costs and expenses,
7 including attorneys' fees, incurred in connection with such appeals.

8 (6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 2012, or for
9 prior years on property subject to taxation in areas affected by the resurvey
10 of the boundary line shall continue to be valid and enforceable by the
11 respective adjoining county, including the foreclosure remedies provided for
12 in G.S. 105-374 and G.S. 105-375 and the remedies of attachment and
13 garnishment provided for in G.S. 105-366 through G.S. 105-368. The
14 Alamance County and Orange County Tax Administrators shall supply one
15 another with a list of unpaid taxes for properties in areas of the boundary line
16 affected by the resurveys for the tax year 2011 on or before July 1, 2012.
17 Any such taxes collected by either county shall be promptly paid to the
18 appropriate adjoining county, including accrued interest. The provisions of
19 G.S. 105-352(d) shall not apply to (i) those areas in the adjoining county
20 previously taxed by either county outside the areas affected by the resurvey
21 of the boundary line that shall forthwith be properly listed and taxed in the
22 county to which they have been reassigned by this act and (ii) those areas
23 within each county that were in the past improperly listed and taxed by the
24 adjoining counties due to uncertainty as to the exact location of the true
25 historic Alamance County/Orange County boundary line.

26 **"SECTION 4.(d)** No cause of action, including criminal actions, involving persons or
27 property located in areas affected by the resurvey of the boundary line that is pending on July 1,
28 ~~2011, 2012,~~ shall be abated, and such actions shall continue in the appropriate adjoining
29 county. In no event shall a defense to a criminal act be maintained where such defense alleges a
30 lack of jurisdiction due to any act or failure to act related to the adjustment of the boundary line
31 by this act, regardless of when such criminal act is alleged to have been committed.

32 **"SECTION 4.(e)** The board of elections of each adjoining county shall, effective July 1,
33 ~~2011, 2012,~~ transfer the voter registration records pertaining to persons residing in areas
34 affected by the resurvey of the boundary line and located in either county to the adjoining
35 county's board of elections, and thereafter the registered voters so transferred shall be validly
36 registered to vote in that adjoining county.

37 **"SECTION 4.(f)** The Jury Commission of each adjoining county shall revise its jury lists
38 to add to or eliminate therefrom those persons subject to jury duty who reside in areas affected
39 by the resurvey of the boundary line, said revised jury lists to be effective July 1, ~~2011-2012.~~

40 **"SECTION 4.(g)** The areas affected by the resurvey of the boundary line and located in
41 each county shall be transferred into the appropriate superior court district, district court
42 district, and prosecutorial district. The areas affected by the resurvey of the boundary line shall
43 remain in the same congressional district, the same State House of Representatives district, and
44 the same State Senate district.

45 **"SECTION 4.(h)** Any cause of action relating to taxation as it is currently exercised by the
46 counties along or near the Alamance County/Orange County boundary, or any other cause of
47 action related in any way to the Alamance County/Orange County boundary or properties
48 affected by changes in the boundary, is stayed, and no new cause of action relating to these
49 matters shall be commenced until ratification of the official line by the North Carolina General
50 Assembly. Thereafter, causes of action related to the taxation of property shall be defended as
51 described in subdivision (5) of Section 4(c) of this act."

1 **SECTION 5.(a)** Any properties affected by S.L. 2010-61 or this act and which are
2 subject to taxation under G.S. 105-274 and which were taxed by both the Alamance County
3 and Orange County taxing authorities on or after January 1, 2007, are hereby granted the
4 following relief:

5 (1) Property owners of any such dually taxed properties may, pursuant to the
6 terms of G.S. 105-381, demand refund and/or release of taxes paid to the
7 county from which their property, or portion thereof, was transitioned.

8 (2) Any claim for relief pursuant to this section and under the terms of
9 G.S. 105-381 may be made for taxes assessed January 1, 2007, through
10 December 31, 2011. All such claims for relief must be made in writing to the
11 county from which the affected property was transitioned on or before
12 February 28, 2012. Should a claim for relief pursuant to this section not be
13 made by February 28, 2012, such claim is waived, and no further relief shall
14 be granted pursuant to this or any other act. Alamance County and Orange
15 County shall not grant refunds or releases pursuant to this section for any
16 claims made after February 28, 2012, and are released from all liability, and
17 no court action shall be maintained for any such claims made for any act or
18 failure to act pursuant to this section.

19 **SECTION 5.(b)** The provisions of this section shall apply only to properties
20 transitioned or reassigned from one county to the other, in whole or in part, by the resurveys of
21 individual qualifying properties pursuant to S.L. 2010-61 and this act.

22 **SECTION 5.(c)** For purposes of this section only, the term "property owner" shall
23 include any builder or developer that paid property taxes on real property to both counties and
24 subsequently sold said property or that as part of an escrow agreement in which the buyer of
25 such property paid taxes to one county and the builder or developer who sold the property paid
26 taxes on the same piece of property to the adjoining county.

27 **SECTION 5.(d)** The taxing authorities of Alamance County and Orange County
28 shall notify property owners affected by this section of the terms of this section within 30 days
29 after this act becomes law. Such notice shall be by United States mail at the mailing address to
30 which any tax bills were previously submitted. No other notice is or shall be required.

31 **SECTION 6.** Section 6 of S.L. 2010-61 reads as rewritten:

32 "**SECTION 6.** Any child who was a resident of any area ~~annexed by this act on its date of~~
33 ~~ratification~~ reassigned by this act on its date of enactment and who was a student in the Orange
34 County or Alamance County school system during the ~~2009-2010 or 2010-2011 school year~~
35 2010-2011 or 2011-2012 school year, and the siblings of any such person, may attend school in
36 the same school system as their siblings without necessity of a release or payment of tuition. ~~in~~
37 ~~the same school system previously attended without necessity of a release or payment of~~
38 ~~tuition.~~ Any such student, while attending the Orange County school system, shall be
39 considered a resident of Orange County for all public school purposes, including transportation,
40 athletics, and funding formulas. Any such student, while attending the Alamance County
41 school system, shall be considered a resident of Alamance County for all public school
42 purposes, including transportation, athletics, and funding formulas. Notice must be given to all
43 affected school systems by the parent or guardian in order to exercise the privilege granted by
44 this section."

45 **SECTION 7.** The establishment of a county boundary line is, pursuant to Section 1
46 of Article VII of the North Carolina Constitution, the responsibility of the General Assembly.
47 Further, it is vital to the State of North Carolina and all affected local governments that county
48 boundary lines be fixed and any uncertainty as to the location of county boundary lines be
49 resolved. For this reason and in the interest of justice, neither Alamance County nor Orange
50 County, nor any agent, employee, or appointed or elected official thereof, shall be liable to any
51 individual, group, organization, for-profit or not-for-profit business entity of any kind, or

1 governmental entity or agency of any type or kind, for any damages, costs, fees, or fines, and
2 no court action shall be maintained against said counties, officials, employees, and agents for
3 any recommendation, act, failure to act, or conduct related to S.L. 2010-61 or this act and/or the
4 adoption of a fixed boundary line separating the two counties. Except as set out in Section 5 of
5 this act, and effective upon enactment of this act, Alamance County and Orange County and
6 their officials, employees, and agents are released from all liability for any claims made, and no
7 court action shall be maintained against said officials, employees, and agents for any act or
8 failure to act pursuant to the terms of this act or S.L. 2010-61, and no further relief shall be
9 granted or cause of action sustained except as provided herein.

10 **SECTION 8.** Section 8 of S.L. 2010-61 reads as rewritten:

11 **"SECTION 8.** Alamance County and Orange County shall cause areas of the boundary line
12 to be resurveyed in areas where property owners have met the established administrative
13 criteria to be assigned to a specific county ~~and in areas where for practical or other reasons the~~
14 ~~North Carolina Geodetic Survey line is not reasonable or is unduly burdensome. county but~~
15 shall not bear the cost of such resurveys. The costs of the resurveys shall be the responsibility
16 of the transitioned properties' owners."

17 **SECTION 9.** Except as amended by this act, S.L. 2010-61 continues in full force
18 and effect. In the case of any conflict between this act and S.L. 2010-61, this act controls to the
19 extent of the conflict.

20 **SECTION 10.** Pursuant to Section 1 of Article VII of the North Carolina
21 Constitution, any boundary line between Alamance County and Orange County previously
22 surveyed, recognized, adopted, described, utilized, or ratified is modified as set forth herein
23 upon ratification of this act.

24 **SECTION 11.** Pursuant to Section 1 of Article VII of the North Carolina
25 Constitution, the official boundary line between Alamance County and Orange County, as
26 described and approved by the Alamance County Board of Commissioners at its regular
27 meeting December 6, 2010, and the Orange County Board of Commissioners at its regular
28 meeting December 14, 2010, is hereby formally recognized and adopted by the North Carolina
29 General Assembly. The nine percent (9%) portion of the boundary line not described and
30 approved by the county commissioners shall be resurveyed pursuant to separate local
31 legislation.

32 **SECTION 12.** Upon completion of the resurveys in compliance with this act, a
33 complete description of the resurveyed line shall be filed in the office of the Register of Deeds
34 of Alamance County, the office of the Register of Deeds of Orange County, and the Secretary
35 of State, as provided in G.S. 153A-18(a).

36 **SECTION 13.** This act is effective when it becomes law.



SENATE BILL 201: Alamance/Orange Boundary

2011-2012 General Assembly

Committee:	House Finance	Date:	May 17, 2011
Introduced by:	Sens. Gunn, Kinnaird	Prepared by:	Cindy Avrette
Analysis of:	Second Edition		Committee Counsel

SUMMARY: *Senate Bill 201 would establish the common boundary between Alamance County and Orange County after the 2010/2011 resurveys of the transitioned properties and would amend S.L. 2010-61, which enabled changes in the historic boundary line. This bill is identical to House Bill 214, sponsored by Representatives Ingle, Bordsen, Insko, and Faison. House Bill 214 received a favorable report from the House Committee on Government on May 9, 2011.*

BILL ANALYSIS:

Section 1 notes that the historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. In the subsequent 160 years, this line became uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections.

Section 2 notes that both boards of commissioners authorized the North Carolina Geodetic Survey (NCGS) to conduct a preliminary resurvey. Through the passage of S.L. 2010-61, the General Assembly enabled Alamance County and Orange County to transition properties between the two counties and to recommend a mutually agreed upon boundary line between the two counties.

Section 3 provides that Alamance County and Orange County may maintain their current taxing, elections, education, and other government functions until July 1, 2012.¹

Section 4 makes a number of changes to S.L. 2010-61. It extends the time by which papers and documents must be recorded in the county to which the property has been reassigned to January 1, 2012,² and extends a number of other dates. It also prohibits defenses to criminal acts alleging a lack of jurisdiction based on adjustment of the boundary line.

Section 5.(a) provides certain relief for property owners which were taxed by both Alamance and Orange County taxing authorities. The owners may demand refund and/or release of taxes paid from the county from which their property was transitioned. Claims for relief may be made for taxes assessed from January 1, 2007, through December 31, 2011 if certain procedures are followed.

Section 5.(b) specifies that this section applies only to properties transitioned from one county to the other by resurveys of properties.

Section 5.(c) provides an expanded definition of "property owner" for this section only.

Section 5.(d) provides that taxing authorities of Orange and Alamance Counties must notify property owners affected by this section within 30 days after the act becomes law. The notice is to be sent by United States mail to the mailing address to which previous tax bills were sent.

Section 6 provides that if a child was a resident of any area reassigned by this act and that child was a student in Orange County or Alamance County during the 2010-2011 or 2011-2012 school year, then the child may attend school in the same system as their siblings.

¹ The date was changed from July 1, 2011, to July 1, 2012, in the Local Government Committee.

² The date was changed from July 1, 2011, to January 1, 2012, in the Local Government Committee.

Senate Bill 201

Page 2

Section 7 gives immunity to the counties, their agents, and elected or appointed officials from suits in connection with local bills related to the location of the boundary line.

Section 8 provides that Alamance and Orange Counties will not bear the costs of resurveys in areas where property owners have met the criteria to be assigned to a specific county; the costs are the responsibility of the transitioned property owners.

Section 9 clarifies that S.L. 2010-61 remains in effect, but that the present bill controls if there is a conflict.

Section 10 provides that pursuant to the North Carolina Constitution, any boundary line previously utilized is modified as provided in this act.

Section 11 provides that the boundary line approved by the commissioners of Alamance County and Orange County are adopted by the General Assembly. It further provides that the 9% portion of the boundary line, which was not approved by the county commissioners, must be resurveyed pursuant to another local bill (Senate Bill 200).

Section 12 provides when the resurveys have been finished, a complete description of the resurveyed land must be filed with the Registers of Deeds in Alamance and Orange Counties and with the Secretary of State.

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

Brad Krehely, counsel to the Senate Committee on State and Local Government, substantially contributed to this summary.

S201-SMRB-56(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

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HOUSE BILL 206*

Short Title: Modify Property Tax Base Exclusions. (Public)

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

Referred to: Finance.

March 3, 2011

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A BILL TO BE ENTITLED
AN ACT TO MODIFY THE PROPERTY TAX BASE EXCLUSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275 is amended by adding a new subdivision to read:

"§ 105-275. Property classified and excluded from the tax base.

The following classes of property are designated special classes under Article V, Sec. 2(2), of the North Carolina Constitution and are excluded from tax:

...

(7a) Real and personal property that meets each of the following requirements:

- a. It is a contiguous tract of land previously (i) used primarily for commercial or industrial purposes and (ii) damaged significantly as a result of a fire or explosion.
- b. It was donated to a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes by an entity other than an affiliate, as defined in G.S. 105-163.010.
- c. No portion is or has been leased or sold by the nonprofit corporation."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expires for taxes imposed for taxable years beginning on or after July 1, 2016.



GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: May 18, 2011

TO: Representatives Howard, Starnes, and Setzer

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 206 (First Edition)

FISCAL IMPACT				
Yes (X)	No ()	No Estimate Available ()		
<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:				
Local Governments: *Insignificant Property Tax Revenue Loss*				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments; NC Department of Revenue				
EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expires for taxes imposed for taxable years beginning on or after July 1, 2016.				

BILL SUMMARY:

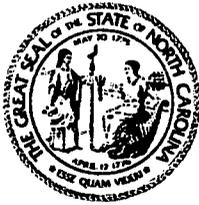
HB 206 would allow a property tax exclusion for a commercial property that is heavily damaged by fire or explosion and donated to a nonprofit corporation. The bill also requires that no portion of the property has been sold by the nonprofit.

ASSUMPTIONS AND METHODOLOGY:

The bill would allow a qualifying property to be removed from the property tax base, resulting in a property tax revenue loss for the taxing jurisdictions. Fiscal Research is aware of only one property that would satisfy the requirements for exclusion under the bill. Due to the narrow circumstances under which a property would qualify, the revenue impact is expected to be minimal.

SOURCES OF DATA: NC Association of Assessing Officers

TECHNICAL CONSIDERATIONS: None



HOUSE BILL 206: Modify Property Tax Base Exclusions

2011-2012 General Assembly

Committee: House Finance	Date: May 18, 2011
Introduced by: Reps. Ross, Jackson, Gill	Prepared by: Cindy Avrette
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 206¹ would exclude from property tax a contiguous tract of commercial property that is significantly damaged by fire or explosion and donated to a nonprofit corporation. The bill would be effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expiring for taxable years beginning on or after July 1, 2016.*

CURRENT LAW: All real and personal property is subject to property tax unless it is excluded or exempted from the tax base. Article V, section 2(2) of the North Carolina Constitution provides that the power to classify property for taxation lies with the General Assembly and that the power of classifying property for taxation must be exercised on a State-wide basis and made by general law uniformly applicable in every county and city.

Article V, section 2(3) of the Constitution allows the General Assembly to exempt property from taxation if it is held for educational, scientific, literary, cultural, charitable, or religious purposes. The exemption must apply on a State-wide basis and be made by general law uniformly applicable in every county and city. G.S. 105-278.7 provides a property tax exemption for property used for educational, scientific, literary, or charitable purposes. Property exempt from taxation under this classification must meet certain ownership and use requirements. In 2002, the Attorney General's office issued an opinion that property owned by the Charlotte/Mecklenburg Development Corporation was not entitled to a charitable exemption where the corporation's goal was to undertake site development and sell the property to businesses. Although the property was owned by a nonprofit entity, it was not held for a charitable purpose.

BILL ANALYSIS: House bill 206 would designate property meeting the following requirements as a special class of property under Article V, section 2(2) of the North Carolina Constitution and exclude it from property taxation. The exclusion would apply for five years: 2011 through 2015. To be included within the classification, property must meet all of the following requirements:

- The property must be a contiguous tract of land previously used primarily for commercial or industrial purposes and damaged significantly as a result of a fire or explosion.
- The property must have been donated to a nonprofit corporation by an entity other than an affiliate.
- The property must not have been leased or sold by the nonprofit corporation.

EFFECTIVE DATE: The bill would become effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expire for taxes imposed for taxable years beginning on or after July 1, 2016.

BACKGROUND: The Garner Economic Development Corporation was formed on November 22, 2010, as a nonprofit corporation. One of its stated purposes is to acquire funds and real property related to the ConAgra plant and to maintain, develop, and market the property for economic development. The ConAgra plant in Garner was damaged significantly as a result of a fire or explosion in June 2009.

H206-SMRB-59(e1) v1

¹ Senate Bill 164, sponsored by Senators Stevens, Hunt, and Blue, is identical to House Bill 206. It is in Senate Finance.
Research Division

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 30
Committee Substitute Favorable 4/14/11
PROPOSED COMMITTEE SUBSTITUTE H30-CSSVf-20 [v.2]

5/18/2011 9:15:49 PM

Short Title: Allow Wage Garnishment to Satisfy Judgments. (Public)

Sponsors:

Referred to:

February 3, 2011

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A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL
MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS INVOLVING UNFAIR
OR DECEPTIVE ACTS OR PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding
a new section to read:

"§ 75-16.3. Procedure for garnishment.

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

- (1) Judgment creditor. – A person awarded a judgment in which a determination has been made that a judgment debtor is found to have violated G.S. 75-1.1
- (2) Judgment debtor. – A person against whom a judgment has been rendered in which a determination has been made that the judgment debtor is found to have violated G.S. 75-1.1.
- (3) Earnings. – Compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.
- (4) Disposable earnings. – The part of the earnings which remains after the deduction of any amounts required by law to be withheld or withheld to pay for reasonably necessary expenses of the judgment debtor or the judgment debtor's dependents, including health care and day care expenses.
- (5) Garnishee. – The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) Judgments May Be Enforced by Garnishment of Wages. – Any judgment creditor awarded a judgment in which a determination has been made that a judgment debtor is found to have violated G.S. 75-1.1 and in which the acts or practices that constituted the violation were knowingly and willfully committed may move the court in the county wherein the judgment debtor resides for an order of garnishment of the disposable earnings of the judgment debtor at any time after attempting execution of a judgment for unfair or deceptive acts or practices that has been returned wholly or partially unsatisfied after exhausting remedies available under Article 31 of Chapter 1 of the General Statutes, provided the following conditions have been met:



- 1 (1) The judgment creditor has sent a certified letter to the judgment debtor's last
2 known address that includes information that the judgment debtor's
3 disposable earnings may be subject to wage garnishment.
- 4 (2) The judgment debtor has neglected or refused to pay or make reasonable
5 arrangements to pay the judgment within 10 days of the mailing of the letter.
6 described in subdivision (1) of this subsection.
- 7 (c) Motion and Notice Procedures. – The motion shall be in writing and describe in
8 detail the grounds for requesting garnishment, the amount of judgment alleged to be unpaid,
9 and the source of earnings of the judgment debtor. A notice of hearing must be served on the
10 judgment debtor at least 10 days before the hearing, in a form prescribed by the Administrative
11 Office of the Courts, that notifies the judgment debtor of the following:
- 12 (1) If the judgment debtor fails to appear at the hearing, the court will enter an
13 order directing the judgment debtor's employer to withhold a portion of
14 wages to apply to the judgment.
- 15 (2) The amount withheld may be as much as fifteen percent (15%) of the
16 judgment debtor's disposable earnings.
- 17 (3) An order of garnishment shall not be entered if the judgment debtor is
18 making regular payments to the judgment creditor that are equal to ten
19 percent (10%) of the judgment debtor's monthly disposable earnings.
- 20 (4) An order of garnishment shall not be entered if the judgment debtor can
21 show at the hearing that economic hardship would result to the judgment
22 debtor or judgment debtor's dependents if garnishment is ordered.
- 23 (d) Filing Fee. – The filing fee for a motion requesting garnishment under this section is
24 the same as for other supplemental proceedings, as set forth in G.S. 7A-308(a)(2). This fee
25 may be recoverable by the judgment creditor as a taxable cost of the action.
- 26 (e) Hearing. – The court may enter an order of garnishment following notice
27 requirements set forth in this Article and a hearing held before a superior or district court judge
28 pursuant to the motion for garnishment. At the hearing on the motion, the court shall determine
29 whether an order of garnishment is appropriate on the basis of the motion, any affidavit of the
30 judgment creditor, the record in the civil action, and any testimony and other relevant evidence
31 offered by either party. The court shall not enter an order of garnishment if the judgment debtor
32 is making regular payments to the judgment creditor that are equal to ten percent (10%) of the
33 judgment debtor's monthly disposable earnings, or if economic hardship would result to the
34 judgment debtor or judgment debtor's dependents if garnishment is ordered.
- 35 (f) Amount Subject to Garnishment. – The court shall not enter an order of garnishment
36 that exceeds the lesser of fifteen percent (15%) of the judgment debtor's monthly disposable
37 earnings, or the amount by which the disposable earnings for that pay period exceed an amount
38 calculated by multiplying the federal minimum hourly wage by 50 times the number of weeks
39 in the pay period. For purposes of applying this provision, a bimonthly pay period shall
40 constitute 2.17 weeks and a monthly pay period shall constitute 4.33 weeks.
- 41 (g) Order of Garnishment; Contents. – If an order of garnishment is entered, the order
42 shall state (i) the names and last known addresses of the judgment creditor and judgment
43 debtor, (ii) the court in which and the date on which the money judgment was rendered, (iii) the
44 original amount of the money judgment and the amount due thereon, (iv) the portion of the
45 judgment debtor's earnings that are subject to garnishment thereunder, or the information
46 necessary to determine such portion, and (v) any information that the judgment creditor
47 provides to identify the judgment debtor's employer. The garnishment order shall notify any
48 garnishee of the manner prescribed by this section for complying with the order. A copy of the
49 order shall be personally served on the judgment debtor and the garnishee by any method
50 authorized under G.S. 1A-1, Rule 4(j). The garnishment order shall be subject to review for
51 modification or dissolution upon the filing of a motion in the cause.

1 (h) Payment to Creditor; Garnishee May Retain Fee. – Upon receipt of an order of
2 garnishment, and beginning with the judgment debtor's next succeeding pay period starting
3 after the receipt of the notice of garnishment, the garnishee shall withhold and transmit to the
4 judgment creditor, at the address specified in the order, the amount ordered by the court to be
5 garnished. The garnishee shall not be required to change normal pay cycles but shall make
6 every effort to ensure that payments are received as soon as practicable. The garnishment order
7 shall simplify the withholding process for garnishees to the extent possible. The amount
8 garnished shall be increased by an additional five dollar (\$5.00) processing fee to be assessed
9 and retained by the garnishee for each payment under the order. The judgment creditor shall,
10 within five business days following the satisfaction of the judgment, deliver to the garnishee a
11 written notification that the garnishment order is satisfied.

12 (i) Duration of Garnishment Order. – A garnishment order issued pursuant to this
13 section shall continue until whichever of the following events occurs first:

14 (1) The underlying judgment has been satisfied in full.

15 (2) The judgment debtor ceases to be employed by the employer, unless the
16 judgment debtor is thereafter reinstated or reemployed within 90 days from
17 the date employment was terminated.

18 (3) The limitations period prescribed by G.S. 1-47 has expired.

19 (j) Priority of Garnishment Orders. – Garnishment orders shall be satisfied by the
20 employer according to the following order of priority, from highest to lowest:

21 (1) Garnishment pursuant to some authority other than this Article, by a
22 governmental entity, by a public hospital, for child support, or by some other
23 entity or for some other purpose. Nothing in this Article alters the priority in
24 which such garnishments are to be satisfied.

25 (2) Garnishment pursuant to this Article. If an employer is served with more
26 than one garnishment order obtained pursuant to this Article against the
27 same judgment debtor, the garnishments shall be satisfied in the order in
28 which they were served on the employer. Each prior garnishment order shall
29 be satisfied before any effect is given to a subsequent garnishment order.

30 (k) Application of Payments Received. – All payments received by a judgment creditor
31 shall be credited or applied in the following mandatory order of priority:

32 (1) Against the record costs of the judgment and garnishment orders.

33 (2) Against the accrued interest on the unpaid balance of the judgment,
34 including postjudgment interest.

35 (3) Against the principal amount of the judgment.

36 (4) Against any attorneys' fees and costs awarded.

37 (l) Notice of Satisfaction. – Notwithstanding G.S. 1-239(c), a judgment creditor shall
38 not notify the clerk of superior court of the receipt of each individual payment under the
39 garnishment order, but upon receipt of payment in full of the total amount ordered, a judgment
40 creditor shall, within 60 days of the receipt of said payment, file with the clerk of superior court
41 in the county where the judgment and garnishment order were entered a notice of payment in
42 full and satisfaction of the judgment. If a judgment creditor fails to file the notice required by
43 this subsection within 30 days following written demand by the judgment debtor, the judgment
44 creditor may be required to pay a civil penalty of one hundred dollars (\$100.00) in addition to
45 attorney fees and any loss caused to the judgment debtor by such failure.

46 (m) Improper Garnishment. – In the event of an improper garnishment, the court may set
47 aside the garnishment order and make such further orders as are necessary to return to the
48 judgment debtor any funds improperly garnished, together with damages and reasonable costs
49 and attorneys' fees."

50 **SECTION 2.** This act becomes effective October 1, 2011, and applies to civil
51 actions filed on or after that date.



HOUSE BILL 30: Allow Wage Garnishment to Satisfy Judgments

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. T. Moore
Analysis of: PCS to Second Edition
H30-CSSVf-20

Date: May 19, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 30 would provide for the garnishment of an individual's disposable earnings to satisfy a judgment for unfair or deceptive trade practices.*

The PCS makes the following changes, which were requested by AOC:

- *It changes the fee for filing a motion for garnishment from \$20 to the same fee that applies in other supplemental proceedings, which is \$30.*
- *It expands the method of service of an order of garnishment by allowing any method authorized under Rule 4(j) of the Rules of Civil Procedure.*
- *It simplifies the process for handling garnishment payments by requiring that they be paid directly to the judgment creditor, rather than to the court, and by requiring the creditor to notify the court once the judgment has been satisfied in full.*

CURRENT LAW: In North Carolina, a judgment creditor may not obtain an order for garnishment of wages against a judgment debtor except where specifically authorized by statute.

Specific situations in which the General Assembly has provided for garnishment of wages include tax liens¹, child support², student loans³, recoupment of fraudulent public assistance program payments⁴, and services provided by public hospitals⁵. The amount that may be garnished from earnings varies among the statutes. For tax liens, the amount is limited to 10% of wages and other compensation for any one pay period. Garnishment for public hospital services may not exceed 10% of monthly disposable earnings; garnishment to recoup fraudulent public assistance payments is limited to 20% of monthly disposable income; and garnishment for the support of a minor child is 40% of monthly disposable earnings.

BILL ANALYSIS: House Bill 30 would authorize the garnishment of wages to satisfy judgments against judgment debtors found to have violated G.S. 75-1.1 (unfair or deceptive acts or practices in or affecting commerce), if the acts that constituted the violation were knowingly and willfully committed.

The bill includes the following provisions:

Enforcement. – A judgment creditor may move for garnishment of the judgment debtor's disposable earnings at any time after attempting to execute the judgment that has been returned wholly or partially unsatisfied after exhausting remedies available under Article 31 of Chapter 1 (Supplemental Proceedings), if:

- The judgment creditor has sent a certified letter to the judgment debtor's last known address with information that the judgment debtor's disposable earnings may be garnished; and

¹ G.S. 105-368

² G.S. 110-136

³ G.S. 105B-3

⁴ G.S. 108A-25.3

⁵ G.S. 131E-49

House PCS 30

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- The judgment debtor has not paid or made reasonable arrangements to pay within 10 days of the mailing.

Motion and notice. – The motion must be in writing and provide grounds for requesting garnishment, the amount alleged to be unpaid, and the judgment debtor's source of earnings. Notice of hearing must be served on the judgment debtor at least 10 days before the hearing and include all of the following:

- Failure to appear will result in an order of garnishment.
- Garnishment may be up to 15% of the judgment debtor's disposable earnings.
- The order shall not be entered if the judgment debtor makes regular payments to the judgment creditor of 10% of the judgment debtor's disposable earnings.
- The order shall not be entered if the judgment debtor can show that economic hardship would result to the judgment debtor or his or her dependents.

Filing fee. – A motion must include a fee of \$30, which is the same fee for other supplemental proceedings. The fee may be recoverable by the judgment creditor as a taxable cost of the action.

Hearing. – At a hearing on the motion, the court must determine whether garnishment is appropriate on the basis of the motion, any affidavit of the judgment creditor, the record in the civil action, and any testimony and other relevant evidence offered by either party.

Garnishment amount. – An order of garnishment may not exceed the lesser of 15% of the judgment debtor's monthly disposable earnings, or the amount by which the disposable earnings for that pay period exceed an amount calculated by multiplying the federal minimum hourly wage by 50 times the number of weeks in the pay period.

Garnishment order. – A copy of the order must be served on the judgment debtor and the garnishee, and it must notify the garnishee of the manner for complying with the order.

Payment to the creditor. – Upon receipt of an order, the garnishee must submit payment to the judgment creditor. For each payment, the amount garnished shall be increased by \$5 as a processing fee to be assessed and retained by the garnishee.

Duration of order. – The order continues until one of the following occurs:

- The judgment has been satisfied.
- The judgment debtor's employment is terminated, unless he or she is reemployed within 90 days of termination.
- The limitation period prescribed by G.S. 1-47 has expired.

Priority of garnishment orders. A garnishment under this article does not take priority over any other garnishment authorized by law. Garnishments under this article against the same judgment debtor are to be satisfied in the order in which they were served on the employer.

Application of payments. All payments are to be applied first against record costs of the judgment and garnishment orders, followed by interest, principal, and then attorneys' fees and costs awarded.

Notice of satisfaction. The judgment creditor must notify the garnishee within 5 business days following satisfaction of the judgment and the clerk within 60 days following satisfaction of the judgment. If a judgment creditor fails to file the notice within 30 days following written demand by the judgment debtor, the judgment creditor may be required to pay a \$100 civil penalty in addition to attorney's fees.

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Improper garnishment. The court may set aside an order of garnishment if it is improper and may make any further orders that are necessary to return the judgment debtor's funds and any reasonable costs and damages.

EFFECTIVE DATE: The act becomes effective October 1, 2011 and applies to civil actions filed on or after that date.

Wendy Ray, counsel to House Judiciary C, substantially contributed to this summary.

H30-SMSV-48(CSSVf-20) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 298
Committee Substitute Favorable 4/27/11
PROPOSED COMMITTEE SUBSTITUTE H298-CSSvf-18 [v.3]

5/18/2011 5:57:26 PM

Short Title: Insurance Amendments.-AB

(Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE INSURANCE LAWS TO PRIVATIZE ONLINE AND ADMINISTRATIVE PROCESSES FOR LICENSE APPLICANTS, CODIFY THE EXISTING SENIORS' HEALTH INSURANCE INFORMATION PROGRAM, ENSURE ACCURACY IN CERTIFICATES OF INSURANCE, REQUIRE PRIOR APPROVAL OF SMALL GROUP HEALTH INSURANCE RATES AND ENCOURAGE THE SALE OF CHILD-ONLY HEALTH INSURANCE POLICIES, AMEND THE RISK-BASED CAPITAL LAW TO MAINTAIN NAIC ACCREDITATION, PROVIDE AN EXEMPTION FOR LICENSING OF CLAIMS INPUT EMPLOYEES FOR PORTABLE ELECTRONIC DEVICES, PROHIBIT FEDERAL PREEMPTION OF CROP ADJUSTERS' REGULATION, AND EASE THE REGULATORY BURDEN ON THE NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION AND THE ASSOCIATION AGGREGATE SECURITY SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-2-69(g) reads as rewritten:

"(g) The Commissioner may contract with the NAIC or other persons for the provision of online services to applicants and licensees, for the provision of administrative ~~services to licensees, or services, for the provision of license processing and support services, and~~ for the provision of regulatory data systems to the Commissioner. The NAIC or other person with whom the Commissioner contracts may charge applicants and licensees a reasonable fee for the ~~costs associated with the licensees' use the provision of online services and services, the provision of administrative services, services, the provision of license processing and support services, and the provision of regulatory data systems to the Commissioner.~~ The fee shall be agreed to by the Commissioner and the other contracting party and shall be stated in the contract. The fee is in addition to any applicable license application and renewal fees. Contracts for the provision of online services, contracts for the provision of administrative services, and contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be



1 awarded by the Commissioner under this subsection a standard clause which provides that the
2 State Auditor and internal auditors of the Commissioner may audit the records of the contractor
3 during the term of the agreement or contract to verify accounts and data affecting fees and
4 performance. The Commissioner shall not award a cost plus percentage of cost agreement or
5 contract for any purpose."

6 SECTION 2. Article 2 of Chapter 58 of the General Statutes is amended by adding
7 the following new section to read:

8 **"§ 58-2-31. Seniors' Health Insurance Information Program.**

9 The Seniors' Health Insurance Information Program is established within the Department as
10 a statewide health benefits counseling program to provide the State's Medicare beneficiaries
11 with counseling in Medicare, Medicare supplement insurance, long-term care insurance, and
12 related health care coverage plans."

13 SECTION 3. G.S. 58-3-150 reads as rewritten:

14 **"§ 58-3-150. Forms to be approved by Commissioner.**

15 (a) It is unlawful for any insurance company licensed and admitted to do business in
16 this State to issue, sell, or dispose of any policy, contract, ~~or~~ certificate, or certificate of
17 insurance, or use applications in connection therewith, until the forms of the same have been
18 submitted to and approved by the Commissioner, and copies filed in the Department. If a policy
19 form filing is disapproved by the Commissioner, the Commissioner may return the filing to the
20 filer. As used in this section, "policy form" includes endorsements, riders, or amendments to
21 policies that have already been approved by the Commissioner.

22 (b) With respect to group and blanket accident and health insurance, group life
23 insurance, and group annuity policies issued and delivered to a trust or to an association outside
24 of this State and covering persons resident in this State, the group certificates to be delivered or
25 issued for delivery in this State shall be filed with and approved by the Commissioner pursuant
26 to subsection (a) of this section.

27 (c) If not submitted electronically, all contracts, literature, advertising materials, letters,
28 and other documents submitted to the Department to comply with the filing requirements of
29 this Chapter or an administrative rule adopted pursuant to this Chapter shall be submitted on
30 paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled
31 or bound.

32 (d) As used in this section, "certificate of insurance" means a document prepared or
33 issued by an insurance company or producer that is used to verify or evidence the existence of
34 property or casualty insurance coverage. "Certificate" or "certificate of insurance" shall not
35 include a document prepared or issued by an insurance company or producer that is used to
36 verify or evidence the existence of property insurance provided to a lender covering real or
37 personal property which serves as the lender's security for commercial mortgages. For
38 purposes of this section, "commercial mortgages" shall mean mortgages or other instruments
39 given for the purpose of creating a lien encumbering office, multi-unit residential, office,
40 apartments, commercial or industrial properties. Commercial mortgages shall not include a lien
41 encumbering one-to-four family residential properties.

42 (e) A certificate of insurance is not a policy of insurance and does not amend, extend,
43 or alter the coverage afforded by the policy to which the certificate of insurance makes
44 reference. A certificate of insurance shall not confer to a certificate of insurance holder new or
45 additional rights beyond what the referenced policy of insurance expressly provides.

46 (f) It is unlawful for any person to knowingly prepare, issue, request, or require a
47 certificate of insurance that meets any of the following criteria:

48 (1) Has not been filed with and approved by the Commissioner.

49 (2) Contains any false or misleading information concerning the policy of
50 insurance to which the certificate of insurance makes reference.

1 (3) Purports to alter, amend, or extend the coverage provided by the policy of
2 insurance to which the certificate of insurance makes reference.

3 (g) A holder of a certificate of insurance shall have a legal right to notice of
4 cancellation, nonrenewal, or any material change, or any similar notice concerning a policy of
5 insurance only if the holder is named within the policy or any endorsement and the policy or
6 endorsement requires notice to be provided to the holder. The terms and conditions of the
7 notice, including the required timing of the notice, are governed by the policy of insurance and
8 cannot be altered by a certificate of insurance."

9 SECTION 4. Article 50 of Chapter 58 of the General Statutes is amended by
10 adding the following new section to read:

11 "**§ 58-50-131. Premium rates for health benefit plans; approval authority; hearing.**

12 (a) No schedule of premium rates for coverage for a health benefit plan subject to this
13 act, or any amendment to the schedule, shall be used in conjunction with any such health
14 benefit plan until a copy of the schedule of premium rates or premium rate amendment has
15 been filed with and approved by the Commissioner. Any schedule of premium rates or
16 premium rate amendment filed under this section shall be established in accordance with
17 G.S. 58-50-130(b). The schedule of premium rates shall not be excessive, unjustified,
18 inadequate, or unfairly discriminatory and shall exhibit a reasonable relationship to the benefits
19 provided by the contract of insurance. Each filing shall include a certification by an individual
20 who is a member in good standing with the Society of Actuaries.

21 (b) The Commissioner shall approve or disapprove a schedule of premium rates within
22 60 days of receipt of a complete filing. It shall be unlawful to use a schedule of premium rates
23 until approved. If the Commissioner disapproves the filing, the Commissioner shall notify the
24 filer, shall specify the reasons for disapproval, and shall provide an opportunity for refileing.

25 (c) The Commissioner shall adopt rules as necessary or proper (i) to prevent the federal
26 preemption of health insurance regulation in the State, (ii) to implement the provisions of this
27 section, and (iii) to establish minimum standards for loss ratios of policies subject to this
28 section in accordance with accepted actuarial principles and practices to assure that the benefits
29 are reasonable in relation to the premium charged. The Commissioner shall adopt rules to
30 require the submission of supporting data and any information that the Commissioner considers
31 necessary or proper to determine whether the filed schedule of premium rates meets the
32 standards set forth in this section."

33 SECTION 5. Article 3 of Chapter 58 of the General Statutes is amended by adding
34 the following new section to read:

35 "**§ 58-3-285. Nondependent child coverage defined; open enrollment.**

36 (a) As used in this section, the following definitions apply:

37 (1) "Health benefit plan" has the same meaning as G.S. 58-3-167(a)(1).

38 (2) "Individual market" has the same meaning as G.S. 58-68-25(a)(9).

39 (3) "Insurer" has the same meaning as G.S. 58-3-167(a)(2).

40 (4) "Nondependent child coverage" or "nondependent child policy" means an
41 individual health benefit plan which provides coverage to an individual
42 under age 19. This shall not include health benefit plans that cover children
43 under age 19 as dependents.

44 (5) "Open enrollment" means, with respect to "nondependent child coverage,"
45 the period of time during which any individual under age 19 has the
46 opportunity to apply for coverage under a health benefit plan offered by an
47 insurer and shall not be denied eligibility for coverage under the plan due to
48 factors relating to the individual's health status.

49 (b) An insurer who offers nondependent child coverage shall offer open enrollment
50 either continuously throughout the year or for the months of January and July of each year.

1 Coverage issued under this section shall be issued without any riders based on the health status
2 of the child. Nothing in this section shall require an insurer to offer nondependent child
3 coverage or maternity coverage within an offer of nondependent child coverage.

4 (c) The Commissioner shall adopt rules as necessary or proper to implement the
5 provisions of this section.

6 (d) Nothing in this section shall prohibit an insurer from adjusting the initial premium
7 charged an individual afforded coverage under this section based upon medical underwriting to
8 the extent that such an adjustment is in compliance with the applicable product's current rate
9 filing approved by the Commissioner."

10 SECTION 6. G.S. 58-12-2 reads as rewritten:

11 "§ 58-12-2. Definitions.

12 As used in this Article, the following terms have the following meanings:

- 13 (1) Adjusted risk-based capital report. – A risk-based capital report that has been
14 adjusted by the Commissioner under G.S. 58-12-6.
- 15 (2) Corrective order. – An order issued by the Commissioner specifying
16 corrective actions that the Commissioner has determined are required.
- 17 (3) Domestic insurer. – Any insurance company or health organization
18 organized in this State under ~~Article 7~~, Article 7 of this Chapter as specified
19 in subdivisions (4b) and (5a) of this section or under Article 15, 65, or 67 of
20 this Chapter.
- 21 (4) Foreign insurer. – Any insurance company or health organization that is
22 admitted to do business in this State under Article 16 or 67 of this Chapter
23 but is not domiciled in this State.
- 24 (4a) Health organization. – Any insurer which is required by the Commissioner
25 to use the NAIC Health Annual Statement Blank when filing the annual
26 statement prescribed by G.S. 58-2-165 or any health maintenance
27 organization, limited health service organization, dental or vision plan,
28 hospital, medical, or dental indemnity or service corporation, or other
29 organization licensed under Article 65 or 67 of this Chapter. "Health
30 organization" does not include an insurer that is licensed as either a life or
31 health insurer or a property or casualty insurer under this Chapter and that is
32 otherwise subject to either the life or property and casualty risk-based capital
33 requirements.
- 34 (4b) Life or health insurer. – Any insurance company licensed to write the kinds
35 of insurance specified in G.S. 58-7-15(1), (2), or (3); or a licensed property
36 and casualty insurer writing only the kinds of insurance specified in
37 G.S. 58-7-15(3). "Life or health insurer" does not mean any insurer that is
38 required by the Commissioner to use the NAIC Health Annual Statement
39 Blank when it files the annual statement prescribed by G.S. 58-2-165.
- 40 (5) Negative trend. – A negative trend, with respect to a life or health insurer,
41 over a period of time, as determined in accordance with the "trend test
42 calculation" included in the risk-based capital instructions.
- 43 (5a) Property or casualty insurer. – Any insurance company licensed to write the
44 kinds of insurance specified in G.S. 58-7-15(4) through (22); but not
45 monoline mortgage guaranty insurers, financial guaranty insurers, or title
46 ~~insurers-insurers~~; nor any insurer that is required by the Commissioner to use
47 the NAIC Health Annual Statement Blank when filing the annual statement
48 prescribed by G.S. 58-2-165.
- 49 (6) Risk-based capital instructions. – The risk-based capital report including
50 risk-based capital instructions adopted by the NAIC, as those risk-based

capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

- (7) Risk-based capital level. – An insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital where:
- a. "Company action level risk-based capital" means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital.
 - b. "Regulatory action level risk-based capital" means the product of 1.5 and its authorized control level risk-based capital.
 - c. "Authorized control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.
 - d. "Mandatory control level risk-based capital" means the product of .70 and the authorized control level risk-based capital.
- (8) Risk-based capital plan. – A comprehensive financial plan containing the elements specified in G.S. 58-12-11(b). If the Commissioner rejects the risk-based capital plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan shall be called the "revised risk-based capital plan".
- (9) Risk-based capital report. – The report required in G.S. 58-12-6.
- (10) Total adjusted capital. – The sum of:
- a. An insurer's statutory capital and surplus, as determined in accordance with the statutory accounting applicable to the annual financial statements required under G.S. 58-2-165; and
 - b. Such other items, if any, as the risk-based capital instructions may provide."

SECTION 7. G.S. 58-12-11(a) reads as rewritten:

"(a) "Company action level event" means any of the following events:

- (1) The filing of a risk-based capital report by an insurer that indicates that:
 - a. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital, ~~if the insurer is a property or casualty insurer or a health organization, capital; or~~
 - b. ~~The~~ In the case of a life or health insurer, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative trend, if the insurer is a life or health insurer trend; or
 - c. In the case of a property or casualty insurer or a health organization, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty or health organization risk-based capital instructions.
- (2) The notification by the Commissioner to the insurer of an adjusted ~~risk-based~~ risk-based capital report that indicates the event in sub-subdivision ~~(1)a. or b.~~ (1)a., (1)b., or (1)c. of this subsection if the insurer does not challenge the adjusted risk-based capital report under G.S. 58-12-30.

- 1 (3) If the insurer challenges an adjusted risk-based capital report that indicates
2 the event in sub-subdivision ~~(1)a. or b.~~ (1)a., (1)b., or (1)c. of this subsection
3 under G.S. 58-12-30, the notification by the Commissioner to the insurer that
4 the Commissioner has rejected the insurer's challenge."

5 SECTION 8. Article 33 of Chapter 58 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 58-33-27. Claims handling for portable consumer electronic devices.**

8 (a) As used in this section, the following definitions apply:

- 9 (1) "Automated claims adjudication system" means a preprogrammed computer
10 system designed for the collection, data entry, calculation, and
11 system-generated final resolution of claims on insurance policies that cover
12 only portable consumer electronic devices, which system shall meet the
13 following criteria:

- 14 a. Be utilized only by a licensed adjuster, licensed agent, or supervised
15 individuals operating pursuant to this section.
16 b. Comply with all claims payment requirements of this Chapter.
17 c. Be certified as compliant with this section by a licensed adjuster who
18 is an officer of a licensed business entity under this Chapter.

- 19 (2) "Portable consumer electronic devices" include the following, which must be
20 easily carried or conveyed by hand: smartphones, navigation devices,
21 cellular phones, personal digital assistants, iPads, iPhones, Androids, video
22 games, wireless reading devices, laptops, tablets, netbooks, MP3 players,
23 digital cameras, and other electronic devices that are portable in nature, their
24 accessories, and services related to the use of the device.

25 (b) No adjuster license is required for an individual who, in connection with insurance
26 covering only portable consumer electronic devices as defined in subdivision (a)(2) of this
27 section, collects claim information from or furnishes claim information to insureds, who
28 conducts data entry, including entering data into an automated claims adjudication system, and
29 who does not exercise any discretion in the disposition of the portable consumer electronic
30 device claim; provided that the individual is supervised by a licensed adjuster or licensed agent
31 and there are no more than 25 individuals who may adjust claims under the supervision of the
32 licensed adjuster or licensed agent. No agent acting as a supervisor pursuant to this section is
33 required to be licensed as an adjuster.

34 (c) If other property losses occur in conjunction with the loss associated with the
35 portable consumer electronic device, the individual who performs duties as described in
36 G.S. 58-33-10(2) on the total loss, including the loss associated with the portable consumer
37 electronic device, must hold an adjuster's license."

38 SECTION 9. G.S. 58-33-30(e) reads as rewritten:

39 "(e) Examination.

- 40 (1) After completion and filing of the application with the Commissioner, the
41 Commissioner shall require each applicant for license as an agent or an
42 adjuster to take an examination as to the applicant's competence to be
43 licensed. The applicant must take and pass the examination according to
44 requirements prescribed by the Commissioner. This subsection shall not
45 apply to adjusters who adjust only federal crop insurance claims and are
46 certified in accordance with subdivision (2a) of this subsection.
47 (2) The Commissioner may require any licensed agent, adjuster, or motor
48 vehicle damage appraiser to take and successfully pass an examination in
49 writing, testing his competence and qualifications as a condition to the
50 continuance or renewal of his license, if the licensee has been found guilty of

1 any violation of any provision of this Chapter. If an individual fails to pass
2 such an examination, the Commissioner shall revoke all licenses issued in
3 his name and no license shall be issued until such individual has passed an
4 examination as provided in this Article.

5 **(2a)** Adjusters who adjust federal crop insurance claims shall be certified as
6 having passed a proficiency examination approved by the federal Risk
7 Management Agency (RMA) as a condition of obtaining an adjuster's license
8 under this Chapter or another proficiency examination approved by the
9 Commissioner. An adjuster who intends to adjust crop insurance claims shall
10 furnish the Commissioner proof that the adjuster is certified as having
11 passed the required examination pursuant to this section.

12 **(3)** Each examination shall be as the Commissioner prescribes and shall be of
13 sufficient scope to test the applicant's knowledge of:

- 14 a. The terms and provisions of the policies or contracts of insurance the
15 applicant proposes to effect; or
- 16 b. The types of claims or losses the applicant proposes to adjust; and
- 17 c. The duties and responsibilities of the license; and
- 18 d. The current laws of this State applicable to the license.

19 **(4)** The answers of the applicant to the examination shall be provided by the
20 applicant under the Commissioner's supervision. The Commissioner shall
21 give examinations at such times and places within this State as the
22 Commissioner considers necessary reasonably to serve the convenience of
23 both the Commissioner and applicants: Provided that the Commissioner may
24 contract directly with persons for the processing of examination application
25 forms and for the administration and grading of the examinations required
26 by this section; the Commissioner may charge a reasonable fee in addition to
27 the registration fee charged under G.S. 58-33-125, to offset the cost of the
28 examination contract authorized by this subsection; and such contracts shall
29 not be subject to Article 3 of Chapter 143 of the General Statutes. However,
30 the Commissioner shall: (i) submit all proposed statewide and agency term
31 agreements or contracts for supplies, materials, printing, equipment, and
32 contractual services that exceed one million dollars (\$1,000,000) authorized
33 by this subdivision to the Attorney General or the Attorney General's
34 designee for review as provided in G.S. 114-8.3; and (ii) include in all
35 contracts to be awarded by the Commissioner under this subdivision a
36 standard clause which provides that the State Auditor and internal auditors
37 of the Commissioner may audit the records of the contractor during the term
38 of the contract to verify accounts and data affecting fees and performance.
39 The Commissioner shall not award a cost plus percentage of cost contract for
40 any purpose.

41 **(5)** The Commissioner shall collect in advance the examination and registration
42 fees provided in G.S. 58-33-125 and in subsection (4) of this section. The
43 Commissioner shall make or cause to be made available to all applicants, for
44 a reasonable fee to offset the costs of production, materials that he considers
45 necessary for the applicants' proper preparation for examinations. The
46 Commissioner may contract directly with publishers and other suppliers for
47 the production of the preparatory materials, and contracts so let by the
48 Commissioner shall not be subject to Article 3 of Chapter 143 of the General
49 Statutes. However, the Commissioner shall: (i) submit all proposed
50 statewide and agency term contracts for supplies, materials, printing,

1 equipment, and contractual services that exceed one million dollars
2 (\$1,000,000) authorized by this subdivision to the Attorney General or the
3 Attorney General's designee for review as provided in G.S. 114-8.3; and (ii)
4 include in all contracts to be awarded by the Commissioner under this
5 subdivision a standard clause which provides that the State Auditor and
6 internal auditors of the Commissioner may audit the records of the
7 contractor during the term of the contract to verify accounts and data
8 affecting fees and performance. The Commissioner shall not award a cost
9 plus percentage of cost contract for any purpose.

10 (6) In addition to the examinations for the kinds of insurance specified in
11 G.S. 58-33-25(c)(1) and (2), before any resident may sell Medicare
12 supplement or long-term care insurance policies defined respectively in
13 Articles 54 and 55 of this Chapter, the resident must take and pass a
14 supplemental written examination according to requirements prescribed by
15 the Commissioner.

16 (7) An individual who fails to appear for the examination as scheduled or fails
17 to pass the examination shall reapply for an examination and remit all
18 required fees and forms before being rescheduled for another examination."

19 **SECTION 10.** Article 4 of Chapter 97 of the General Statutes reads as rewritten:

20 "Article 4.

21 "North Carolina Self-Insurance Security Association.

22 **"§ 97-130. Definitions.**

23 As used in this Article:

24 (1) "Association" means the North Carolina Self-Insurance Security Association
25 established by G.S. 97-131.

26 (1a) "Association Aggregate Security System" means the security system
27 established by the Association under G.S. 97-133 whereby individual
28 self-insurers collectively secure their aggregate self-insured workers'
29 compensation liabilities through the North Carolina Self-Insurance Security
30 Association.

31 (2) "Board" means the Board of Directors of the Association established by
32 G.S. 97-132.

33 (3) "Commissioner" means the North Carolina Commissioner of Insurance.

34 (4) "Covered claim" means an unpaid claim against an insolvent individual
35 self-insurer or group self-insurer that relates to an injury that occurs while
36 the individual self-insurer or group self-insurer is a member of the
37 Association and that is compensable under this Chapter.

38 (5) "Fund" means the North Carolina Self-Insurance Security Fund established
39 by G.S. 97-133.

40 (5a) "Group" or "Group self-insurer" means a group self-insurer licensed by the
41 Commissioner under Part 1, Article 47 of Chapter 58 of the General Statutes.

42 (5b) "Individual self-insurer" means an individual employer licensed by the
43 Commissioner under Article 5 of this Chapter.

44 (6) "Member self-insurer" or "member" means an individual self-insurer or
45 group self-insurer that is required to be a member of the Association under
46 this Article or Part 1, Article 47 of Chapter 58 of the General Statutes.

47 (7) "Plan" means the Plan of Operation authorized by G.S. 97-134.

48 (8) Repealed by Session Laws 2005-400, s. 1.2, effective January 1, 2006.

- 1 (9) "Servicing facility" means those persons delegated by the Board and
2 ~~approved by the Commissioner~~ to settle or compromise claims and to
3 expend Fund assets to pay claims.

4 **"§ 97-131. Creation.**

5 ...

6 (b) All individual self-insurers and group self-insurers shall be and remain members of
7 the Association as a condition of being licensed to self-insure in this State. The Association
8 shall perform its functions under a Plan of Operation established or amended, or both, by the
9 ~~Board and approved by the Commissioner, Board~~ and shall exercise its powers through the
10 Board.

- 11 (1) An individual self-insurer or a group self-insurer shall be deemed to be a
12 member of the Association for purposes of another member's insolvency, as
13 defined in G.S. 97-135, when:
- 14 a. The individual self-insurer or group self-insurer is a member of the
15 Association when an insolvency occurs, or
 - 16 b. The individual self-insurer or group self-insurer has been a member
17 of the Association at some point in time during the 12-month period
18 immediately preceding the insolvency in question.
- 19 (2) An individual self-insurer or a group self-insurer shall be deemed to be a
20 member of the Association for purposes of its own insolvency if it is a
21 member when the compensable injury occurs.
- 22 (3) In determining the membership of the Association for the purposes of
23 subdivisions (1) and (2) of this subsection for any date after the effective
24 date of this Article, no individual self-insurer or group self-insurer may be
25 deemed to be a member of the Association on any date after the effective
26 date of this Article, unless that employer is on that date licensed as an
27 individual self-insurer by the Commissioner under Article 5 of this Chapter
28 or a group of employers is at that time licensed as a group self-insurer by the
29 Commissioner under Article 47 of Chapter 58 of the General Statutes.

30 **"§ 97-132. Board of directors.**

31 The Board shall consist of not less than nine directors serving terms as established in the
32 Plan. The directors shall be selected by the members of the Association, ~~subject to the approval~~
33 ~~of the Commissioner, Association~~ and shall serve for three-year terms and until a successor is
34 elected and qualified. There is no limitation on the number of terms a director may serve. ~~In~~
35 ~~approving selections to the Board, the Commissioner shall consider, among other things,~~
36 ~~whether individual self-insurers and group self-insurers are fairly represented.~~ Directors may be
37 reimbursed from the assets of the Association for expenses incurred by them as directors.

38 **"§ 97-133. Powers and duties of the Association.**

39 (a) The Association shall:

- 40 (1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.

41 (1a) Administer a fund, to be known as the North Carolina Self-Insurance
42 Security Fund, which shall receive the assets of the North Carolina
43 Self-Insurance Guaranty Fund previously established under subdivision (2)
44 of this subsection, the assessments required by subdivisions (2a) and (3a) of
45 this subsection and any other sums received by the Association. ~~In its~~
46 ~~discretion, the Board may determine that the assets of the Fund should be~~
47 ~~segregated or that a separate accounting shall be made in order to identify~~
48 ~~that portion of the Fund which represents assessments paid by individual~~
49 ~~self-insurers and that portion of the Fund which represents assessments paid~~
50 ~~by group self-insurers. If the Board segregates the Fund in this manner, the~~

1 Association shall thereafter pay covered claims against individual member
2 self insurers from that portion of the Fund that represents assessments
3 against individual self insurers and shall thereafter pay covered claims
4 against group member self insurers from that portion of the Fund that
5 represents assessments against group self insurers. The costs of
6 administering the Association shall be borne by the Fund. The Association is
7 authorized to secure insurance, primary excess insurance, reinsurance,
8 bonds, other insurance, financial guarantees and related financial instruments
9 to effectuate the purposes of the Association. The Board will invest the Fund
10 assets pursuant to an investment policy adopted by the Board and reviewed
11 and approved annually by the Department of the State Treasurer. The
12 earnings from investment of Fund assets shall be placed in or credited to the
13 Fund.

14 (2) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

15 (2a) ~~Establish, operate, and maintain~~ Establish and operate the Association
16 Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as
17 follows:

18 a. ~~The Association shall annually prepare and submit to the~~
19 ~~Commissioner a written plan to operate and~~ provide an Association
20 Aggregate Security System through a combination of cash on deposit
21 in the Fund, securities, surety bonds, irrevocable letters of credit,
22 ~~insurance insurance, reinsurance,~~ or other financial instruments or
23 guarantees owned or entered into by the ~~Association and acceptable~~
24 ~~to the Commissioner. Association.~~ The written plan shall include, but
25 not be limited to, (i) a description of the institutions that will issue or
26 ~~guarantee the securities, surety bonds, irrevocable letters of credit,~~
27 ~~insurance or other financial instruments or guarantees, including, but~~
28 ~~not limited to, the credit rating, financial strength, and AM best~~
29 ~~rating, if applicable to the institutions (ii) applicable cash flow~~
30 ~~information and financial assumptions (iii) a description of the~~
31 ~~methodology to be used by the Association to assess and collect the~~
32 ~~Association Aggregate Security System assessments to be made~~
33 ~~pursuant to subdivision (3a) of this subsection and (iv) a proposed~~
34 ~~timetable for the release of existing individual company deposits~~
35 ~~posted pursuant to G.S. 97-185(e), provided, however, that no~~
36 ~~individual company deposits posted pursuant to G.S. 97-185(e) shall~~
37 ~~be released without the written consent of the Commissioner. The~~
38 ~~noncash elements of the composite security may be one year or~~
39 ~~multiple year instruments.~~

40 b. ~~Within 90 days following the submission of the initial plan under~~
41 ~~sub subdivision a. of this subdivision, the Commissioner shall either~~
42 ~~approve or disapprove the initial plan and shall notify the Association~~
43 ~~in writing. If the Commissioner does not approve or disapprove the~~
44 ~~initial plan within 90 days following submission, then the initial plan~~
45 ~~shall be deemed to be approved by the Commissioner. All~~
46 ~~subsequent plans shall be either approved or disapproved within 60~~
47 ~~days following submission.~~

48 e. ~~The Commissioner shall also determine the total undiscounted claims~~
49 ~~liability of each individual self insurer that will participate in the~~
50 ~~Association Aggregate Security System as well as the aggregate total~~

1 ~~undiscounted outstanding claims liabilities of all the individual~~
2 ~~self-insurers that are to participate in the Association Aggregate~~
3 ~~Security System and shall notify the Association of this~~
4 ~~determination.~~

5 d. ~~Upon approval by the Commissioner of the Association's plan for the~~
6 ~~Association Aggregate Security System, the~~ The Association shall
7 assess the individual self-insurers that participate in the Association
8 Aggregate Security System pursuant to subdivision (3a) of this
9 subsection.

10 e. ~~If the Commissioner disapproves the plan for any year, If the~~
11 Association determines it is not feasible or practical to operate the
12 Association Aggregate Security System in any given year, it may
13 terminate or suspend the Association Aggregate Security System and
14 shall notify the Commissioner at least 90 days prior to the
15 termination or suspension of the Association Aggregate Security
16 System for that particular year. During any period that the Associate
17 Aggregate Security System is terminated or suspended, every
18 self-insurer shall deposit with the Commissioner, or continue to
19 deposit, the amount required by G.S. 97-185(b3) in the manner
20 prescribed by G.S. 97-185(c).

21 f. Group self-insurers shall not participate in the Association Aggregate
22 Security System.

23 (3) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

24 (3a) Assess members of the Association as follows:

25 a. Association Aggregate Security System assessments. – The
26 Association shall assess each individual self-insurer participating in
27 the Association Aggregate Security System a security system
28 assessment. The amount of the security system assessment charged to
29 each individual self-insurer participating in the Association
30 Aggregate Security System shall be based on the Association's
31 reasonable consideration of all of the following factors:

- 32 1. The total amount of assessments necessary to provide
33 aggregate security for all participating individual
34 self-insurers.
- 35 2. The individual self-insurer's total workers' compensation
36 liabilities under the Act.
- 37 3. The financial strength and creditworthiness of the
38 participating individual self-insurer.
- 39 4. Any other relevant factors.

40 b. Special assessment. – In the event that there are covered claims
41 against an insolvent member or members and the assets of the Fund
42 are not sufficient to pay the obligations of the Association, then the
43 Association may collect a special assessment from the members in an
44 amount sufficient to pay the aggregate value of such covered claims.
45 Each member's special assessment shall be determined by the Board
46 and shall be based on the proportion of the member's total obligations
47 under the Act to the aggregate total of all members' obligations under
48 the Act.

49 c. Initial assessments. – An individual self-insurer that becomes a
50 member and does not initially participate in the Association

- 1 Aggregate Security System shall pay an initial assessment to the
2 Association in an amount determined by the Board. A group
3 self-insurer, upon receiving its initial license from the Commissioner,
4 shall pay an initial assessment to the Association in an amount
5 determined by the Board.
- 6 d. Each member shall be notified of assessments no later than 30 days
7 before the assessment is due.
- 8 e. Delinquent assessments, except as otherwise provided, shall bear
9 interest at a rate to be established by the Board.
- 10 f. Group assessments. – The Association may annually assess each
11 member group self-insurer in an amount not to exceed two percent
12 (2%) of the group self-insurer's annual gross premiums for the
13 preceding calendar year, as determined under G.S. 105-228.5(b),
14 (b1), and (c).
- 15 (4) Be obligated to pay covered claims.
- 16 (5) After paying any covered claim, be subrogated to the rights of the injured
17 employee and dependents and be entitled to enforce liability against the
18 self-insurer or any third party by any appropriate action brought in its own
19 name or in the name of the injured employee and dependents.
- 20 (6) Expend Fund assets in amounts necessary to pay all of the following:
- 21 a. The obligations of the Association under this Article subsequent to
22 an insolvency.
- 23 b. The expenses of handling covered claims subsequent to an
24 insolvency.
- 25 c. The cost of examinations under G.S. 97-137.
- 26 d. The costs of implementing and operating the Association Aggregate
27 Security System.
- 28 e. All other expenses authorized by this Article.
- 29 (7) Investigate claims brought against the Association and adjust, compromise,
30 settle, and pay covered claims to the extent of the Association's obligation;
31 and deny all other claims. The Association may review settlements to which
32 the insolvent member was a party to determine the extent to which such
33 settlements may be properly contested.
- 34 (8) Notify such persons as the Commissioner directs under G.S. 97-136.
- 35 (9) Handle claims through its directors, its employees, or through one or more
36 members or other persons designated as servicing facilities. Designation of a
37 ~~servicing facility is subject to the approval of the Commissioner, but~~
38 ~~designation~~ of a member as a servicing facility may be declined by such
39 member.
- 40 (10) Reimburse each servicing facility for obligations of the Association paid by
41 the facility and for expenses incurred by the facility while handling claims
42 on behalf of the Association.
- 43 (11) Pay any other expenses of the Association authorized by this section.
- 44 (12) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- 45 (13) Require each member to annually determine its total undiscounted workers'
46 compensation claims liability and require each member to notify the
47 Association of this determination.
- 48 (b) The Association may:
- 49 (1) Employ or retain such persons, including, but not limited to, adjustors,
50 brokers, accountants, attorneys, financial advisors, investment bankers,

1 placement agents, and consultants, as the Board may determine are
 2 necessary to handle claims, perform other duties of, provide services to, and
 3 consult with the Association.

4 (2) Borrow funds necessary to effect the purposes of this Article in accord with
 5 the Plan, including entering into standby lines of credit.

6 (3) Sue or be sued.

7 (4) Negotiate and become a party to such contracts as are necessary to carry out
 8 the purpose of this section.

9 (5) Perform such other acts as are necessary or proper to effectuate the purpose
 10 of this section.

11 (6) ~~Reimburse the Department of Insurance up to twenty thousand dollars~~
 12 ~~(\$20,000) for consultants retained by the Department to review the initial~~
 13 ~~plan submitted pursuant to G.S. 97-133(a)(2a).~~

14 (c) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

15 (c1) The Association shall provide in its Plan that the functions of administration and
 16 adjusting claims shall not be performed by the same entity that provides legal representation to
 17 the Association for claims.

18 (d) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.

19 **"§ 97-134. Plan of Operation.**

20 The Plan is as follows:

21 (1) ~~The Association Board shall submit to the Commissioner adopt a Plan of~~
 22 ~~Operation and any amendments necessary or suitable to assure the fair,~~
 23 ~~reasonable, and equitable administration of the Association. The Plan and~~
 24 ~~any amendments become effective upon approval in writing by the~~
 25 ~~Commissioner. If the Association at any time fails to submit a suitable Plan~~
 26 ~~or suitable amendment to the Plan the Commissioner shall, after notice and~~
 27 ~~hearing, adopt such reasonable rules as are necessary or advisable to~~
 28 ~~effectuate this Article. The rules shall continue in force until modified by the~~
 29 ~~Commissioner or superseded by a Plan submitted by the Association and~~
 30 ~~approved by the Commissioner.~~

31 (2) All member self-insurers shall comply with the Plan.

32 (3) The Plan shall:

33 a. Establish the procedures whereby all the powers and duties of the
 34 Association under G.S. 97-133 will be performed.

35 b. Establish procedures for investing and managing Fund assets.

36 c. Adopt a reasonable mechanism and procedure to achieve equity in
 37 assessing members under G.S. 97-133.

38 d. Establish the amount and method of reimbursing members of the
 39 Board under G.S. 97-132.

40 e. Establish procedures by which claims may be filed with the
 41 Association and establish acceptable forms of proof of covered
 42 claims.

43 f. Establish regular places and times for meetings of the Board.

44 g. Establish procedures for records to be kept of all financial
 45 transactions of the Association, its agents, and the Board.

46 h. Provide that any member self-insurer aggrieved by any final action or
 47 decision of the Association may appeal to the Commissioner within
 48 30 days after the action or decision.

49 i. ~~Establish the procedures whereby selections for the Board shall be~~
 50 ~~submitted to the Commissioner.~~

- j. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

"§ 97-136. Powers and duties of the Commissioner.

(a) The Commissioner shall:

- (1) Notify the Association of the existence of an insolvent member self-insurer not later than 30 days after he receives notice of an insolvency pursuant to the standards set forth in G.S. 97-135.
- (2) ~~Approve or disapprove the plan for an Association Aggregate Security System as required under G.S. 97-133(a)(2a)b. and notify the Association of the information required under G.S. 97-133(a)(2a)c.~~

"§ 97-137. Examination of the Association.

The Association shall be subject to examination and regulation by the Commissioner. The Board shall submit, not later than ~~March 30~~ June 1 of each year, a financial report for the preceding calendar year in a form approved by the Commissioner.

...."

SECTION 11. G.S. 97-185(a1) reads as rewritten:

"(a1) All individual self-insurers as defined in G.S. 97-130(5b) shall participate in the Association Aggregate Security System established under G.S. 97-131 unless excluded by the Board of Directors of the North Carolina Self-Insurance Security Association. The Board of Directors of the North Carolina Self-Insurance Security Association shall exclude all of the following from the Association Aggregate Security System:

- (1) Individual self-insurers whose licenses have previously been revoked by the Commissioner.
- (2) Individual self-insurers with a debt rating as established by Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum Standard & Poor's ~~and or~~ Moody's ratings if a minimum debt rating has been established in the written plan by the Board of Directors of the North Carolina Self-Insurance Security Association for the Association Aggregate Security System submitted by the Association and approved by the Commissioner under G.S. 97-133(a)(2a) System.
- (3) Individual self-insurers that have defaulted on the payment of their self-insured workers' compensation liabilities.
- (4) Individual self-insurers that fail to submit sufficient financial information to enable the Association to determine their total outstanding workers' compensation liabilities, or their creditworthiness, or both.

The Board of Directors of the North Carolina Self-Insurance Security Association shall notify the Commissioner of the individual self-insurers that are excluded from participating in the Association Aggregate Security System."

SECTION 12. Article 8 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-8-36. Administrative fees.

Statewide multiline limited assessable mutual insurance companies are not subject to the provisions of G.S. 58-33-85(b)."

SECTION 13. G.S. 58-64-85 reads as rewritten:

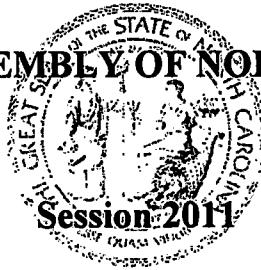
"§ 58-64-85. Other licensing or regulation.

(a) Nothing in this Article affects the authority of the Department of Health and Human Services or any successor agency otherwise provided by law to license or regulate any health service facility or domiciliary service facility.

1 **(b)** Facilities and providers licensed under this Article that also are subject to the
2 provisions of the North Carolina Condominium Act under Chapter 47C of the General Statutes
3 shall not be subject to the provisions of Chapter 39A of the General Statutes, provided that the
4 facility's declaration of condominium does not require the payment of any fee or charge not
5 otherwise provided for in a resident's contract for continuing care, or other separate contract for
6 the provisions of membership or services."

7 **SECTION 14.** Sections 1, 4, 10, and 11 of this act become effective July 1, 2011.
8 Sections 3, 5, 6, and 7 of this act become effective October 1, 2011. Section 8 of this act
9 becomes effective July 1, 2012, and applies to licenses issued on or after that date. The
10 remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: May 19, 2011

TO: Representative Dockham

FROM: Tazra Mitchell
Fiscal Research Division

RE: House Bill 298 - CSSVf-18 (PCS to Second Edition)

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:	*Unknown. See Assumptions and Methodology*				
EXPENDITURES:	*None Anticipated*				
POSITIONS (cumulative):	*None Anticipated*				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance					
EFFECTIVE DATE: Sections 1, 4, 10 and 11 become effective July 1, 2011. Sections 3, 5, 6, and 7 become effective October 1, 2011. Section 8 becomes effective July 1, 2012 and applies to licenses issued on or after that date. The remainder of the act is effective when it becomes law.					

BILL SUMMARY:

The Proposed Committee Substitute to the Second Edition of House Bill 298 makes the following changes:

Section 1 authorizes the Commissioner of Insurance to contract with the National Association of Insurance Commissioners (NAIC) and other third parties to provide online license processing and support services to license applicants. The bill also authorizes the third party to charge a reasonable fee, as agreed to by the Commissioner, for these services.

Section 2 codifies the existing Senior Health Insurance Information Program (SHIIP) in Chapter 58 of the General Statutes governing insurance. Currently, this Program is referenced in the Administrative Code (11 NCAC 17).

Section 3 makes it unlawful to prepare or issue a certificate of insurance that: (1) is in a form not approved by the Commissioner; (2) contains any false or misleading information; or (3) purports to alter or amend the coverage provided by the policy. A certificate of insurance is a short summary of a policy provided by an insurer upon request to verify the existence of coverage.

The PCS adds the following language to this section:

"Certificate" or "certificate of insurance" shall not include a document prepared or issued by an insurance company or producer that is used to verify or evidence the existence of property insurance provided to a lender covering real or personal property which serves as the lender's security for commercial mortgages. For purposes of this section, "commercial mortgages" shall mean mortgages or other instruments given for the purpose of creating a lien encumbering office, multi-unit residential, office, apartments, commercial or industrial properties.

Section 4 grants the Commissioner the authority to approve or disapprove rates filed by insurers for small group coverage prior to an insurer's use of the filed rates. This is known as "prior approval." Prior approval is needed to avoid possible federal intervention in the approval of rates if the State does not have this authority.

Section 5 creates a defined open enrollment period in the months of January and July of each year for nondependent child coverage, also known as "child only" coverage. An insurer is not required, however, to offer child only coverage, or maternity coverage as part of an offer of child only coverage.

Sections 6 and 7 adopt NAIC model language implementing a new "trend test" calculation. The trend test is currently used to allow the Department to identify a company with insufficient capital in light of the company's assumed risk. The Department can then require the development of a comprehensive financial plan by the company. Failure to adopt the new NAIC Model trend test language could result in loss of state accreditation by the NAIC.

Section 8 exempts from adjuster licensing requirements those individuals who, in connection solely with insurance covering only portable consumer electronic devices, collect claims information and conduct data entry, and exercise no discretion in the disposition of the portable

electronic device claim. For the exemption to apply, the individual must be supervised by a licensed adjuster or licensed agent who supervises no more than 25 individuals adjusting claims.

Section 9 exempts crop loss adjusters from the examination requirements applicable to property and casualty adjusters if: (1) the crop adjuster adjusts only federal crop insurance claims; and (2) the adjuster passes a proficiency examination approved by the federal Risk Management Agency or the Commissioner.

Sections 10 and 11 make changes to ease Department regulation of the Association Aggregate Security System (System) of the North Carolina Self-Insurance Guaranty Association (Association). The Association provides for the payment of Workers' Compensation claims against member self-insurers in the case of insolvency of one of its members. The System was established by the Association to allow individual self-insurers to collectively secure workers' compensation liabilities through the Association. The Association submits its Plan of Operation to the Commissioner for approval and also must annually submit its plan for the System to the Commissioner for approval. The bill makes the following changes:

- Deletes language requiring the Commissioner's approval of the Association's Board of Directors (G.S. 97-132), the Association's Plan of Operation (G.S. 97-134), the System's plan (G.S. 97-133(a)(2a), and the Association's servicing facility (G.S. 97-133(a)(9)).
- Removes language allowing separation of the Association's Self-Insurance Security Fund into separate funds for group self-insurers and individual self-insurers (G.S. 97-133(a)(1a)).
- Requires each member of the Association to annually determine and report its total undiscounted workers compensation claims liability to the Association (G.S. 97-133(a)(13)).
- Allows the Board to set its own minimum debt rating for participation in the System.

Section 12 exempts multiline limited assessable mutual insurance companies from requirement that application and policy fees may not be charged by an insurer without the insured's prior written consent. Under current law, these mutual insurance companies are generally exempt from Department regulatory requirements.

Section 13 provides that a fee charged by a licensed continuing care facility in a facility's declaration of condominium which is also provided in a resident's contract for continuing care with the facility is not a transfer fee for the purposes of Chapter 39A of the General Statutes. Chapter 39A prohibits the enforcement of transfer fee covenants running with a title to real property.

Source: Bill Summary, Research Division (May 18, 2011)

ASSUMPTIONS AND METHODOLOGY:

Revenue

Section 8

This section of the bill exempts from adjuster licensing requirements those individuals who, in connection solely with insurance covering only portable consumer electronic devices, collect

claims information and conduct data entry, and exercise no discretion in the disposition of the portable electronic device claim.

The Department of Insurance (DOI) reports that there could be a reduction in revenue as a result of this exemption, but DOI is not aware of any adjuster who is only adjusting portable electronic device claims. The Agent Services Division within DOI has no way of determining the population or number of adjusters that would fall into this category. As a result, Fiscal Research is not able to estimate the potential reduction in revenue to the State.

Expenditures

DOI estimates that House Bill 298 would have no fiscal impact on its current operations. Any additional workload required by the bill would be absorbed by current DOI staff. DOI also anticipates that the bill would not result in any savings to the State.

Section 1

This section of the bill authorizes the Commissioner of Insurance to contract with the National Association of Insurance Commissioners (NAIC) and other third parties to provide online license processing and support services to license applicants. The bill also authorizes the third party to charge a reasonable fee, as agreed to by the Commissioner, for these services. This section of the bill will have no fiscal impact on DOI because the administrative fee would be charged to the licensee and does not have a fiscal impact on DOI.

Sections 4, 5, 6, 7, 10, and 11

DOI anticipates that it would absorb the additional workload required by these sections of the bill. With respect Sections 10 and 11, DOI does not expect any savings from the review of the Association Aggregate Security System.

Section 9

This section exempts crop loss adjusters from the examination requirements applicable to property and casualty adjusters under certain circumstances. The hail adjuster exam exemption does not have a fiscal impact on DOI because the adjusters would still be required to be licensed and would have to pay the annual license fees.

SOURCES OF DATA: Department of Insurance

TECHNICAL CONSIDERATIONS: None



HOUSE BILL 298: Insurance Amendments.-AB

2011-2012 General Assembly

Committee:	House Finance	Date:	May 19, 2011
Introduced by:	Rep. Dockham	Prepared by:	Trina Griffin
Analysis of:	PCS to Second Edition H298-CSSVf-18		Committee Counsel

SUMMARY: *House Bill 298 makes various changes to the insurance laws including laws governing licensing requirements, the provision of services for license applicants, certificates of insurance, health insurance, risk-based capital requirements for insurers, and Department oversight of the Association Aggregate Security System for workers compensation self-insurers.*

The PCS revises Section 3 of the bill dealing with certificates of insurance.

BILL SUMMARY: House Bill 298 makes the following changes:

Section 1 authorizes the Commissioner of Insurance to contract with the National Association of Insurance Commissioners (NAIC) and other third parties to provide online license processing and support services to license applicants. The bill also authorizes the third party to charge a reasonable fee, as agreed to by the Commissioner, for these services.

Section 2 codifies the existing Senior Health Insurance Information Program (SHIIP) in Chapter 58 of the General Statutes governing insurance. Currently, this Program is referenced in the Administrative Code (11 NCAC 17).

Section 3 makes it unlawful to prepare or issue a certificate of insurance that: (1) is in a form not approved by the Commissioner; (2) contains any false or misleading information; or (3) purports to alter or amend the coverage provided by the policy. A certificate of insurance is a short summary of a policy provided by an insurer upon request to verify the existence of coverage.

The PCS adds the following language to this section:

"Certificate" or "certificate of insurance" shall not include a document prepared or issued by an insurance company or producer that is used to verify or evidence the existence of property insurance provided to a lender covering real or personal property which serves as the lender's security for commercial mortgages. For purposes of this section, "commercial mortgages" shall mean mortgages or other instruments given for the purpose of creating a lien encumbering office, multi-unit residential, office, apartments, commercial or industrial properties. Commercial mortgages shall not include a lien encumbering one-to-four family residential properties.

Section 4 grants the Commissioner the authority to approve or disapprove rates filed by insurers for small group coverage prior to an insurer's use of the filed rates. This is known as "prior approval." Prior approval is needed to avoid possible federal intervention in the approval of rates if the State does not have this authority.

Section 5 creates a defined open enrollment period in the months of January and July of each year for nondependent child coverage, also known as "child only" coverage. An insurer is not required, however, to offer child only coverage, or maternity coverage as part of an offer of child only coverage.

Sections 6 and 7 adopt NAIC model language implementing a new "trend test" calculation. The trend test is currently used to allow the Department to identify a company with insufficient capital in light of the company's assumed risk. The Department can then require the development of a comprehensive

House PCS 298

Page 2

financial plan by the company. Failure to adopt the new NAIC Model trend test language could result in loss of state accreditation by the NAIC.

Section 8 exempts from adjuster licensing requirements those individuals who, in connection solely with insurance covering only portable consumer electronic devices, collect claims information and conduct data entry, and exercise no discretion in the disposition of the portable electronic device claim. For the exemption to apply, the individual must be supervised by a licensed adjuster or licensed agent who supervises no more than 25 individuals adjusting claims.

Section 9 exempts crop loss adjusters from the examination requirements applicable to property and casualty adjusters if: (1) the crop adjuster adjusts only federal crop insurance claims; and (2) the adjuster passes a proficiency examination approved by the federal Risk Management Agency or the Commissioner.

Sections 10 and 11 make changes to ease Department regulation of the Association Aggregate Security System (System) of the North Carolina Self-Insurance Guaranty Association (Association). The Association provides for the payment of Workers' Compensation claims against member self-insurers in the case of insolvency of one of its members. The System was established by the Association to allow individual self-insurers to collectively secure workers' compensation liabilities through the Association. The Association submits its Plan of Operation to the Commissioner for approval and also must annually submit its plan for the System to the Commissioner for approval. The bill makes the following changes:

- Deletes language requiring the Commissioner's approval of the Association's Board of Directors (G.S. 97-132), the Association's Plan of Operation (G.S. 97-134), the System's plan (G.S. 97-133(a)(2a), and the Association's servicing facility (G.S. 97-133(a)(9)).
- Removes language allowing separation of the Association's Self-Insurance Security Fund into separate funds for group self-insurers and individual self-insurers (G.S. 97-133(a)(1a)).
- Requires each member of the Association to annually determine and report its total undiscounted workers compensation claims liability to the Association (G.S. 97-133(a)(13)).
- Allows the Board to set its own minimum debt rating for participation in the System (Section 11).

Section 12 exempts multiline limited assessable mutual insurance companies from requirement that application and policy fees may not be charged by an insurer without the insured's prior written consent. Under current law, these mutual insurance companies are generally exempt from Department regulatory requirements.

Section 13 provides that a fee charged by a licensed continuing care facility in a facility's declaration of condominium which is also provided in a resident's contract for continuing care with the facility is not a transfer fee for the purposes of Chapter 39A of the General Statutes. Chapter 39A prohibits the enforcement of transfer fee covenants running with a title to real property.

EFFECTIVE DATE: Sections 1, 4, 10 and 11 become effective July 1, 2011. Sections 3, 5, 6, and 7 become effective October 1, 2011. Section 8 becomes effective July 1, 2012 and applies to licenses issued on or after that date. The remainder of the act is effective when it becomes law.

Tim Hovis, counsel to House Insurance, substantially contributed to this summary.

H298-SMSV-42(CSSVf-18) v2

Research Division

O. Walker Reagan, Director

(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 596
PROPOSED COMMITTEE SUBSTITUTE H596-CSTM-6 [v.5]

5/18/2011 7:05:11 PM

Short Title: Transfer Surplus Prop. to Retirement System.

(Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE PROCEEDS OF CERTAIN DISPOSITIONS OF STATE-OWNED REAL PROPERTY BE USED IN PART TO SUPPORT THE GENERAL FUND, IN PART TO SUPPORT THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM OF NORTH CAROLINA, AND IN PART TO SUPPORT THE AGENCIES TO WHICH THE PROPERTY WAS ALLOCATED; AND TO APPROPRIATE FUNDS FOR THESE PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-30(a) reads as rewritten:

"§ 146-30. Application of net proceeds.

(a) The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, ~~the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty five thousand dollars (\$25,000), then such exchange may not be made without consultation with the Joint Legislative Commission on Governmental Operations.~~ as follows:

- (1) If the appraised value of the land exceeds ten million dollars (\$10,000,000), the net proceeds shall be deposited with the State Treasurer to support the General Fund.
- (2) If the appraised value of the land does not exceed ten million dollars (\$10,000,000), the net proceeds shall be deposited as follows:
 - a. 25% to the State agency to which the property was allocated. These funds may be used for any purpose authorized by law and are hereby appropriated.
 - b. 25% to the State Treasurer to support the General Fund.
 - c. 50% to the State Treasurer to be deposited in the Teachers' and State Employees' Retirement System of North Carolina. These funds are hereby appropriated."

SECTION 2. G.S. 146-30 is amended by adding a new subsection to read:



1 "(a1) Nothing in this section shall be construed to prohibit the disposition of any State
2 lands by exchange for other lands, but if the appraised value in fee simple of any property
3 involved in the exchange is at least twenty-five thousand dollars (\$25,000), then such exchange
4 may not be made without consultation with the Joint Legislative Commission on Governmental
5 Operations."

6 **SECTION 3.** This act becomes effective July 1, 2011, and expires January 1, 2016.



HOUSE BILL 596: Transfer Surplus Prop. to Retirement System

2011-2012 General Assembly

Committee: House Finance	Date: May 19, 2011
Introduced by: Reps. Hastings, Stam, Crawford	Prepared by: Greg Roney
Analysis of: PCS to First Edition H596-CSTM-6	Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 596 would modify the allocation of the proceeds from the disposition of surplus real property with an appraised value below \$10,000,000 as follows: 25% to the State agency allocated the property, 25% to the General Fund, and 50% to the Teachers' and State Employees' Retirement System.*

CURRENT LAW: G.S. 146-27 authorizes the Department of Administration to initiate proceedings to dispose of surplus land. G.S. 146-28 provides that State agencies may voluntarily file an application with the Department of Administration to initiate the disposition of surplus land. The Department of Administration completes the disposition with the approval the Governor and the Council of State. For proposed dispositions of surplus land with an appraised value of \$25,000 or more, consultation with the Joint Legislative Commission on Governmental Operations is required. The net proceeds from the disposition of surplus land is paid into the General Fund.

BILL ANALYSIS: The PCS for House Bill 596 would direct that 25% of the net proceeds from the sale of surplus land with an appraised value below \$10,000,000 be paid to the General Fund and would redirect the remaining 75% of the net proceeds to the State agency currently allocated the land (25%) and to the Teachers' and State Employees' Retirement System (50%). The PCS for House Bill 596 would provide that 100% of the net proceeds from the sale of surplus land with an appraised value exceeding \$10,000,000 be paid to the General Fund.

BACKGROUND: The PCS for House Bill 596 creates an incentive for State agencies to voluntarily identify surplus land. The benefit of any increase in the disposition of surplus land is paid to the Teachers' and State Employees' Retirement System which will receive 50% of the net proceeds.

EFFECTIVE DATE: The PCS for House Bill 596 is effective July 1, 2011 and sunsets January 1, 2016.

H596-SMTM-18(CSTM-6) v3

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 596

DATE 5.19.11

S. B. No. _____

Amendment No. 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. Hackney
Sen.)

1 moves to amend the bill on page 1, line 21

2 () WHICH CHANGES THE TITLE

3 by deleting the phrase "ten million
4 dollars (\$10,000,000)," and
5 substituting the phrase "six
6 million dollars (\$6,000,000);"

7
8 and on page 1, lines 24-25
9 by deleting the phrase
10 "ten million dollars (\$10,000,000),"
11 and substituting the phrase
12 "six million dollars (\$6,000,000)."

13
14
15
16
17
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19

SIGNED *Hackney*

ADOPTED FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 867*
PROPOSED COMMITTEE SUBSTITUTE H867-CSRbx-40 [v.3]

5/18/2011 4:35:37 PM

Short Title: Google for Education.

(Public)

Sponsors:

Referred to:

April 21, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ASSIST THE SCHOOL CHILDREN OF NORTH CAROLINA BY
3 REQUIRING GOOGLE TO PAY SALES TAX ON THE PURCHASE OF ELECTRICITY
4 AND BUSINESS PROPERTY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 105-164.3(8e) reads as rewritten:

7 "(8e) Eligible Internet datacenter. – A datacenter that satisfies each of the
8 following conditions:

9 a. The facility is used primarily or is to be used primarily by a business
10 engaged in for one of the following:

11 1. ~~software~~ Software publishing included in industry 511210 of
12 NAICS or NAICS.

13 2. ~~an~~ An Internet activity included in industry 519130 of
14 NAICS. NAICS that focuses on building and reflecting social
15 networks or social relations website among people who share
16 interests and activities.

17 b. The facility is comprised of a structure or series of structures located
18 or to be located on a single parcel of land or on contiguous parcels of
19 land that are commonly owned or owned by affiliation with the
20 operator of that facility.

21 c. The facility is located or to be located in a county that was
22 designated, at the time of application for the written determination
23 required under sub-subdivision d. of this subdivision, either an
24 enterprise tier one, two, or three area or a development tier one or
25 two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless
26 of any subsequent change in county enterprise or development tier
27 status.

28 d. The Secretary of Commerce has made a written determination that at
29 least two hundred fifty million dollars (\$250,000,000) in private
30 funds has been or will be invested in real property or eligible
31 business property, or a combination of both, at the facility within five
32 years after the commencement of construction of the facility."

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



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1

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: May 18, 2011

TO: House Finance Committee

FROM: Sandra Johnson, Fiscal Research Division

RE: House Bill 867 (Proposed Committee Substitute)

FISCAL IMPACT (\$ In Millions)					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:	\$4.12	\$4.25	\$4.37	\$4.48	\$4.59
EXPENDITURES:					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	North Carolina Department of Revenue				
EFFECTIVE DATE:	When the bill becomes law.				

BILL SUMMARY: The proposed committee substitute for HB 867 modifies the definition of an eligible internet datacenter under G.S. 105-164.3(8e). The modification eliminates the sales and use tax incentives originally enacted for Google during the 2006 session. The modified definition for an eligible internet data center would remove sales tax exemptions for affected companies purchasing the following items:

- Electricity,
- Eligible business property that is capitalized, and used for one of the following:
 - Provision of Internet service or Web search portal services, including heating and cooling equipment for the property,
 - Generation, transformation, transmission, distribution, or management of electricity, or
 - Related computer engineering or computer science research.

ASSUMPTIONS AND METHODOLOGY:

Should the PCS for HB 867 become law, companies eligible for the sales and use tax incentives provided by G.S. 105-164.13(55) meeting the definition originally set forth in G.S. 105-164.3(8e) would no longer meet the incentive criteria. Modifying the definition of eligible internet data centers increases General Fund availability by roughly \$4.2 million per fiscal year.

When the sales and use tax economic development incentives for eligible internet datacenters were originally enacted, Fiscal Research and the North Carolina Department of Revenue estimated that the fiscal impact would equal \$1.8 million in FY 07-08. North Carolina Department of Revenue's most recent estimate for eligible internet datacenters is \$5.5 million for FY 2009-10.

The sales tax incentives for certain eligible internet datacenters can be broken into two parts: 1) the sales tax exemption for electricity, which would otherwise be taxed at a rate of 3% under current law, 2) the sales tax exemption for machinery and equipment purchased by most datacenters, which would otherwise be subject to the general sales tax rate of 4.75% effective July 1, 2011.

The increased General Fund availability of \$4.2 million is based on the assumption that roughly 35% of the forgone revenue, \$1.65 million (\$5.5 million * 35%), can be associated with electricity related expenses. The \$1.65 million in electricity sales tax exemptions for certain eligible datacenters represents the revenue associated with applying the general sales and use tax rate of 5.52% to electricity in FY 09-10. Electricity sales, under G.S. 105-164.4(4a), are subject to the lower sales and use tax rate of 3%. After adjusting the \$ 1.65 million estimate to reflect the lower sales and use tax rate for electricity, \$0.9 million can be associated with electricity related expenses and therefore attributed to an increase in the General Fund.

Machinery and equipment purchases by eligible internet datacenters represent the remaining 65% of the \$5.5 million in sales and use tax incentives. Should the PCS for HB 867 become law, companies eligible for the sales and use tax incentives provided by G.S. 105-164.13 (55) that meet the definition set forth in G.S. 105-164.3(8e) would no longer be exempt from sales tax for their machinery and equipment purchases. This change would generate an estimated \$3.76 million in sales and use tax revenue in FY 2009-10. At a sales and use tax rate of 4.75%, the exemption is valued at \$3.08 million.

SOURCES OF DATA: North Carolina Department of Revenue, Biennial Tax Expenditure Report, 2007 and 2009.

TECHNICAL CONSIDERATIONS: None



HOUSE BILL 867: Google for Education

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Starnes
Analysis of: PCS to First Edition
H867-CSRBx-40

Date: May 18, 2011
Prepared by: Cindy Avrette
Committee Counsel

SUMMARY: *The proposed House committee substitute for House Bill 867 would remove the sales tax exemption for purchases of electricity and business property used by Goggle.*

CURRENT LAW: In 2006, the General Assembly granted a sales tax exemption to an Internet datacenter for the electricity and business property used at its facility. For purposes of the exemption, an "eligible Internet datacenter" is defined as a facility that meets the following requirements:

- Its primary business is in software publishing included in Industry 51210 of NAICS¹ or as an Internet activity included in Industry 519130 of NAICS.²
- It is comprised of a structure or series of structures located on contiguous parcels of land owned by the same operator.
- It is located in a development tier one or two county.
- The owner commits at least \$250 million of private funds in the facility over a five-year period.

The owner of an Internet datacenter must forfeit the sales tax exemptions it has been allowed if it fails to meet the investment threshold, fails to locate and use the property at the datacenter, or fails to use the electricity at the datacenter. A taxpayer that forfeits an exemption is liable for all past taxes avoided as a result of the exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest. The past taxes and interest are due 30 days after the date the exemption is forfeited.

BILL ANALYSIS: The PCS for House Bill 867 modifies the definition of an "eligible Internet datacenter" to remove its applicability to Google. Industry 519130 of NAICS includes Web search portals as well as social networking sites. The PCS narrows the definition of an "eligible Internet datacenter" so that a facility must not only be used by a business included in Industry 519130 of NAICS *but also* by a business that focuses on social networking.

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

BACKGROUND: At the time the sales tax exemption for "eligible Internet datacenters" was enacted³, Goggle was considering a possible site in North Carolina for one of its server farms and this tax incentive was part of the recruitment package offered. The General Assembly expanded the definition of an "eligible Internet datacenter" in 2010 to include facilities engaged in software publishing.⁴

H867-SMRB-60(CSRBx-40) v1

¹ Microsoft is an example of an Internet datacenter engaged in software publishing. North Carolina was one of three sites Microsoft considered for the location of its datacenter to serve as the East Coast hub for its online services. Microsoft selected a site near Boydton, Virginia in August 2010.

² Google and Facebook are examples of an Internet datacenter included in industry 519130 of NAICS. Facebook announced in November 2010 that it would build a \$450 million datacenter in Forest City, North Carolina.

³ G.S. 105-164.13(55); S.L. 2006-66.

⁴ S.L. 2010-91.



North Carolina General Assembly
House Committee on Finance

Minutes

~
May 26, 2011

The House Committee on Finance met on Thursday, May 26, 2011 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Jordan, Luebke, McCormick, McGee, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Earl Coker and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Judy Collier, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Jennifer McGinnis, Tazra Mitchell; Giles Perry, Greg Roney, and Brian Slivka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson Howard called the meeting to order at 8:30 am and recognized the five (5) pages present: (1) Briana Davis of Guilford County sponsored by Representative Brandon; (2) Christina Schaefer of Wake County sponsored by Representative Stam; (3) Jessica Carelock of Stanly County sponsored by Representative Burr; (4) James Carelock of Stanly County sponsored by Representative Burr; and (5) Jimmy Llewellyn of Forsyth County sponsored by Representative Womble.

The first bill to be heard by the Committee was **HB 491 NC Certificates of Participation Referendum** (see **attachment 3**). The Chair recognized Representative Collins who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairperson Howard recognized Representatives Brown and Cleveland to explain the bill. The Committee members heard from Vance Holliman of the Treasurer's Office. The Chair recognized Representative Starnes who moved that HB 491 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. Chairperson Howard called for a show of hands for the motion for favorable report. The vote being 17 affirmative and 11 against. The motion carried.

The next bill considered by the Committee was **HB 242 Nat. Gas/Bonds/Fees/Studies** (see **attachment 4**). The Chair recognized Representative Ross who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairperson Howard recognized Representatives Stone and Gillespie to explain the bill. Staff member Jennifer McGinnis of Research assisted with member's questions. Chairperson Howard invited members of the public

to speak. The Committee heard from the following: Becky Ceartas, Rural Advancement Foundation International – USA; Robin Smith, North Carolina Department of Environment and Natural Resources; and Elizabeth Ouzts, Environment North Carolina. The Chair then recognized Representative McCormick who moved that HB 242 be given a favorable report to the proposed committee substitute 2, unfavorable report to committee substitute 1. The motion was set aside for further discussion. The Chair recognized Representative Luebke who sent forth amendment 1 that moved to amend the bill on page 3, line 27 (see attachment 5). Representative Luebke was recognized to explain the amendment. Being no further discussion or debate, the Chair called for ayes and noes on amendment 1. The motion to adopt amendment 1 passed the voice vote. The Chair recognized Representative McCormick who restated his motion that HB 242 be given a favorable report to the proposed committee substitute 2 as amended, unfavorable report to committee substitute 1. The motion carried.

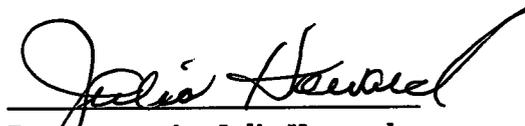
The next bill before the Committee was **HB 619 Update/Modernize Physical Therapy Act** (see attachment 6). Chairperson Howard recognized Representative Samuelson who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representative Starnes to explain the proposed committee substitute. Staff member Barry Boardman of Fiscal Research assisted with member's questions. The Chair then recognized Representative Stam who moved that HB 619 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

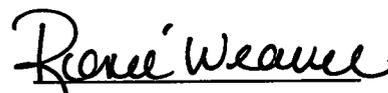
The next bill before the Committee was **SB 19 Union Fire Fee Sunset Repealed** (see attachment 7). Chairperson Howard recognized Representative Horn to explain the bill. Chairperson Howard recognized then Representative Luebke who moved that SB 19 be given a favorable report. The motion carried.

Due to time, **HB 350 Clarify Property Tax for Conservation Land, HB 476 Protect Galax & Venus Flytrap/WRC Rule Fines, HB 662 Electronic Monitoring Fee, SB 145 Southern Shores Canal Dredging, and SB 321 Surplus Lines/Premium Tax** were unable to be heard and is scheduled to be heard on Wednesday, June 1, 2011.

There being no further business presently before the Committee, Chairperson Howard adjourned the meeting at 9:48 am.

Respectfully submitted,


Representative Julia Howard
Presiding Senior Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 242 A BILL TO BE ENTITLED AN ACT TO (1) INCREASE THE AMOUNT OF THE BOND REQUIRED UPON REGISTRATION IN ORDER TO DRILL FOR OIL OR NATURAL GAS IN THE STATE; (2) INCREASE THE AMOUNT OF FEES APPLICABLE TO DRILLING AND ABANDONING OIL OR GAS WELLS; (3) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE ISSUE OF OIL AND GAS EXPLORATION IN THE STATE, AND SPECIFICALLY THE USE OF HYDRAULIC FRACTURING FOR THAT PURPOSE; AND (4) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO CONDUCT AT LEAST TWO PUBLIC HEARINGS ON THE ISSUE IN THE AREA IN WHICH DRILLING FOR NATURAL GAS BY MEANS OF HYDRAULIC FRACTURING MAY OCCUR.

With a favorable report as to Committee substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 491 A BILL TO BE ENTITLED AN ACT TO REQUIRE A VOTE OF THE PEOPLE FOR THE STATE OF NORTH CAROLINA TO ISSUE CERTIFICATES OF PARTICIPATION.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 619 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA PHYSICAL THERAPY PRACTICE ACT BY PROVIDING FOR PROFESSIONAL ASSOCIATION BUSINESS ORGANIZATION STATUS FOR PHYSICAL THERAPISTS AND SOME ASSOCIATED PROFESSIONALS, CLARIFYING THE DEFINITION OF PHYSICAL THERAPY AIDE, AUTHORIZING THE NORTH CAROLINA BOARD OF PHYSICAL THERAPY EXAMINERS TO CONDUCT CRIMINAL BACKGROUND CHECKS OF APPLICANTS FOR LICENSURE, AND MAKING OTHER MODERNIZING STATUTORY CHANGES.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 19 A BILL TO BE ENTITLED AN ACT TO REPEAL THE SUNSET ON FIRE PROTECTION FEES IN UNION COUNTY.

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 _____.

|

AGENDA
House Finance Committee

Thursday, May 26, 2011

8:30 am

Room 544 LOB

Chaired by: Representative Julia Howard

Call to Order

Introduction of Pages

Bills:

HB 242 Nat'l Gas/Bonds/Fees/Studies

Representatives Stone, Gillespie

HB 350 Clarify Property Tax for Conservation Land

Representatives McGrady, Starnes, Brubaker, Harrison

HB 476 Protect Galax & Venus Flytrap/WRC Rule Fines

Representative Gillespie

HB 491 NC Certificates of Participation Referendum

Representatives R. Brown, Cleveland

HB 619 Update/Modernize Physical Therapy Act

Representatives Howard, McLawhorn, Carney, Ingle

HB 662 Electronic Monitoring Fee

Representatives Cook, Shepard

SB 19 Union Fire Fee Sunset Repealed

Senator Tucker

SB 145 Southern Shores Canal Dredging/Maintenance

Senator White

SB 321 Surplus Lines/Premium Tax

Senator Apodaca

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAY 26, 2011

Room: 544

*Name: Briana Davis

County: Guilford

Sponsor: Marcus Brandon

*Name: Christina Schaefer

County: Wake

Sponsor: Rep. Stam

*Name: Jessica Carelock

County: Stanly

Sponsor: Burr

*Name: James Carelock

County: Stanly

Sponsor: Burr

*Name: Jimmy Llewellyn

County: Forsyth

Sponsor: Representative Wamble

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: KEN KIRBY

2. Name: JOHN BRANDON

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

May 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Andy Ellen	NCPMA
Pat Foglia	Indiana Inc
Pat Bell	MACC
Joy Willis	NCSA
Alan Lopez	LA for Rep. R. Brown
Kevin Reardon	WCACC
Ken Melton	K. M. A.
M. Shewell	KC Med Soc
John Merritt	MAC LLC
Wm. K. ...	Kt Bates
Bob ...	Melanie Wood

VISITOR REGISTRATION SHEET

House Finance

May 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN SHAW	CAP. GRP SIERRA CLUB
Jimmy Broughton	Womble Carlyle
Tom Cors	TNC
David Baker	NC DOR
Thomas Slusser	NC DENR - DWQ
Rick Bolich	NC DENR - DWQ
Evan Kane	NC DENR - DWQ
Sujit Caneyaketa	Southern Legislative Conf.
Daniel Palm	DENR
Karl Barsness	DENR
Laura Gadd	DENR

VISITOR REGISTRATION SHEET

House Finance

May 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Gene Cross	NCDASCS
David Kelly	EDF
Elizabeth Dantz	Environment NC
John Handlin	MFIS
Jeff Reid	DENR - Land Resources - Geological Survey Section
James Simon	DENR Land Res
Molly Higgins	Sierra Club
R R OGBERKES	CWMTK
Amy Baum	NCACC
Rebecca Troutman	NCACC

VISITOR REGISTRATION SHEET

House Finance

May 26, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Fred B. Agostini</i>	<i>Smith Moore L.</i>
<i>Mitch Leonard</i>	<i>SEANC</i>
<i>Matthew J. Mancini</i>	<i>Carolinas HealthCare</i>
<i>IBETH COUPHAW</i>	<i>PANXIS</i>
<i>Emily Grimm</i>	<i>mwc</i>
<i>Travis Haggitt</i>	<i>Sierra Club</i>
<i>Becky Cearns</i>	<i>BAFI-USA</i>
<i>Peter Kuo</i>	<i>CTNC</i>
<i>Edgar Miller</i>	<i>CTNC</i>
<i>Vance Hollar</i>	<i>DST</i>
<i>Solari</i>	<i>DST</i>

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 491
PROPOSED COMMITTEE SUBSTITUTE H491-CSMC-10 [v.2]

5/24/2011 11:29:58 AM

Short Title: Repeal State Capital Facilities Finance Act. (Public)

Sponsors:

Referred to:

March 29, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE STATE CAPITAL FACILITIES FINANCE ACT.
3 The General Assembly of North Carolina enacts:
4 SECTION 1. Article 9 of Chapter 142 of the General Statutes is repealed.
5 SECTION 2. G.S. 113-44.15(d) is repealed.
6 SECTION 3. G.S. 113-77.9(b3) is repealed.
7 SECTION 4. G.S. 113A-256(j) is repealed.
8 SECTION 5. This act is effective when it becomes law. This act does not affect
9 debt issued, incurred, or authorized to be issued or incurred prior to that date and does not
10 affect any authority to reimburse the General Fund for debt service on special indebtedness
11 issued or incurred under Article 9 of Chapter 142 of the General Statutes.





PCS for HOUSE BILL 491: Repeal State Capital Facilities Finance Act

2011-2012 General Assembly

Committee:	House Finance	Date:	May 26, 2011
Introduced by:	Reps. R. Brown, Cleveland	Prepared by:	Trina Griffin
Analysis of:	PCS to First Edition H491-CSMC-10		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 491 would repeal the State Capital Facilities Finance Act, which is a mechanism authorizing the State to incur nonvoted special indebtedness.*

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 491 would repeal the State Capital Facilities Finance Act (Act), which is a mechanism by which the State may incur nonvoted special indebtedness for the purpose of financing capital facilities. The bill would not impact local government authority or outstanding debt authorized under the Act.

Sections 2 through 4 of the PCS are conforming changes. The three statutes being repealed provide for reimbursement to the General Fund from certain funds for debt service on special indebtedness issued under Article 9 of Chapter 142 (see p. 3 of this Analysis for text of statutes).

CURRENT LAW: Article V, Section 3 of the North Carolina Constitution and the North Carolina General Statutes restrict the General Assembly's authority to issue debt. Except in limited circumstances,¹ the General Assembly does not have the power to authorize the issuance of bonds secured by a pledge of the faith and credit of the State without a referendum approved by a majority of the voters voting in an election. These bonds are referred to as general obligation bonds because the general taxing power of the State secures the bonds. Article 5 of Chapter 159 of the General Statutes authorizes the State to use revenue bonds to finance a project without voter approval, but authorization by specific legislation is required under G.S. 159-88(c). Revenue bonds involve the pledge of non-tax revenues related to the project, such as parking fees for parking decks and water and sewer charges for water and sewer projects. A third type of bonded indebtedness used by the State to finance capital facilities is special indebtedness or security interest indebtedness, commonly referred to as 'certificates of participation'.

Until 2003, the State did not have general authority for security interest debt; only a handful of specific projects had been authorized.² In 2003, Article 9 of Chapter 142 of the General Statutes was enacted to provide the procedural and regulatory provisions governing the State's issuance of security interest indebtedness. Specific legislative approval is still required as to the projects or category of projects for which debt may be issued and the maximum amount.

Security interest indebtedness may take one of three forms: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and limited obligation bonds. The particular form to be used for a given project³ will depend on its size, the nature

¹ The North Carolina Constitution allows the General Assembly to issue non-voted general obligation bonds in an amount not to exceed 2/3 of the amount by which it reduced its outstanding general obligation debt in the preceding biennium. There are limited other Constitutional exceptions for non-voted general obligation debt.

² Before 2003, legislation had been enacted authorizing security interest debt for limited State purposes: two Wildlife Commission Projects in 2000, the lease-purchase of three prisons in 2001, and guaranteed energy savings contracts in 2002.

³ The Act specifically defines the capital expenditures that may be financed as any combination of buildings, utilities, structures, and other facilities and property developments, including streets, landscaping, equipment and furnishing in

Research Division
O. Walker Reagan, Director
(919) 733-2578

House PCS 491

Page 2

of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of security interest debt may be the least expensive and most practical for the State to utilize.

Under security interest indebtedness, the debt is secured by a lien on or security interest in all or any part of the capital facilities to be financed, including all or part of any land on which improvements are to be constructed. If the project is a renovation, the entire existing facility as well as the improvement could serve as security. The value of the property securing the debt may exceed the amount of the debt and the financing of several capital projects may be jointly secured by liens on some or all of the capital facilities being financed.

Because the property serves as the security for the indebtedness, there is no pledge of the State's faith and credit or taxing power. Thus, voter approval is not necessary for the borrowing. If the State defaulted on its repayments, no deficiency judgment could be rendered against the State, but the capital facilities that serve as security could be disposed of to generate funds to satisfy the debt. The State could choose not to appropriate funds to repay the debt, but such a decision would have negative consequences for the State's credit rating.

Before special indebtedness can be issued or incurred, specific authorization must be given by the General Assembly, and the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

Once it is determined that special indebtedness can be issued or incurred, the funds can be borrowed from a single entity in an installment purchase or lease purchase contract, generated by the issuance of limited obligation bonds, or borrowed under an installment financing contract by the sale of certificates of participation. A certificate of participation represents the holder's undivided interest in the right to receive the installment payments to be made by the State. If certificates of participation are issued, a nonprofit corporation will act as a straw person to facilitate the financing.

EFFECTIVE DATE: This bill would become effective when it becomes law. It would not affect debt issued, incurred, or authorized to be issued prior to that date and does not affect any authority to reimburse the General Fund for debt service on general indebtedness issued or incurred under Article 9 of Chapter 142 of the General Statutes.

House PCS 491

Page 3

STATUTORY REFERENCES:

§ 113-44.15. Parks and Recreation Trust Fund.

...

(d) Debt. – The Authority may allocate up to fifty percent (50%) of the portion of the annual appropriation identified in subdivision (b)(1) of this section to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in subdivision (b)(1) of this section and for waterfront access. In order to allocate funds for debt service reimbursement, the Authority must identify to the State Treasurer the specific parks projects for which it would like special indebtedness to be issued or incurred and the annual amount it intends to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a parks project requested by the Authority, the Authority must credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer.

§ 113-77.9. Acquisition of lands with funds from the Natural Heritage Trust Fund.

...

(b3) Debt. – Of the funds credited annually to the Fund pursuant to G.S. 105-228.30, the Trustees may authorize expenditure of up to sixty percent (60%) to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in subdivisions (b)(1) and (2) of this section. In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific natural heritage projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a natural heritage project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer.

§ 113A-256. Clean Water Management Trust Fund Board of Trustees: powers and duties.

...

(j) Debt. – Of the funds credited annually to the Fund, the Trustees may authorize expenditure of a portion to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in G.S. 113A-253(c)(1) through (4). In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific capital projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a capital project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer.

H491-SMSV-52(CSMC-10) v1

House PCS 491

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SUMMARY: *The Proposed Committee Substitute for House Bill 491 would repeal the State Capital Facilities Finance Act, which is a mechanism authorizing the State to incur nonvoted special indebtedness.*

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 491 would repeal the State Capital Facilities Finance Act (Act), which is a mechanism by which the State may incur nonvoted special indebtedness for the purpose of financing capital facilities. The bill would not impact local government authority.

CURRENT LAW:

Types of Indebtedness. – Article V, Section 3 of the North Carolina Constitution and the North Carolina General Statutes restrict the General Assembly's authority to issue debt. Except in limited circumstances,⁴ the General Assembly does not have the power to authorize the issuance of bonds secured by a pledge of the faith and credit of the State without a referendum approved by a majority of the voters voting in an election. These bonds are referred to as general obligation bonds because the general taxing power of the State secures the bonds. Article 5 of Chapter 159 of the General Statutes authorizes the State to use revenue bonds to finance a project without voter approval, but authorization by specific legislation is required under G.S. 159-88(c). Revenue bonds involve the pledge of non-tax revenues related to the project, such as parking fees for parking decks and water and sewer charges for water and sewer projects. A third type of bonded indebtedness used by the State to finance capital facilities is special indebtedness or security interest indebtedness, commonly referred to as 'certificates of participation'.

Special or Until 2003, the State did not have general authority for security interest debt; only a handful of specific projects had been authorized.⁵ In 2003, Article 9 of Chapter 142 of the General Statutes was enacted to provide the procedural and regulatory provisions governing the State's issuance of security interest indebtedness. Specific legislative approval is still required as to the projects or category of projects for which debt may be issued and the maximum amount. In 2003 and 2004, the General Assembly gave specific approval for numerous projects.

Security interest indebtedness may take one of three forms: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and limited obligation bonds. The particular form to be used for a given project⁶ will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of security interest debt may be the least expensive and most practical for the State to utilize.

Under security interest indebtedness, the debt is secured by a lien on or security interest in all or any part of the capital facilities to be financed, including all or part of any land on which improvements are to be constructed. If the project is a renovation, the entire existing facility as well as the improvement could serve as security. The value of the property securing the debt may exceed the amount of the debt and the financing of several capital projects may be jointly secured by liens on some or all of the capital facilities being financed.

⁴ The North Carolina Constitution allows the General Assembly to issue non-voted general obligation bonds in an amount not to exceed 2/3 of the amount by which it reduced its outstanding general obligation debt in the preceding biennium. There are limited other Constitutional exceptions for non-voted general obligation debt.

⁵ Before 2003, legislation had been enacted authorizing security interest debt for limited State purposes: two Wildlife Commission Projects in 2000, the lease-purchase of three prisons in 2001, and guaranteed energy savings contracts in 2002.

⁶ The Act specifically defines the capital expenditures that may be financed as any combination of buildings, utilities, structures, and other facilities and property developments, including streets, landscaping, equipment and furnishing in connection with a building project; additions, renovations, and improvements to existing facilities; land acquisition; infrastructure; and furniture, equipment, vehicles, machinery, and similar items.

House PCS 491

Page 5

Because the property serves as the security for the indebtedness, there is no pledge of the State's faith and credit or taxing power. Thus, voter approval is not necessary for the borrowing. If the State defaulted on its repayments, no deficiency judgment could be rendered against the State, but the capital facilities that serve as security could be disposed of to generate funds to satisfy the debt. The State could choose not to appropriate funds to repay the debt, but such a decision would have negative consequences for the State's credit rating.

As with revenue bonds, authorization to use security interest indebtedness must be given by the General Assembly through specific legislation under G.S. 142-83. Before special indebtedness can be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

Once it is determined that special indebtedness can be issued or incurred, the funds can be borrowed from a single entity in an installment purchase or lease purchase contract, generated by the issuance of limited obligation bonds, or borrowed under an installment financing contract by the sale of certificates of participation. A certificate of participation represents the holder's undivided interest in the right to receive the installment payments to be made by the State. If certificates of participation are issued, a nonprofit corporation will act as a straw person to facilitate the financing.

EFFECTIVE DATE:

§ 113-44.15. Parks and Recreation Trust Fund.

...

(d) Debt. – The Authority may allocate up to fifty percent (50%) of the portion of the annual appropriation identified in subdivision (b)(1) of this section to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in subdivision (b)(1) of this section and for waterfront access. In order to allocate funds for debt service reimbursement, the Authority must identify to the State Treasurer the specific parks projects for which it would like special indebtedness to be issued or incurred and the annual amount it intends to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a parks project requested by the Authority, the Authority must credit to the General Fund each year the actual aggregate principal and

House PCS 491

Page 6

interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer.

§ 113-77.9. Acquisition of lands with funds from the Natural Heritage Trust Fund.

...

(b3) Debt. – Of the funds credited annually to the Fund pursuant to G.S. 105-228.30, the Trustees may authorize expenditure of up to sixty percent (60%) to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in subdivisions (b)(1) and (2) of this section. In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific natural heritage projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a natural heritage project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer.

§ 113A-256. Clean Water Management Trust Fund Board of Trustees: powers and duties.

...

(j) Debt. – Of the funds credited annually to the Fund, the Trustees may authorize expenditure of a portion to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in G.S. 113A-253(c)(1) through (4). In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific capital projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a capital project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer.

H491-SMSV-52(CSMC-10) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 242
Committee Substitute Favorable 4/19/11
PROPOSED COMMITTEE SUBSTITUTE H242-CSRI-26 [v.3]

5/25/2011 10:41:30 AM

Short Title: Nat. Gas/Bonds/Fees/Studies.

(Public)

Sponsors:

Referred to:

March 8, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO (1) INCREASE THE AMOUNT OF THE BOND REQUIRED UPON
3 REGISTRATION IN ORDER TO DRILL FOR OIL OR NATURAL GAS IN THE
4 STATE; (2) INCREASE THE AMOUNT OF FEES APPLICABLE TO DRILLING AND
5 ABANDONING OIL OR GAS WELLS; (3) DIRECT THE DEPARTMENT OF
6 ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE ISSUE OF OIL
7 AND GAS EXPLORATION IN THE STATE, AND SPECIFICALLY THE USE OF
8 DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING
9 FOR THAT PURPOSE; (4) DIRECT THE DEPARTMENT OF ENVIRONMENT AND
10 NATURAL RESOURCES TO CONDUCT AT LEAST TWO PUBLIC HEARINGS ON
11 THE ISSUE IN THE AREA IN WHICH EXPLORATION FOR NATURAL GAS BY
12 MEANS OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC
13 FRACTURING MAY OCCUR; AND (5) APPROPRIATE THE SUM OF ONE
14 HUNDRED THOUSAND DOLLARS TO THE DEPARTMENT FOR THE CONDUCT
15 OF THE STUDY AND THE HEARINGS.

16 The General Assembly of North Carolina enacts:

17 SECTION 1. G.S. 113-378 reads as rewritten:

18 "§ 113-378. Persons drilling for oil or gas to register and furnish bond.

19 Any person, firm or corporation before making any drilling exploration in this State for oil
20 or natural gas shall register with the Department of Environment and Natural Resources or such
21 other State agency as may hereafter be established to control the conservation of oil or gas in
22 this State. Resources. To provide for such registration, the drilling operator must furnish the
23 name and address of such person, firm or corporation, and the location of the proposed drilling
24 operations, and file with the aforesaid Department a bond in the an amount totaling the sum
25 of of (i) five thousand dollars (\$5,000) plus (ii) one dollar (\$1.00) per linear foot proposed to be
26 drilled for the well. (\$5,000) running to the State of North Carolina, conditioned that any Any
27 well opened by the drilling operator upon abandonment shall be plugged upon abandonment in
28 accordance with the rules of said the Department."

29 SECTION 2. G.S. 113-395 reads as rewritten:

30 "§ 113-395. Notice and payment of fee to Department before drilling or abandoning well;
31 plugging abandoned well.



1 Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same
2 shall notify the Department upon such form as it may prescribe and shall pay a fee of fifty-three
3 thousand dollars (~~\$50.00~~)(\$3,000) for each well. The drilling of any well is hereby prohibited
4 until such notice is given and such fee has been paid and permit granted.

5 Each abandoned well and each dry hole ~~promptly~~ shall be plugged promptly in the manner
6 and within the time required by rules ~~to be~~ prescribed by the Department, and the owner of
7 such well shall give notice, upon such form as the Department may prescribe, of the
8 abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of
9 ~~fifteen-four hundred fifty~~ dollars (~~\$15.00~~)(\$450.00). No well shall be abandoned until such
10 notice has been given and such fee has been paid."

11 **SECTION 3.** The Department of Environment and Natural Resources shall study
12 the issue of oil and gas exploration in the State and the use of directional and horizontal drilling
13 and hydraulic fracturing for that purpose. The Department shall report its findings and
14 recommendations, including specific legislative proposals, to the Environmental Review
15 Commission no later than February 1, 2012. At a minimum, the study shall include information
16 on the following:

- 17 (1) Oil and gas reserves present in the Triassic Basins and in any other areas of
18 the State.
- 19 (2) Methods of exploration and extraction of oil and gas, including directional
20 and horizontal drilling and hydraulic fracturing.
- 21 (3) Potential impacts on infrastructure, including roads, pipelines, and water and
22 wastewater services. In analyzing potential impacts, the Department shall
23 specifically examine the expected water usage from hydraulic fracturing,
24 water resources in the area in which drilling may occur, as well as existing
25 water users in the area that may be impacted by increased consumption of
26 water for use in hydraulic fracturing.
- 27 (4) Potential environmental impacts, including constituents or contaminants that
28 may be present in the fluid used in the hydraulic fracturing process; the
29 potential for the contamination of nearby wells and groundwater, as well as
30 the options for disposal and reuse of the wastewater produced; stormwater
31 management; the potential for emission of toxic air pollutants; impacts on
32 wildlife; management and reclamation of drilling sites, including orphaned
33 sites; management of naturally occurring radioactive materials (NORM)
34 generated by the drilling and production of natural gas; and the potential for
35 seismic activity in the area in which drilling may occur. In examining this
36 issue, the Department shall formulate regulatory requirements advisable to
37 address potential environmental impacts and in doing so shall gather
38 information on regulatory programs in other states where oil and gas
39 exploration or extraction is occurring, particularly with regard to the use of
40 hydraulic fracturing for that purpose.
- 41 (5) Potential economic impacts, including possible sources of revenue that could
42 accrue to the benefit of the State in the event that drilling for oil or natural
43 gas were to take place in the State. In examining this issue, the Department
44 shall gather information on (i) the number of jobs that may be expected as a
45 result from drilling activities in the State and (ii) what severance taxes, fees,
46 royalties, bonds, or assessments may be appropriate in connection with the
47 activity. For any sources of revenue that may be anticipated, the Department
48 shall evaluate use of the revenue for the following purposes: funds necessary
49 to implement an oil and gas regulatory program; funds dedicated to the
50 conservation and preservation of land and water resources; funds dedicated

1 to remediation of environmental contamination such as the Inactive
2 Hazardous Sites Cleanup Fund; and funds dedicated to improving water and
3 wastewater infrastructure across the State.

4 (6) Potential social impacts, including impacts of drilling operations on nearby
5 communities and quality of life within those communities, recreational
6 activities, and commercial and residential development.

7 (7) Potential oversight and administrative issues associated with an oil and gas
8 regulatory program, including: statutory authority necessary for
9 implementation of such a program; funding requirements necessary to
10 implement a stable and effective program; criteria for permit issuance or
11 denial; frequency and scope of inspections; compliance and enforcement
12 procedures; coordination of agency involvement to ensure efficient
13 permitting and clear delineation of compliance responsibilities; opportunities
14 for public participation; and data management.

15 (8) Consumer protection and legal issues relevant to oil and gas exploration in
16 the State, including matters of contract law, mineral leases, and landowner
17 rights.

18 (9) Any other pertinent issues that the Department deems relevant to oil and gas
19 exploration in the State and the use of hydraulic fracturing for that purpose.

20 **SECTION 4.** By February 1, 2012, the Department of Environment and Natural
21 Resources shall hold at least two public hearings at separate locations within the Triassic Basin
22 on the issue of drilling for natural gas by means of directional and horizontal drilling and
23 hydraulic fracturing. The public hearings shall be conducted in order to promote awareness of
24 the issue generally and inform and consult with the public and user groups on potential
25 environmental impacts, potential regulatory controls, potential economic impacts, and
26 consumer protection issues, including landowner rights and mineral leases. In developing the
27 consumer protection portion of the public hearings, the Department may consult with the
28 Consumer Protection Division of the North Carolina Department of Justice and the Rural
29 Advancement Foundation International (RAFI).

30 **SECTION 5.** There is appropriated from the General Fund to the Department of
31 Environment and Natural Resources the sum of one hundred thousand dollars (\$100,000) for
32 the 2011-2012 fiscal year to complete the study and conduct the public hearings required by
33 this act.

34 **SECTION 6.** This act is effective when it becomes law.



HOUSE BILL 242: Nat. Gas/Bonds/Fees/Studies

2011-2012 General Assembly

Committee:	House Finance	Date:	May 26, 2011
Introduced by:	Reps. Stone, Gillespie	Prepared by:	Jennifer McGinnis
Analysis of:	PCS to Second Edition H242-CSRI-26 [v.3]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute (PCS) for House Bill 242 would: (1) increase the amount of the bond required upon registration in order to drill for oil or natural gas in the State; (2) increase the amount of fees applicable to drilling and abandoning oil or gas wells; (3) direct the Department of Environment and Natural Resources (DENR) to study the issue of oil and gas exploration in the State, and specifically the use of directional and horizontal drilling and hydraulic fracturing for that purpose; (4) direct DENR to conduct at least two public hearings on the issue in the area in which drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing may occur; and (5) appropriate \$100,000 to DENR in order to conduct the study and the public hearings.*

The PCS makes changes to the 2nd Edition of the bill as follows: (1) increases the amount of the fee applicable to drilling oil or gas wells from \$1,500 to \$3,000; (2) adds additional matters to be studied including consumer protection and legal issues and administration and oversight issues associated with an oil and gas regulatory program; (3) changes the date on which the study must be completed from September 1, 2011 to February 1, 2012; and (4) adds an appropriation for conduct of the required study and public hearings.

BACKGROUND: Several years ago the North Carolina Geological Survey recognized thick sections of organic shale located in the State (Triassic Strata of the Deep River Basin – Lee and Chatham, Counties) as a potential gas resource. Modern exploration and gas production technology, such as horizontal drilling and hydraulic-fracturing, has enabled the extraction of shale gas in similar formations in other states. The use of hydraulic fracturing involves drilling a well and injecting drilling fluids under pressure to fracture the shale rock and release the gas. Drilling fluids are mostly made up of water, but also include other chemicals; the exact makeup of the drilling fluids varies from company to company.

CURRENT LAW: Article 27 of Chapter 113 of the General Statutes governs drilling and exploration for oil and gas in the State. This Article, which was originally enacted in 1945, among other things, requires posting of a bond and payment of a permit fee prior to drilling.

The General Statutes currently prohibit horizontal drilling¹ and injection of any wastes to the subsurface or groundwaters of the State by means of wells². State rules also specifically prohibit use or operation of a storage related injection well and injection of fluids for oil and gas production. These restrictions have been in place for a number of years and were not developed with hydraulic fracturing in mind.

¹ G.S. 113-393

² G.S. 143-214.2(b)

House PCS 242

Page 2

BILL ANALYSIS: The PCS would –

- Increase the amount of the bond required upon registration in order to drill for oil or natural gas in the State from a flat amount of \$5,000 to \$5,000 plus \$1.00 per linear foot proposed to be drilled for the well.
- Increase the amount of fees applicable to drilling (from \$50 to \$3,000) and abandoning (from \$15 to \$450) oil or gas wells.
- Direct DENR to study the issue of oil and gas exploration in the State, and specifically the use of directional and horizontal drilling and hydraulic fracturing for that purpose. DENR would be required to report its findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than February 1, 2012. At a minimum, the study would include information on: oil and gas reserves present in the State; methods of exploration for oil and gas, including directional and horizontal drilling and hydraulic fracturing; consumer protection and legal issues; and potential environmental, economic, and social impacts, as well as impacts on infrastructure, which may arise from drilling by means of hydraulic fracturing.
- Direct DENR to conduct at least two public hearings by February 1, 2012, on the issue in the area in which drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing may occur in order to promote awareness of the issue generally and inform and consult with the public and user groups on: potential environmental impacts, potential regulatory controls, potential economic impacts, and consumer protection issues, including landowner rights and mineral leases.
- Appropriate \$100,000 to DENR in order to conduct the study and the public hearings.

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

H242-SMRI-31(CSRI-26) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 242

DATE 5/26/11

S. B. No. _____

Amendment No. 1

COMMITTEE SUBSTITUTE H242-CSRI-26 [v.3]

(to be filled in by
Principal Clerk)

Rep.) Luebke
 Sen.)

3

27

1 moves to amend the bill on page _____, line _____

2 () WHICH CHANGES THE TITLE

3 by deleting the word "may" and
4 substituting the word "shall"

- 5 _____
- 6 _____
- 7 _____
- 8 _____
- 9 _____
- 10 _____
- 11 _____
- 12 _____
- 13 _____
- 14 _____
- 15 _____
- 16 _____
- 17 _____
- 18 _____
- 19 _____

SIGNED [Signature]

ADOPTED FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 619
PROPOSED COMMITTEE SUBSTITUTE H619-CSR-42 [v.4]

5/25/2011 1:37:36 PM

Short Title: Job Creation Act of 2011.

(Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO STIMULATE ECONOMIC ACTIVITY AND JOB GROWTH BY
TEMPORARILY REDUCING THE INCOME TAX BURDEN ON BUSINESS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that:

- (1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.
- (2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.
- (3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires the enactment of a new program as provided in this act that is designed to stimulate new economic activity and to create new jobs within the State.
- (4) The enactment of this act is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina, and this act will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.
- (5) The purpose of this act is to stimulate economic activity and to create new jobs within the State.

SECTION 2.(a) G.S. 105-134.1 reads as rewritten:

"§ 105-134.1. Definitions.

The following definitions apply in this Part:



1 (1) Adjusted gross income. – Defined in section 62 of the Code.

2 ~~(1a)~~ Code. – Defined in G.S. 105-228.90.

3 ...
4 ~~(16)~~ Taxable income. – Defined in section 63 of the Code.

5 ...
6 ~~(19)~~ This State. – The State of North Carolina."

7 SECTION 2.(b) G.S. 105-134.5 reads as rewritten:

8 "**§ 105-134.5. North Carolina taxable income defined.**

9 (a) Residents. – For ~~residents of this State,~~ an individual who is a resident of this State,
10 the term "North Carolina taxable income" means the taxpayer's ~~taxable income as determined~~
11 ~~under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.~~ adjusted gross
12 income as modified in G.S. 105-134.6.

13 (b) Nonresidents. – For ~~a nonresident individuals, individual,~~ the term "North Carolina
14 taxable income" means the taxpayer's ~~taxable income as determined under the Code, adjusted~~
15 ~~as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of~~
16 ~~which is the taxpayer's gross income as determined under the Code, adjusted as provided in~~
17 ~~G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross~~
18 ~~income, as adjusted,~~ adjusted gross income as modified in G.S. 105-134.6, multiplied by a
19 fraction the denominator of which is the taxpayer's adjusted gross income as modified in
20 G.S. 105-134.6, and the numerator of which is the amount of that adjusted gross income, as
21 modified, that is derived from North Carolina sources and is attributable to the ownership of
22 any interest in real or tangible personal property in this State, is derived from a business, trade,
23 profession, or occupation carried on in this State, or is derived from gambling activities in this
24 State.

25 (c) Part-year Residents. – If an individual was a resident of this State for only part of
26 the taxable year, having moved into or removed from the State during the year, the term "North
27 Carolina taxable income" has the same meaning as in subsection (b) of this section except that
28 the numerator ~~shall include gross income, adjusted as provided in G.S. 105-134.6 and~~
29 ~~G.S. 105-134.7,~~ includes adjusted gross income, as modified under G.S. 105-134.6, derived
30 from all sources during the period the individual was a resident.

31 (d) S Corporations and Partnerships. – In order to calculate the numerator of the
32 fraction provided in subsection ~~(b);~~ (b) of this section, the amount of a shareholder's pro rata
33 share of S Corporation income that is includable in the numerator ~~shall be~~ is the shareholder's
34 pro rata share of the S Corporation's income attributable to the State, as defined in
35 G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection
36 (b) of this section for a member of a partnership or other unincorporated business ~~with that has~~
37 ~~one or more nonresident members that and~~ operates in one or more other states, the amount of
38 the member's distributive share of income of the business that is includable in the numerator
39 ~~shall be~~ is determined by multiplying the total net income of the business by the ratio
40 ascertained under the provisions of G.S. 105-130.4. As used in this subsection, total net income
41 means the entire gross income of the business less all expenses, taxes, interest, and other
42 deductions allowable under the Code ~~which that~~ were incurred in the operation of the business.

43 (e) Tax Year. – A taxpayer must compute North Carolina taxable income on the basis
44 of the taxable year used in computing the taxpayer's income tax liability under the Code."

45 SECTION 2.(c) G.S. 105-134.6, as amended by S.L. 2011-5, reads as rewritten:

46 "**§ 105-134.6. Adjustments to taxable income.** Modifications to adjusted gross income.

47 (a) S Corporations. – Each shareholder's pro rata share of an S Corporation's income is
48 subject to the adjustments provided in this section.

49 ~~(a1)~~ Personal Exemption. – In calculating North Carolina taxable income, a taxpayer
50 may deduct an exemption amount equal to the amount listed in the table below based on the

1 taxpayer's filing status and adjusted gross income. The taxpayer is allowed the same number of
 2 personal exemptions claimed under section 151 of the Code for the taxable year.

<u>Filing Status</u>	<u>Adjusted Gross Income</u>	<u>Personal Exemption</u>
<u>Married, filing jointly</u>	<u>Up to \$100,000</u>	<u>\$2,500</u>
	<u>Over \$100,000</u>	<u>\$2,000</u>
<u>Head of Household</u>	<u>Up to \$80,000</u>	<u>\$2,500</u>
	<u>Over \$80,000</u>	<u>\$2,000</u>
<u>Single</u>	<u>Up to \$60,000</u>	<u>\$2,500</u>
	<u>Over \$60,000</u>	<u>\$2,000</u>
<u>Married, filing separately</u>	<u>Up to \$50,000</u>	<u>\$2,500</u>
	<u>Over \$50,000</u>	<u>\$2,000</u>

13 (a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may
 14 deduct either the standard deduction amount listed in the table below for that taxpayer's filing
 15 status or the itemized deductions amount elected under section 63 of the Code. A taxpayer may
 16 not deduct both the standard deduction amount and the itemized deductions amount.

<u>Filing Status</u>	<u>Standard Deduction</u>
<u>Married, filing jointly</u>	<u>\$6,000</u>
<u>Head of Household</u>	<u>4,400</u>
<u>Single</u>	<u>3,000</u>
<u>Married, filing separately</u>	<u>3,000</u>

23 (b) ~~Deductions.~~ Other Deductions. – ~~The following deductions from taxable income~~
 24 ~~shall be made in calculating North Carolina taxable income, to the extent each item is included~~
 25 ~~in taxable income.~~ In calculating North Carolina taxable income, a taxpayer may deduct any of
 26 the following items to the extent those items are included in the taxpayer's adjusted gross
 27 income.

28 ...
 29 (22) The first fifty thousand dollars (\$50,000) of net business income the
 30 taxpayer receives during the taxable year. For purposes of this subdivision,
 31 the term "business income" does not include income that is considered
 32 passive income under the Code. This subdivision expires for taxable years
 33 beginning on or after January 1, 2014.

34 (c) ~~Additions.~~ – ~~The following additions to taxable income shall be made in calculating~~
 35 ~~North Carolina taxable income, to the extent each item is not included in taxable income.~~ In
 36 calculating North Carolina taxable income, a taxpayer must add any of the following items to
 37 the extent those items are not included in the taxpayer's adjusted gross income. For a taxpayer
 38 who deducts the itemized deductions amount under subsection (a2) of this section, the taxpayer
 39 must add any of the following items to the extent those items are included in the itemized
 40 deductions amount.

41 ...
 42 (4) ~~The amount by which the taxpayer's additional standard deduction for aged~~
 43 ~~and blind has been increased for inflation under section 63(c)(4)(A) of the~~
 44 ~~Code plus the amount by which the taxpayer's basic standard deduction,~~
 45 ~~including adjustments for inflation, under the Code exceeds the appropriate~~
 46 ~~amount in the following chart based on the taxpayer's filing status:~~

<u>Filing Status</u>	<u>Standard Deduction</u>
<u>Married filing jointly/Surviving Spouse</u>	<u>\$6,000</u>
<u>Head of Household</u>	<u>4,400</u>
<u>Single</u>	<u>3,000</u>

1 Married filing separately 3,000
 2 (4a) ~~The amount by which each of the taxpayer's personal exemptions has been~~
 3 ~~increased for inflation under section 151(d)(4)(A) of the Code. This amount~~
 4 ~~is reduced by five hundred dollars (\$500.00) for each personal exemption if~~
 5 ~~the taxpayer's adjusted gross income (AGI), as calculated under the Code, is~~
 6 ~~less than the following amounts:~~

Filing Status	AGI
8 Married, filing jointly	\$100,000
9 Head of Household	80,000
10 Single	60,000
11 Married, filing separately	50,000.

12 ~~For the purposes of this subdivision, if the taxpayer's personal~~
 13 ~~exemptions have been reduced by the applicable percentage under section~~
 14 ~~151(d)(3) of the Code, the amount by which the personal exemptions have~~
 15 ~~been increased for inflation is also reduced by the applicable percentage.~~

16 ...
 17 (11) ~~The amount of the taxpayer's real property tax deduction under section~~
 18 ~~63(e)(1)(C) of the Code.~~

19 (12) ~~The amount of the taxpayer's deduction for motor vehicle sales taxes under~~
 20 ~~section 164(a)(6) or section 63(e)(1)(E) of the Code.~~section 164(a)(6).

21 ...
 22 (d) ~~Other Adjustments. – The following adjustments to taxable income shall be made in~~
 23 ~~calculating North Carolina taxable income.~~In calculating North Carolina taxable income, a
 24 taxpayer must make the following adjustments to adjusted gross income.

25 ..."

26 **SECTION 2.(d)** G.S. 105-134.4 is repealed.

27 **SECTION 2.(e)** G.S. 105-151.26 reads as rewritten:

28 **"§ 105-151.26. Credit for charitable contributions by nonitemizers.**

29 A taxpayer who elects the standard deduction under ~~section 63 of the Code for federal tax~~
 30 ~~purposes~~G.S. 105-134.6(a2) is allowed as a credit against the tax imposed by this Part an
 31 amount equal to seven percent (7%) of the taxpayer's excess charitable contributions. The
 32 taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable
 33 contributions for the taxable year that would have been deductible under section 170 of the
 34 Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the
 35 taxpayer's adjusted gross ~~income as calculated under the Code.~~income.

36 No credit shall be allowed under this section ~~for amounts deducted from gross income in~~
 37 ~~calculating taxable income under the Code or for contributions for which a credit was claimed~~
 38 ~~under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the~~
 39 ~~credit allowed by this section shall reduce the amount of the credit by multiplying it by the~~
 40 ~~fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this~~
 41 ~~section may not exceed the amount of tax imposed by this Part for the taxable year reduced by~~
 42 ~~the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."~~

43 **SECTION 3.** Section 2 of this act becomes effective for taxable years beginning on
 44 or after January 1, 2012. The remainder of this act is effective when it becomes law.

Fiscal Impact of the PCS to HB 619

Changes to the Personal Income Tax	Effective Date	FY 2011-12	FY 2012-13
Exempt first \$50,000 in non-passive business income paid through the Personal Income Tax, sunsets 12/31/2013*	01/01/2012	(\$131.6)	(\$335.6)
First Step towards modernizing the Personal Income Tax: Begin individual income tax calculation with Federal AGI - simplifies tax form with no change to taxpayers tax liability, keep all exemptions, credits and deductions	01/01/2012	No change	No change

*An estimated 450,000 tax returns from LLCs, S-corps, and sole proprietorships reporting business income on their NC personal income taxes would have their tax liability reduced by the exemption.



HOUSE BILL 619: Job Creation Act of 2011

2011-2012 General Assembly

Committee:	House Finance	Date:	May 25, 2011
Introduced by:	Reps. Howard, McLawhorn, Carney, Ingle	Prepared by:	Cindy Avrette
Analysis of:	PCS to First Edition H619-CSR-42		Committee Counsel

SUMMARY: *The House proposed committee substitute for House Bill 619 replaces the contents of the original bill, Update/Modernize Physical Therapy Act, with a \$50,000 tax deduction for business income realized by individual taxpayers for two years, 2012 and 2013. The House budget, H200 (V4), reserved \$635 million for the finance committee for the 2011-2013 biennium; this PCS uses part of that reserve. This tax relief is in addition to the \$1.3 billion in expiring tax revenue.¹*

CURRENT LAW: A business may be organized as a corporation, as a sole proprietorship, or as a pass-through entity such as a partnership or LLC. Business income derived from a corporate entity is taxed under the corporate income tax. In North Carolina, the corporate income tax rate is 6.9%. Business income derived from a sole proprietorship or a pass-through entity is taxed under the individual income tax. North Carolina has a graduated individual income tax rate structure of 6%, 7%, and 7.75%.

Revenue from North Carolina's personal income tax accounts for 52% to 55% of all General Fund revenues.² The non-withholding portion of this tax³ may fluctuate as much as 35% from year to year, which has contributed to the State's volatile revenue structure. Much of this volatility has occurred since the 1990s as more and more business entities have organized as limited liability entities whose income flows through the personal income tax rather than the corporate income tax.

BILL ANALYSIS: The proposed committee substitute for House Bill 619 would provide a personal income tax deduction for the first \$50,000 of net business income a taxpayer receives during a taxable year. The deduction is effective for the 2012 and 2013 taxable years only; it expires for taxable years beginning on or after January 1, 2014. This change in the law would affect at least 250,000 small businesses. Of these 250,000 small businesses, more than 50% of them are sole proprietorships.

The term 'business income' would not include income that is considered passive income under the Code. Section 469 of the Code, as well as various IRC tax regulations, define passive income. Form 1040, Schedule E, requires reporting of passive and non-passive income. Form 1040, Schedule C, requires the reporting of profit and loss from sole proprietorships. Form 1040, Schedule F, requires the reporting of farm income and loss.

The bill also changes the starting point for calculating North Carolina taxable income from federal taxable income to federal adjusted gross income. Of the 35 states that begin their calculation of state taxable income with federal law, 29 use federal adjusted gross income while only six use federal taxable income. Federal taxable income is income after all federally allowed deductions; it includes the deductions from gross income to determine adjusted gross income and the deductions from adjusted gross income to determine taxable income. The primary differences between federal taxable income and

¹ The 1% State sales tax rate expires July 1, 2011; the corporate and individual income surtaxes expire for taxable years beginning on or after January 1, 2011.

² In 1970, the PIT accounted for 32.7% of General Fund revenues.

³ The non-withholding portion of the tax consists of business income, capital gains, rental income, interest and dividends, pension income, etc.

House PCS 619

Page 2

adjusted gross income are the personal and dependency exemptions and the subtraction of either the standard deduction amount or the itemized deductions amount.

North Carolina began using federal taxable income as the starting point for this calculation in 1989. At the time, this change significantly simplified North Carolina's individual income tax; it eliminated 30 individual income tax exclusions and reduced 47 deductions and exemptions to seven. Since that time, however, the number of adjustments a taxpayer must make to federal taxable income to determine North Carolina taxable income has increased from 11 to more than 40.

The movement to AGI in the bill does not expand the tax base; it retains all of the current deductions and credits. Although it does not eliminate many of the 40 adjustments, it does eliminate the need for two of the most confusing and complex ones: the calculation of North Carolina's standard deduction amount and personal and dependency exemption amounts. Under current law, a taxpayer begins the calculation of State taxable income with the federal standard deduction and personal exemption amounts. Those amounts are indexed; North Carolina does not index its standard deduction and dependent exemption amounts. The difference means every taxpayer must adjust the personal and dependency exemption amounts and at least 70% of the individual taxpayers, representing more than 2 million returns, must adjust their standard deduction amount.

North Carolina's standard deduction amount varies depending upon the filing status of the taxpayer:

<u>Filing Status</u>	<u>Standard Deduction</u>
Married, filing jointly	\$6,000
Head of household	4,400
Single	3,000
Married, filing separately	3,000

North Carolina's personal and dependency exemption amount varies depending upon the taxpayer's filing status and adjusted gross income:

<u>Filing Status</u>	<u>AGI</u>	<u>Personal Exemption</u>
Married, filing jointly	Up to \$100,000	\$2,500
	Over \$100,000	2,000
Head of household	Up to \$80,000	\$2,500
	Over \$80,000	2,000
Single	Up to \$60,000	\$2,500
	Over \$60,000	2,000
Married, filing separately	Up to \$50,000	\$2,500
	Over \$50,000	2,000

EFFECTIVE DATE: The tax changes become effective for taxable years beginning on or after January 1, 2012, and expire for taxable years beginning on or after January 1, 2014.

H619-SMRB-62(CSRB-42) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 19

Short Title: Union Fire Fee Sunset Repealed. (Local)

Sponsors: Senator Tucker.

Referred to: State and Local Government.

February 2, 2011

1 A BILL TO BE ENTITLED .
 2 AN ACT TO REPEAL THE SUNSET ON FIRE PROTECTION FEES IN UNION COUNTY.
 3 The General Assembly of North Carolina enacts:
 4 SECTION 1. Section 2 of S.L. 2010-84 is repealed.
 5 SECTION 2. This act is effective when it becomes law.





SENATE BILL 19: Union Fire Fee Sunset Repealed

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Tucker
Analysis of: First Edition

Date: May 25, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *Senate Bill 19¹ repeals the sunset on Union County's authorization to impose specified fees for fire protection services provided in fee-based fire protection districts.*

CURRENT LAW: S.L. 1991-883 authorized Union County to create fire protection districts funded by fees rather than by taxes. The act provides fees may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property benefiting from the availability of fire protection. The Union County fire protection fees originally established in 1991 were:

- \$50 per year for a single family dwelling, manufactured home, or duplex.
- \$75 per year for a triplex.
- \$100 per year for any other multiple-family dwelling.
- \$10 per year for animal or horticultural operations.
- \$50 per year for other commercial facilities with structures encompassing less than 5,000 square feet.
- \$100 per year for other commercial facilities with structures exceeding 5,000 square feet.
- \$50 per year on any other class of property.

S.L. 2010-84 permitted Union County to increase its fire protection fees in excess of the limits set by 1991 local act, but the increase may not exceed twice the amount of the maximum fee amounts for each class of property. The board of county commissioners is authorized effectuate the increase by including the increased amounts in its budget ordinance adopted under Article 3 of Chapter 159 of the General Statutes. Under that Article, the board must hold a public hearing before adopting the budget ordinance.

S.L. 2010-84 also provided that Union County's fee-based fire protection district authority, not just the fee increases authorized by that act, would expire on July 1, 2012.

BILL ANALYSIS: Senate Bill 19 repeals the sunset on S.L. 2010-84. By repealing the sunset, Union County would maintain its current authority to assess fees for fire protection up to twice the amount of the maximum fee amounts for each class of property set out in the 1991 legislation.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: This bill is a request of the Union County Board of Commissioners. According to the resolution they passed, the sunset provision limits the county's flexibility in funding fire protection services and cause additional strain on property taxpayers through the imposition of ad valorem taxes as the only alternative revenue source for funding fire protection services. There are 18 fire departments throughout the county, five of which impose a fire tax and the remainder of which charge the annual fire fee.

Giles Perry, counsel to Senate State and Local Government, substantially contributed to this summary.

S19-SMSV-54(e1) v1

¹ Companion Bill, House Bill 97, received a favorable report in House Finance on May 18, 2011, and is currently on the House Calendar for June 1, 2011.



North Carolina General Assembly
House Committee on Finance

Minutes

June 1, 2011

The House Committee on Finance met on Wednesday, June 1, 2011 at 8:00 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Brawley, Carney, Collins, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Bob Rossi and Champ Claris. Staff persons present included Cindy Avrette, Rodney Bizzell, Dan Etefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Greg Roney, and Brian Slivka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Starnes called the meeting to order at 8:00 am and recognized the four (4) pages present: (1) Sarah Horne of Guilford County sponsored by Representative Faircloth; (2) Meredith Shaw of Forsyth County sponsored by Representative Larry Brown; (3) Kelsie Maxwell of Carteret County sponsored by Representative McElraft; and (4) Leondra Holmes of Cumberland County sponsored by Representative Glazier.

The first bill to be heard by the Committee was **SB 145 Southern Shores Canal Dredging/Maintenance** (see **attachment 3**). The Chair recognized Senator White to explain the bill. The Chair then recognized Representative Lewis who moved that SB 145 be given a favorable report. The motion carried.

The next bill considered by the Committee was **HB 340 Utilities Commission/Criminal Records Check** (see **attachment 4**). Chairman Starnes recognized Representatives Steen and Hager to explain the bill. The Chair then recognized Representative Setzer who moved that HB 340 be given a favorable report. The motion carried.

The next bill before the Committee was **HB 350 Property Tax Uniformity for Conservation Land** (see **attachment 5**). Chairman Starnes recognized Representative Stone who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representative McGrady to explain the proposed committee substitute. The Chair recognized Representative Collins who moved that HB 350 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill before the Committee was **HB 417 Extend Time For Site Of Low/Mod. Inc. Housing** (see **attachment 6**). Chairman Starnes recognized Representative McGrady to explain the bill. Chairman Starnes then recognized Representative Womble who moved that HB 417 be given a favorable report. The motion carried.

HB 476 Protect Galax & Venus Flytrap/WRC Rule Fines (see **attachment 7**) was the next bill considered by the Committee. Chairman Starnes recognized Representative Collins who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representative Howard to explain the bill. The Chair invited members of the public to speak for or against the bill. Chairman Starnes recognized Linda Pearsall with the Department of Environment and Natural Resources who spoke in favor of the bill. Chairman Starnes then recognized Representative Stone who moved that HB 476 be given a favorable report to the proposed committee substitute 2, unfavorable report to committee substitute 1. The motion carried.

The next bill considered by the Committee was **SB 321 Surplus Lines/Premium Tax.-AB** (see **attachment 8**). Chairman Starnes recognized Representative Dockham to explain the bill. The Chair then recognized Representative Howard who sent forth amendment 1 that moved to amend the bill on page 10, line 20 (see **attachment 9**). Representative Howard, with the assistance of staff member Greg Roney, explained the amendment. Being no further discussion or debate, the Chair called for the ayes and noes on amendment 1. Amendment 1 was adopted. The Chair then recognized Representative Luebke who moved that SB 321 be given a favorable report as amended and rolled into a proposed committee substitute, unfavorable report to the original bill.

Chairman Starnes recognized Representative McGee, Chair of the Subcommittee on Occupancy Tax who stated that **HB 518 Authorize Add'l Person County Occupancy Tax** conformed to the guidelines and was reported favorable by the Subcommittee on Occupancy Tax and re-referred to the Committee on Finance.

The next bill considered by the Committee was **HB 518 Authorize Add'l Person County Occupancy Tax** (see **attachment 10**). Chairman Starnes recognized Representative Warren who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representative Faison to explain the proposed committee substitute. Chairman Starnes then recognized Representative Carney who moved that HB 518 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

Next on the agenda was **HB 571 Prepaid Wireless/Point of Sale Collection** (see **attachment 11**). The Chair recognized Representative Moffitt who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Starnes recognized Representatives Brawley, Sager and Bryant to explain the proposed committee substitute. Representative Howard was recognized for a motion to give HB 571 a favorable report to the proposed committee substitute 2, unfavorable report to committee substitute 1. The motion was

set aside for further discussion. The Chair invited the audience to speak on the bill. The Chair recognized Any Ellen with the Retail Merchants Association who spoke in favor of the bill and Tom Dixon with the Department of Revenue who spoke against the bill. The Chair recognized Representative Brawley who moved that HB 571 be temporarily displaced. The motion carried.

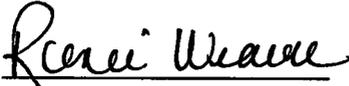
The final bill heard by the Committee was **HB 662 Electronic Monitoring Fee** (see **attachment 12**). The Chair recognized Representative Cook to explain the bill. Staff member Sandra Johnson assisted in answering member's questions. Chairman Starnes recognized Representative Lewis who sent forth amendment 1 that moved to amend the bill on page 1, line 11 (see **attachment 13**). Representative Lewis explained his amendment. Staff members Trina Griffin and Doug Holbrook assisted with answering member's questions. Being no further discussion or debate, the Chair called for the ayes and noes on the adoption of amendment 1. Amendment 1 was adopted. The Chair then invited anyone that would like to speak in favor or against the bill. Chairman Starnes recognized Amy Bason with the North Carolina Association of County Commissioners who spoke in favor of the bill. The Chair again recognized Representative Lewis who moved that HB 662 be given a favorable reported as amended and rolled into a proposed committee substitute, unfavorable report to the original bill. The chair called for a show of hands for the motion of favorable report. The vote being 13 affirmative and 7 against. The motion carried.

Due to time, **HB 896 Authorize Electronic Listing** was unable to be heard and is scheduled to be heard on Thursday, June 2, 2011.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 9:51 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 2 for

HB 340 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE UTILITIES
COMMISSION TO OBTAIN CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR
AND CURRENT HOLDERS OF A CERTIFICATE TO TRANSPORT HOUSEHOLD GOODS.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 350 A BILL TO BE ENTITLED AN ACT TO MODIFY THE CLASSES OF PROPERTY EXCLUDED FROM THE TAX BASE.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 417 A BILL TO BE ENTITLED AN ACT TO EXTEND THE TIME PERIOD FOR HOLDING REAL PROPERTY AS A FUTURE SITE FOR HOUSING FOR LOW- OR MODERATE-INCOME INDIVIDUALS AND FAMILIES.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 476 A BILL TO BE ENTITLED AN ACT TO PROVIDE CERTAIN PROTECTIONS TO GALAX AND VENUS FLYTRAP UNDER THE PLANT PROTECTION AND CONSERVATION ACT, TO REQUIRE ANY PERSON WHO ACTS IN THE CAPACITY OF A DEALER OF EITHER OF THESE PLANTS TO OBTAIN A DEALER PERMIT, AND TO INCREASE THE CIVIL PENALTY FOR VIOLATIONS OF CERTAIN RULES OF THE WILDLIFE RESOURCES COMMISSION.

With a favorable report as to Committee substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 518 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE AN ADDITIONAL ONE PERCENT OCCUPANCY TAX FOR PERSON COUNTY.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 662 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE COUNTIES THAT PROVIDE ELECTRONIC MONITORING FOR OFFENDERS TO COLLECT A FEE TO RECOVER THE ACTUAL COSTS OF PROVIDING THAT MONITORING.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 145 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF SOUTHERN SHORES TO IMPOSE A CANAL DREDGING AND MAINTENANCE FEE AND TO ASSESS FOR NAVIGATION PROJECTS.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

House Committee Substitute # 1 for

SB 321 A BILL TO BE ENTITLED AN ACT TO CONFORM PROVISIONS OF NORTH CAROLINA SURPLUS LINES INSURANCE LAWS TO THE FEDERAL NONADMITTED AND REINSURANCE REFORM ACT OF 2010, TO STREAMLINE APPLICATIONS FOR COMMERCIAL PURCHASERS, TO PREVENT ANY LOSS OF PREMIUM TAX REVENUE TO THE STATE, AND TO CONFORM THE DEFINITION OF RISK RETENTION GROUP TO FEDERAL LAW.

With a favorable report as to House committee substitute bill 2, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

AGENDA
House Finance Committee

Wednesday, June 1, 2011

8:00 am

Room 544 LOB

Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 340 Utilities Commission/Criminal Records Check

Representatives Steen, Hager

HB 350 Clarify Property Tax for Conservation Land

Representatives McGrady, Starnes, Brubaker, Harrison

HB 417 Extend Time For Site of Low/Mod. Inc. Housing

Representative McGrady

HB 476 Protect Galax & Venus Flytrap/WRC Rule Fines

Representative Gillespie

HB 518 Authorize Add'l Person County Occupancy Tax

Representative Wilkins

HB 571 Prepaid Wireless/Point of Sale Collection

Representatives Sager, Justice, Bryant, Brawley

HB 662 Electronic Monitoring Fee

Representatives Cook, Shepard

HB 896 Authorize Electronic Listing

Representative Brubaker

SB 145 Southern Shores Canal Dredging/Maintenance

Senator White

SB 321 Surplus Lines/Premium Tax

Senator Apodaca

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: JUNE 1, 2011 Room: 544

*Name: Sarah Horne

County: Guilford

Sponsor: John Faircloth

*Name: Meredith Shaw

County: Forsyth

Sponsor: Larry Brown

*Name: Kelsie Maxwell

County: Carteret

Sponsor: Pat McElraft

*Name: Leondra Holmes

County: Cumberland

Sponsor: Glazier

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: BOB ROSSI

2. Name: JOHN BRANDON

5. Name: _____

3. Name: CHAMP CLARIS

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

June 1, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Richard Taylor	NC 911 Board
Andy Eller	NCPWA
Allison Fowler	NC Grange
Cameron Huntly	Electronics
Lan Ann Horvath	CATA
Michelle Frazier	MF+S
John Handley	MF+S
CSH/LS	TSS
John McMillan	MF+S
Saffers	WV
Amy McConkey	NC Bev Assn

VISITOR REGISTRATION SHEET

House Finance

June 1, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chris P. Han	none
Wendy Kelly	Policy Group
Lorrie Turner	T-Mobile
Thomas Moore	Frank W Moore
DAVID BARNES	PS
Steve Woodson	NETB
Jeff Russell	AT&T
Vanessa Shannon	AT&T
CARLOS E. SANCHEZ	AT&T
Robert Youngblood	Randolph County Ten Party GRAC
Herb Crenshaw	AT&T

VISITOR REGISTRATION SHEET

House Finance

June 1, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tom Dixon	NCDOR
Elizabeth Colcord	NC DOR
David Baker	NC DOR
Melissa Frank	NCACC
Amy Broom	NCACC
MICHELLE HEALY	SMITH ANDERSON
Bill Wargb	Verizon
Scott Mackey	KSE Partners LLP Montpelier, VT 05602
Reid Wilson	Conservation Trust for NC
Linda Pearsall	Dept Env + Natural Resources
Erie Wayne	NC DOR
Michael Hauser	NC DOR

VISITOR REGISTRATION SHEET

House Finance

June 1, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>R. E. R...</i>	NCNC
<i>Cady Thomas</i>	NCAR
<i>Jessi Hayes</i>	NCHBA
<i>Doug Lassiter</i>	NCSTA
<i>Rose Williams</i>	NCDOI
<i>Gene Cross</i>	NCDAICS
<i>Peter Kus</i>	CTNC
<i>Kevin G. Q...</i>	NCACC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011.

S

1

SENATE BILL 145

Short Title: Southern Shores Canal Dredging/Maintenance. (Local)

Sponsors: Senator White.

Referred to: State and Local Government.

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF SOUTHERN SHORES TO IMPOSE A CANAL DREDGING AND MAINTENANCE FEE AND TO ASSESS FOR NAVIGATION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2004-104 as rewritten by S.L. 2005-47 and S.L. 2005-90 reads as rewritten:

"SECTION 7. This act applies only within the municipal boundaries of the Towns of Emerald Isle, Holden Beach, and ~~Ocean Isle Beach.~~ Ocean Isle Beach, and Southern Shores."

SECTION 2.(a) This section applies only to the Town of Southern Shores.

SECTION 2.(b) Sections 1 through 4 of S.L. 2004-104 as amended by Section 1 of S.L. 2007-335 reads as rewritten:

"SECTION 1. Fee-Supported Canal Dredging and Maintenance District. – A municipality by resolution may create a fee-supported canal dredging and maintenance district for all properties that are contiguous to a canal within the corporate limits.

"SECTION 2. Imposition of Annual Fees. – A municipality may impose annual fees for the dredging and maintenance of canals, both natural and concrete, within the corporate limits. The governing board shall establish the fees on or before July 1 each year.

"SECTION 3. Fees. – The fees imposed by the municipality may not exceed the cost of providing for the dredging and maintenance of the canals within the municipality. The fees shall be imposed on owners of each dwelling unit or parcel of property that could or does benefit from water access through the canal system ~~on the island within the municipality's corporate limits.~~ and shall be made on the basis of one of the following:

- (1) The frontage abutting the project at an equal rate per foot of frontage.
- (2) Per unit or parcel of property.

"SECTION 4. Billing of Fees. – The municipality may include a fee imposed under this section on the property tax bill for each parcel of property lying within the municipal limits on which the fee is imposed. Said fee shall be collected in the same manner as provided for in the General Statutes for the collection of ad valorem taxes, and remedies available by statute for the collection of taxes shall apply to the collection of the canal dredging and maintenance fees."

SECTION 3. Section 3 of Chapter 725 of the 1985 Session Laws reads as rewritten:

"Sec. 3. This act applies to the ~~Town of~~ Towns of Southern Shores and Sunset Beach only."

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





SENATE BILL 145: Southern Shores Canal Dredging/Maintenance

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. White
Analysis of: First Edition

Date: May 26, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *Senate Bill 145 is a local act that would allow the Town of Southern Shores to impose a canal dredging and maintenance fee and to assess for navigation projects.*

CURRENT LAW: The General Assembly authorized the Town of Ocean Isle Beach to create a fee-supported canal dredging district in 2004.¹ The General Assembly granted similar authority to the Towns of Emerald Isle and Holden Beach in 2005.²

G.S. 160A-238 allows a city to make special assessments for beach erosion control or flood and hurricane protection. In 1985, the General Assembly authorized the Town of Sunset Beach to impose an assessment for navigation projects.³

BILL ANALYSIS: Section 1 of Senate Bill 145 would add the Town of Southern Shores to the list of municipalities authorized to impose a canal dredging fee. Section 2 of Senate Bill 145 would expand the purpose of the fee to include maintenance of the canal.

Specifically, the bill would allow the Town of Southern Shores to do the following:

- Create a fee-supported canal dredging and maintenance district for all properties that are contiguous to a canal within its corporate limits.
- Impose annual fees for the dredging and maintenance of canals, both natural and concrete, on or before July 1 of each year. The fees may not exceed the cost of providing for the dredging and maintenance of the canals. The fees must be imposed on owners that could or do benefit from water access through the canal system within the municipality's corporate limits. The fees may be imposed on the property tax bill and collected in the same manner as ad valorem taxes.
- Abolish the district whenever there is no longer a need for it.
- Establish a capital reserve fund. If a capital reserve fund is established to build up funds to provide the service, the Town may delay providing the service until sufficient funds have accumulated (but not for longer than five years).

Section 3 of Senate Bill 145 would extend the authority to impose a special assessment for navigation projects to the Town of Southern Shores. To impose a special assessment, the Town would need to follow the procedures set forth in Article 10 of Chapter 160A: it must adopt a preliminary resolution, hold a public hearing, adopt an assessment resolution, determine the total costs of the project, prepare a preliminary assessment roll, hold a public hearing, and affirm the assessment roll.

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

Brad Krehely, Cindy Avrette, and Giles Perry of the Research Division substantially contributed to this summary.

S145-SMTM-20(e1) v2

¹ S.L. 2004-104.

² S.L. 2005-47 and S.L. 2005-90.

³ The term would include dredging and bulkheading canals. S.L. 1985-725.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

3

HOUSE BILL 340
Committee Substitute Favorable 3/24/11
Committee Substitute #2 Favorable 5/19/11

Short Title: Utilities Commission/Criminal Records Check. (Public)

Sponsors:

Referred to:

March 15, 2011

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A BILL TO BE ENTITLED
AN ACT AUTHORIZING THE UTILITIES COMMISSION TO OBTAIN CRIMINAL
HISTORY RECORD CHECKS OF APPLICANTS FOR AND CURRENT HOLDERS OF
A CERTIFICATE TO TRANSPORT HOUSEHOLD GOODS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 62 of the General Statutes is amended by
adding a new section to read as follows:

**§ 62-273.1. Criminal history record checks of applicants for and current holders of
certificate to transport household goods.**

(a) The following definitions apply in this section:

- (1) Applicant. – An individual, partnership, limited liability corporation, or corporation who applies for certification as a common carrier of household goods in the State of North Carolina.
- (2) Certificate. – A certificate of exemption or a certificate of public convenience and necessity issued by the Utilities Commission to authorize the holder to engage in the intrastate transportation of household goods for compensation in the State of North Carolina.
- (3) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's or current holder's fitness to possess a certificate.
- (4) Current holder. – An individual, partnership, limited liability corporation, or corporation who has been certified as a common carrier of household goods in the State of North Carolina.

(b) The Commission shall conduct a criminal history record check of applicants and current holders of a certificate to transport household goods. An applicant for or current holder of a certificate to transport household goods must furnish the Commission with a complete set of the applicant's fingerprints in a manner prescribed by the Commission. In those instances where the quality characteristic of an applicant's or current holder's fingerprints is determined to be too low or otherwise inadequate for processing by the FBI, the applicant or current holder shall comply with the Commission's criminal history record check requirement pursuant to the Commission's alternate name-based records check procedure.

(c) If the applicant's or current holder's verified criminal history record check reveals one or more convictions, the convictions shall not automatically constitute cause for denying an application or revoking a certificate. However, all of the following factors shall be considered by the Commission in determining whether the application should be denied or the certificate revoked:



- 1 (1) The level and seriousness of the crime.
2 (2) The date of the crime.
3 (3) The age of the person at the time of the conviction.
4 (4) The nature of the crime as it relates to the duties and responsibilities of a
5 common carrier of household goods.
6 (5) The employment history of the person after the date the crime was
7 committed.
8 (6) Any evidence of rehabilitation of the person after the date the crime was
9 committed.
10 (d) The Commission may deny an application or revoke a certificate if the applicant or
11 current holder refuses to consent to a criminal history record check or use of fingerprints or
12 other identifying information required by the State or National Repositories of Criminal
13 Histories."

14 SECTION 2. Article 4 of Chapter 114 of the General Statutes is amended by
15 adding a new section to read:

16 "§ 114-19.31. Criminal history record checks of applicants for and current holders of
17 certificate to transport household goods.

18 The Department of Justice may provide to the Utilities Commission from the State and
19 National Repositories of Criminal Histories the criminal history of any applicant for or current
20 holder of a certificate to transport household goods. Along with the request, the Commission
21 shall provide to the Department of Justice the fingerprints of the applicant or current holder, a
22 form signed by the applicant or current holder consenting to the criminal history record check
23 and use of fingerprints and other identifying information required by the State and National
24 Repositories of Criminal Histories, and any additional information required by the Department
25 of Justice. The applicant's or current holder's fingerprints shall be forwarded to the State Bureau
26 of Investigation for a search of the State's criminal history record file, and the State Bureau of
27 Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a
28 national criminal history record check. The Utilities Commission shall keep all information
29 obtained pursuant to this section confidential. The Department of Justice may charge a fee to
30 offset the cost incurred by it to conduct a criminal history record check under this section. The
31 fee shall not exceed the actual cost of locating, editing, researching, and retrieving the
32 information. The Department of Justice shall send a copy of the results of the criminal history
33 record checks directly to the Utilities Commission Chief Clerk."

34 SECTION 3. This act is effective when it becomes law and applies to all persons
35 holding a current certificate of exemption or a certificate of public convenience and necessity
36 on or after that date and to all applications for a certification of exemption or a certificate of
37 public convenience and necessity received by the Commission on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 340 (Third Edition)

SHORT TITLE: Utilities Commission/Criminal Records Check.

SPONSOR(S): Representatives Steen and Hager

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	<i>*See Assumptions and Methodology*</i>				
EXPENDITURES	No significant fiscal impact				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice					
EFFECTIVE DATE: When it becomes law					

BILL SUMMARY:

House Bill 340 provides definitions for the following terms as used in the proposed statute: (1) applicant, (2) certificate, (3) criminal history, and (4) current holder. The act also amends G.S. 62-273.1(b) to direct the Utilities Commission to conduct a criminal history record check of applicants and current holders of certificate to transport household goods. The act requires an applicant for or current holder of certificate to furnish the Commission with a complete set of the applicant's fingerprints. The proposed legislation recodifies the provision allowing the Department of Justice to provide the criminal history of any applicant for or current holder of a certificate to transport household goods to the Commission, with fingerprints forwarded to the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI) in new G.S. 114-19.31.

The proposed legislation is effective when the act becomes law and applies to all current holders and applicants for a certificate to transport household goods on or after that date.

SOURCE: BILL DIGEST H.B. 340 (03/14/0201)

ASSUMPTIONS AND METHODOLOGY:

Department of Justice

Revenue

The Department of Justice (DOJ) reports that a fee of \$38 is charged to perform each criminal background check. Of this fee, \$22 is forward to the Federal Bureau of Investigation (FBI) for a check of federal databases, and the remaining \$16 is retained by DOJ. Of this \$16, \$14 goes to a check of North Carolina databases and \$2 is used for the processing cost associated with the request.

Expenditures

The proposed changes in the bill may increase the workload and number of background checks the SBI may have to review and process. However, the bill makes no changes to 114-19.2 (c) which allows DOJ to charge a reasonable fee to recover their costs. Because this fee mechanism remains intact, the Department does not project that the proposed legislation will have a material fiscal impact on the SBI or DOJ.

SOURCES OF DATA: Department of Justice

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone and John Poteat

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: May 31, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 340: Utilities Commission/Criminal Records Check

2011-2012 General Assembly

Committee: House Finance
Introduced by: Reps. Steen, Hager
Analysis of: Third Edition

Date: May 31, 2011
Prepared by: Heather Fennell
Committee Counsel

SUMMARY: *House Bill 340 would authorize the Utilities Commission to obtain a criminal history records checks of transporters of household goods.*

CURRENT LAW: Under Chapter 62, the transportation of household goods within the State is considered a public utility and subject to regulation by the Utilities Commission. The term "household goods" is defined by Commission Rule to be "personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is arranged and paid by the householder or another party."

BILL ANALYSIS: House Bill 340 would authorize the Utilities Commission to obtain a criminal history record check of transporters of household goods. The Commission may deny a certificate to a new transporter, or may revoke a certificate of a current transporter, if the transporter refuse to consent to the criminal history record check, or refuses to provide fingerprints for the check. If the quality characteristic of the fingerprints isn't satisfactory for FBI processing, there is an alternate name-based records check procedure.

The records check will be conducted by the Department of Justice by submission of fingerprints to both the State Bureau of Investigation and the Federal Bureau of Investigation. The Department of Justice may charge a fee to offset the costs associated with the check. The current cost of a State wide check conducted by the SBI is \$14; the current cost of nation wide check is \$38.

Convictions revealed by a criminal history records check, do not constitute cause to deny an application or revoke a current certificate. The Commission must consider the following in its determination:

- The level and seriousness of the crime.
- The date of the crime.
- The age of the person at the time of conviction.
- The nature of the crime as it relates to the duties and responsibilities of a common carrier of household goods.
- The employment history of the person after the date the crime was committed.
- Any evidence of rehabilitation of the person after the crime.

EFFECTIVE DATE: This act is effective when it becomes law and applies to all persons holding a current certificate of exemption or a certificate of public convenience and necessity on or after that date and to all applications for a certification of exemption or a certificate of public convenience and necessity received by the Commission on or after that date.

H340-SMTD-58(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 350
PROPOSED COMMITTEE SUBSTITUTE H350-CSLAX-2 [v.13]

5/31/2011 10:35:51 AM

Short Title: Property Tax Uniformity for Conservation Land.

(Public)

Sponsors:

Referred to:

March 15, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY WHEN LAND USED FOR CONSERVATION PURPOSES IS TO BE
3 EXCLUDED FROM THE PROPERTY TAX BASE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 105-275 reads as rewritten:

6 "§ 105-275. Property classified and excluded from the tax base.

7 The following classes of property are designated special classes under Article V, Sec. 2(2),
8 of the North Carolina Constitution and are excluded from tax:

- 9 ...
- 10 (12) Real property that (i) is owned by a nonprofit corporation or association
 11 organized to receive and administer lands for conservation purposes, (ii) is
 12 exclusively held and used by its owner for educational and scientific
 13 purposes as a protected natural area, for one or more of the purposes listed in
 14 this subdivision, and (iii) produces no income or produces income that is
 15 incidental to and not inconsistent with the purpose or purposes for which the
 16 land is held and used. (For purposes of this subdivision, the term "protected
 17 natural area" means a nature reserve or park in which all types of wild
 18 nature, flora and fauna, and biotic communities are preserved for observation
 19 and study.)The taxes that would otherwise be due on land classified under
 20 this subdivision shall be a lien on the real property of the taxpayer as
 21 provided in G.S. 105-355(a). The taxes shall be carried forward in the
 22 records of the taxing unit or units as deferred taxes. The deferred taxes for
 23 the preceding five fiscal years are due and payable in accordance with
 24 G.S. 105-277.1F when the property loses its eligibility for deferral as a result
 25 of a disqualifying event. A disqualifying event occurs when the property (i)
 26 is no longer exclusively held and used for one or more of the purposes listed
 27 in this subdivision, (ii) produces income that is not incidental to and
 28 consistent with the purpose or purposes for which the land is held and used,
 29 or (iii) is sold or transferred without an easement recorded at the time of sale
 30 that requires perpetual use of the land for one or more of the purposes listed
 31 in this subdivision and that prohibits any use of the land that would generate
 32 income that is not incidental to and consistent with the purpose or purposes
 33 for which the land is held and used. In addition to the provisions in
 34 G.S. 105-277.1F, all liens arising under this subdivision are extinguished



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upon the real property being sold or transferred to a local, state, or federal government unit for conservation purposes or subject to an easement recorded at the time of sale that requires perpetual use of the land for one or more of the purposes listed in this subdivision. The purposes allowed under this subdivision are any of the following:

- a. Used for an educational or scientific purpose as a nature reserve or park in which wild nature, flora and fauna, and biotic communities are preserved for observation and study. For purposes of this sub-subdivision, the terms "educational purpose" and "scientific purpose" are defined in G.S. 105-278.7(f).
- b. Managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission.
- c. Managed under a forest stewardship plan developed by the Forest Stewardship Program.
- d. Used for public access to public waters or trails.
- e. Used for protection of water quality and subject to a conservation agreement under the provision of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes.
- f. Held by a nonprofit land conservation organization for sale or transfer to a local, state, or federal government unit for conservation purposes.

...."

SECTION 2. G.S. 105-277.1F(a) is amended by adding a new subdivision to read:

"(a)

Scope. – This section applies to the following deferred tax programs:

- (1) G.S. 105-275(12)f., real property held for future transfer to government unit for conservation purposes.
- (1a) G.S. 105-275(29a), historic district property held as future site of historic structure.
- (2) G.S. 105-277.1B, the property tax homestead circuit breaker.
- (2a) G.S. 105-277.1D, the inventory property tax deferral.
- (3) G.S. 105-277.4(c), present-use value property.
- (4) G.S. 105-277.14, working waterfront property.
- (4a) G.S. 105-277.15, wildlife conservation land.
- (5) G.S. 105-278(b), historic property.
- (6) G.S. 105-278.6(e), nonprofit property held as future site of low- or moderate-income housing."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.



HOUSE BILL 350: Property Tax Uniformity For Conservation Land

2011-2012 General Assembly

Committee: House Finance	Date: May 17, 2011
Introduced by: Reps. McGrady, Starnes, Brubaker, Harrison	Prepared by: Dan Etefagh
Analysis of: First Edition	Committee Counsel

SUMMARY: HB 350 does the following:

- Replaces "exclusive" use for "primary" use for the exemption for real property owned by a nonprofit/association that is held and used for educational and scientific purposes as a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study ("protected natural area").
- Enlarges the tax exemption to include land held and used for any of the conservation purposes required for donated real property to qualify for the income tax credit in G.S. 105-151.12.¹
- Places real property held for nonprofit land conservation purposes in the deferred tax program by requiring that deferred taxes are due if the land is not transferred subject to conservation agreements or for conservation purposes within five years.

The proposed committee substitute does the following:

- Reinstates the exclusive use requirement, as in current law.
- Clarifies and modifies the tax exemption by listing certain, enumerated conservation purposes.
- Creates a 5-year rollback for avoided taxes if conservation property is no longer used for conservation purposes, used to generate income inconsistent with conservation, or is sold or transferred without an easement requiring perpetual use of the listed conservation purposes and without a prohibition on income generation.
- Expressly aligns definitions for educational and scientific purposes with the property tax exemption for property used for educational and scientific purposes.
- Requires, as does the income tax credit for real property donations for conservation purposes, that the entity owning the property must be "organized to receive and administer lands for conservation purposes".
- Adds the requirement that property qualifying under this exemption either not earn income or only earn income that is merely incidental to and not inconsistent with conservation purposes.

[As introduced, this bill was identical to S579, as introduced by Sen. Hartsell, which is currently in Senate Finance.]

¹ Donations of real property qualify for an income tax credit under G.S. 105-151.12 if useful for the following conservation purposes: (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas, (vii) conservation of natural or scenic river areas, (viii) conservation of predominantly natural parkland, or (ix) historical landscape conservation.

House Bill 350

Page 2

CURRENT LAW: G.S. 105-275 lists classes of property that are authorized by the North Carolina Constitution to be excluded from the property tax base. One of those classes is real property that is (i) owned by a nonprofit corporation or association and (ii) exclusively held and used by its owner for educational and scientific purposes as a protected natural area.

BILL ANALYSIS: The proposed committee substitute makes the following changes to the exemption in G.S. 105-275 (12):

- Clarifies that the definitions for educational purpose and scientific purpose have the same meanings as defined in G.S. 105-278.7 (real and personal property used for, *inter alia*, educational or scientific purposes.)
- Adds to the previous qualifying use (that land be used as a protected natural area) the following conservation purposes:
 - Managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission
 - Managed under a forest stewardship plan developed by the Forest Stewardship Program.²
 - Used for public access to public waters or trails.
 - Used for protection of water quality and subject to a conservation agreement.³
 - Held by a nonprofit land conservation organization for sale or transfer to a local, state, or federal government unit for conservation purposes.
- Property taxes avoided for up to the preceding 5 fiscal years are no longer eliminated but, instead, are carried forward as deferred taxes that become due and payable if a disqualifying event occurs. The following are disqualifying events:
 - The land is no longer used for one of the qualifying conservation purposes or is used to produce income inconsistent with the conservation use/s to which the land is applied.
 - The conservation organization transfers the land without an easement that requires the conservation use/s required for the land to qualify for the property tax benefit will continue to be applied and that prohibits income generation.
- It adds a requirement that property excluded from the tax base for conservation purposes not earn income or only earn income that is both incidental to and not inconsistent with the conservation purpose (e.g., a forest tract could not be managed for the commercial production of timber but some trees could be harvested if the harvesting is incidental and needed to accomplish the overall conservation purposes for which the tract is being managed).

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

² Authorized by the Cooperative Forestry Assistance Act of 1978, this Program provides technical assistance, through State forestry agency partners, to nonindustrial private forest owners to encourage and enable active long-term forest management.

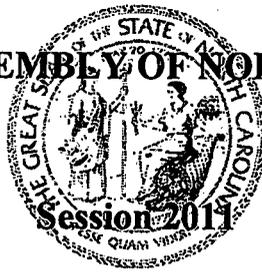
³ Conservation agreements are governed by the provisions of the Conservation and Historical Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes

House Bill 350

Page 3

**Martha Walston, Fiscal Research Division, contributed to this summary.*

H350-SMMC-2(e1) v5



FISCAL ANALYSIS MEMORANDUM

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DATE: May 25, 2011

TO: Representatives Howard, Starnes, and Setzer

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS to H350 v.1 Property Tax Uniformity for Conservation Land

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES:

Local Governments: *Insignificant Property Tax Revenue Change to Local Governments*

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments;
NC Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after July 1, 2011.

BILL SUMMARY:

The proposed committee substitute for HB 350 does the following:

- Clarifies and modifies the conservation property tax exemption by listing certain, enumerated conservation purposes.
- Creates a 5-year rollback for avoided taxes if conservation property is no longer used for conservation purposes, used to generate income inconsistent with conservation, or is sold

or transferred without an easement requiring perpetual use of the listed conservation purposes.

- Expressly aligns definitions for educational and scientific purposes with the property tax exemption for property used for educational and scientific purposes.
- Requires, as does the income tax credit for real property donations for conservation purposes, that the entity owning the property must be "organized to receive and administer lands for conservation purposes".
- Adds the requirement that property qualifying under this exemption not earn income or earn income that is merely incidental to and not inconsistent with conservation purposes.

Source: Dan Ettefagh, Committee Counsel

ASSUMPTIONS AND METHODOLOGY:

The PCS to HB 350 would potentially reduce property tax revenues to local governments by increasing the uses for which conservation land qualifies for a property tax exclusion. Under current law, property owned by a nonprofit and used "exclusively for scientific or educational purposes as a protected natural area" qualifies for a property tax exclusion under 105-275. The PCS expands this exclusion by including five additional enumerated purposes in Section 1. Although the additional purposes may increase the property acreage that qualifies for the exclusion, the additional purposes are closely aligned with scientific and educational purposes and may be interpreted in some counties to qualify under current law.

The 5-year rollback included in the PCS would potentially increase property tax revenues in circumstances in which property that is exempt under current law is disqualified as a result of a disqualifying event. In the event of a disqualification, the deferred taxes for the preceding five years will become due. The rollback will also serve to mitigate the property tax loss resulting from the expansion of purposes for which property can be excluded.

Because the PCS includes provisions which will potentially reduce local revenues (the expansion of qualifying purposes) and increase local revenues (a 5-year roll-back for disqualifying events), it is not clear whether the PCS will result in an overall reduction or increase in local revenues. The overall change in revenue is expected to be minimal.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

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HOUSE BILL 417

Short Title: Extend Time For Site Of Low/Mod. Inc. Housing. (Public)

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

Referred to: Commerce and Job Development.

March 22, 2011

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A BILL TO BE ENTITLED
AN ACT TO EXTEND THE TIME PERIOD FOR HOLDING REAL PROPERTY AS A
FUTURE SITE FOR HOUSING FOR LOW- OR MODERATE-INCOME INDIVIDUALS
AND FAMILIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-278.6 reads as rewritten:

"§ 105-278.6. Real and personal property used for charitable purposes.

(a) Real and personal property owned by:

...

(8) A nonprofit organization providing housing for individuals or families with
low or moderate incomes

shall be exempted from taxation if: (i) As to real property, it is actually and exclusively
occupied and used, and as to personal property, it is entirely and completely used, by the owner
for charitable purposes; and (ii) the owner is not organized or operated for profit.

...

(e) Real property held by an organization described in subdivision (a)(8) for a
charitable purpose under this section as a future site for housing for individuals or families with
low or moderate incomes may be classified under this section for no more than ~~five~~ 10 years.
The taxes that would otherwise be due on real property exempt under this subsection shall be a
lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the
records of the taxing unit as deferred taxes. The deferred taxes are due and payable in
accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result
of a disqualifying event. A disqualifying event occurs when the property was not used for low-
or moderate-income housing within ~~five~~ 10 years from the first day of the fiscal year the
property was classified under this subsection. In addition to the provisions in G.S. 105-277.1F,
all liens arising under this subdivision are extinguished when the property is used for low- or
moderate-income housing within the time period allowed under this subsection."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on
or after July 1, 2011.



GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: May 31, 2011

TO: Representatives Howard, Starnes, and Setzer

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 417 (First Edition)

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
Local Governments					
	Minimal Property Tax Revenue Loss – See Assumptions and Methodology				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; NC Local Governments					
EFFECTIVE DATE: Taxable Years Beginning July 1, 2011					

BILL SUMMARY:

House Bill 417 would extend from 5 years to 10 years the maximum time period that real property owned by a nonprofit organization as a future site for low or moderate income housing may be exempted from taxation.

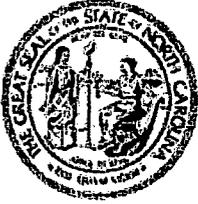
ASSUMPTIONS AND METHODOLOGY:

Property held by a non-profit for future use as low or moderate income housing is currently eligible for a property tax exemption for up to 5 years. The taxes that would be due are a lien on the property and become due if the property loses eligibility as a result of a disqualifying event. H 417 would extend the period that the property could be held as a future site from five to ten years.

Because current law already allows an exemption for property that is held as a future site for low or moderate income housing up to five years, this bill would only affect properties that are held as a future site between five and ten years. As a result, the number and value of properties affected is considered to be small and the property tax revenue loss is expected to be minimal.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None



HOUSE BILL 417: Extend Time For Site Of Low/Mod. Inc. Housing

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. McGrady
Analysis of: First Edition

Date: June 1, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *House Bill 417 would extend from 5 years to 10 years the maximum time period that real property owned by a nonprofit organization as a future site for low or moderate income housing may be exempted from taxation.*

CURRENT LAW: Real and personal property owned by a nonprofit organization providing housing for individuals or families with low or moderate incomes is exempt from property taxation if the owner is not organized or operated for profit and (1) as to real property, it is actually and exclusively occupied and used and (2) as to personal property, it is entirely and completely used by the owner for charitable purposes.

Real property held by a nonprofit organization as a future site for housing for individuals or families with low or moderate incomes may be exempted from taxation for a maximum of 5 years. The taxes otherwise due are a lien on the property. The taxes are carried forward to the next year as deferred taxes and are due if the property loses eligibility because of a disqualifying event. A disqualifying event occurs when the property is not used for low or moderate income housing within 5 years from the first day of the fiscal year the property was classified as exempt.

BILL ANALYSIS: House Bill 417 would provide that real property held by a nonprofit organization as a future site for low or moderate income housing may be exempted from taxation for a maximum of 10 years.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011.

Brad Krehely, counsel to House Commerce, substantially contributed to this summary.

H417-SMTM-24(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 476
Committee Substitute Favorable 4/6/11
PROPOSED COMMITTEE SUBSTITUTE H476-CSTF-8 [v.3]

5/25/2011 5:24:25 PM

Short Title: Protect Galax & Venus Flytrap/WRC Rule Fines.

(Public)

Sponsors:

Referred to:

March 28, 2011

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A BILL TO BE ENTITLED
AN ACT TO PROVIDE CERTAIN PROTECTIONS TO GALAX AND VENUS FLYTRAP
UNDER THE PLANT PROTECTION AND CONSERVATION ACT AND TO
INCREASE THE CIVIL PENALTY FOR VIOLATIONS OF CERTAIN RULES OF THE
WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-202.19(a) reads as rewritten:

"(a) Unless the conduct is covered under some other provision of law providing greater punishment, it is ~~unlawful~~ unlawful to engage in any of the following conduct:

- (1) To uproot, dig, take or otherwise disturb or remove for any purpose from the lands of another, any plant on a protected plant list without a written permit from the owner which is dated and valid for no more than 180 days and which indicates the species or higher taxon of plants for which permission is granted; except that the incidental disturbance of protected plants during agricultural, forestry or development operations is not illegal so long as the plants are not collected for sale or commercial ~~use~~ use.
- (2) To sell, barter, trade, exchange, export, offer for sale, barter, trade, exchange or export or give away for any purpose including advertising or other promotional purpose any plant on a protected plant list, except as authorized according to the rules and regulations of the ~~Board~~ Board.
- (3) To violate any rule of the Board promulgated under this ~~Article~~ Article.
- (4) To dig ginseng on another person's land, except for the purpose of replanting, between the first day of April and the first day of ~~September~~ September.
- (5) To buy ginseng outside of a buying season as provided by the Board without obtaining the required documents from the person selling the ~~ginseng~~ ginseng.
- (6) To buy ginseng for the purpose of resale or trade without holding a currently valid permit as a ginseng ~~dealer~~ dealer.
- (6a) To uproot, dig, take, or otherwise disturb or remove for any purpose from another person's land, galax or Venus flytrap, without a written permit from the owner that is dated and valid for no more than 180 days.



- 1 (6b) To buy galax outside of a buying season as provided by the Board without
2 obtaining the required documents from the person selling the galax.
3 (6c) To buy Venus flytrap outside of a buying season as provided by the Board
4 without obtaining the required documents from the person selling the Venus
5 flytrap.
6 (6d) To buy more than five pounds of galax for the purpose of resale or trade
7 without a copy of the landowner's written permission and confirmation of
8 the collection date.
9 (6e) To buy more than 50 Venus flytrap plants for the purpose of resale or trade
10 unless fully compliant with applicable regulations.
11 (7) To fail to keep records as required under this Article, to refuse to make
12 records available for inspection by the Board or its agent, or to use forms
13 other than those provided for the current year or harvest season by the
14 Department of Agriculture and Consumer ~~Services~~ Services.
15 (8) To provide false information on any record or form required under this
16 ~~Article~~ Article.
17 (9) To make false statements or provide false information in connection with
18 any investigation conducted under this ~~Article~~ Article.
19 (10) To possess any protected plant, or part thereof, which was obtained in
20 violation of this Article or any rule adopted ~~hereunder~~ under this Article.
21 (11) To violate a stop sale order issued by the Board or its agent."

22 **SECTION 2.** G.S. 113-135.1(a) reads as rewritten:

23 "(a) To prevent unsuspecting members of the public from being subject to harsh criminal
24 penalties for offenses created by rules of the Wildlife Resources Commission, the penalty for
25 an offense that is solely a violation of rules of the Wildlife Resources Commission is limited to
26 a fine of ~~ten dollars (\$10.00)~~ twenty-five dollars (\$25.00) except as follows:

- 27 (1) Offenses set out in subsection (b) of this section are punishable as set forth
28 in G.S. 113-135 or other sections of the General Statutes.
29 (2) A person who parks a vehicle in violation of a rule regulating the parking of
30 vehicles at boating access or boating launch areas is responsible for an
31 infraction and shall pay a fine of fifty dollars (\$50.00)."

32 **SECTION 3.** This act becomes effective October 1, 2011, and applies to violations
33 and offenses committed on or after that date. Prosecutions for offenses committed before the
34 effective date of this act are not abated or affected by this act, and the statutes that would be
35 applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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DATE: May 25, 2011
TO: Representatives Howard, Starnes, and Setzer
FROM: Lanier McRee, Sarah Stone, Fiscal Research Division
RE: PCS for HB 476v2

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
Fines & Forfeiture Fund	\$6,750	\$6,750	\$6,750	\$6,750	\$6,750
EXPENDITURES:					
NCDA&CS	\$0	\$0	\$0	\$0	\$0
WRC	\$0	\$0	\$0	\$0	\$0
Corrections		No significant impact anticipated			
Probations		Exact amount cannot be determined			
Judicial		Exact amount cannot be determined			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Department of Agriculture & Consumer Services (NCDA&CS)					
Wildlife Resources Commission (WRC)					
EFFECTIVE DATE: October 1, 2011					

BILL SUMMARY:

The PCS on HB 476v2, Protect Galax and Venus Flytrap/ WRC Rule Fines, makes changes to the General Statutes for the Department of Agriculture & Consumer Services and the Wildlife Resources Commission. In Section 1, the bill amends G.S. 106-202.19(a) to add five instances of unlawful conduct

related to galax and venus flytrap under the Plant Protection and Conservation Act. HB 476 will make the following illegal:

- (1) To uproot, dig, take, or otherwise disturb or remove from another person's land galax or venus flytrap without a written permit from the owner that is dated and valid for no more than 180 days.
- (2) To buy galax outside of a buying season as provided by the Board without obtaining the required documents from the person selling the galax.
- (3) To buy Venus flytrap outside of a buying season as provided by the Board without obtaining the required documents from the person selling the Venus flytrap.
- (4) To buy more than five pounds of galax for the purpose of resale or trade without holding a currently valid permit as a galax dealer.
- (5) To buy more than Venus flytrap plants for the purpose of resale or trade without holding a currently valid permit as a Venus flytrap dealer.

Section 2 amends G.S. 113-135.1(a) to increase the fine from \$10 to \$25 for a violation of WRC rules. Section 3 makes this provision apply to violations and offenses committed on or after October 1, 2011, and clarifies that prosecutions for offenses committed before October 1, 2011 are not abated or affected, and statutes that would be applicable but for this act remain applicable.

ASSUMPTIONS AND METHODOLOGY:

Department of Agriculture & Consumer Services (NCDA&CS)

The requirements added by HB 476 will not change NCDA&CS expenditures. The additions to unlawful conduct in G.S. 106-202.19(a) do not require changes to NCDA&CS' current programs. In addition, the Department will derive no additional revenue from the changes made in HB 476.

Wildlife Resources Commission (WRC)

WRC is responsible for enforcing rules created by the Wildlife Resources Commission. HB 476 will not increase the operating costs of the agency since it is already enforcing these rules. However, HB 476 increases the penalty for an offense that is solely a violation of the rules of the WRC from \$10 to \$25. Over the last three years, WRC has issued less than 500 penalties per year (See Table 1).

Table 1. Violations Pursuant to G.S. 113-135.1(a)?

	Number of Offenses	Revenue
FY 2008-09	491	\$4,910
FY 2009-10	398	\$3,980
FY 2010-11 expected ¹	450	\$4,500

All revenue collected from these penalties is deposited into the Fines & Forfeiture Fund, which is distributed to local school districts; WRC does not receive a percentage of these funds for the collection of these revenues. WRC does not expect a significant change in the number of offenses due to the increase in the fine. Thus, assuming approximately 450 fines per year (the average over the last 3 years is expected to be 446 offenses) the new expected revenue is \$6,750, all of which would go to the Fines & Forfeiture Fund.

¹ There have been 201 offenses resolved through May 25, 2011 but there are many unresolved cases. WRC expects the total number of violations to be between 400 and 500.

Justice & Public Safety -- General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction -- Division of Prisons

The bill amends the Plant Protection and Conservation Act (G.S. Chapter 106, Article 19B) to regulate commerce in galax and Venus flytrap.

Section 1: Expands the list of unlawful activities in subsection (a) of G.S. 106-202.19, Unlawful acts; penalties; enforcement, to include the following:

- (6a) To uproot, dig, take, or otherwise disturb or remove for any purpose from another person's land, galax or Venus flytrap, without a written permit from the owner that is dated and valid for no more than 180 days.
- (6b) To buy galax outside of a buying season as provided by the Board without obtaining the required documents from the person selling the galax.
- (6c) To buy Venus flytrap outside of a buying season as provided by the Board without obtaining the required documents from the person selling the Venus flytrap.
- (6d) To buy more than five pounds of galax for the purpose of resale or trade without holding a currently valid permit as a galax dealer.
- (6e) To buy more than 50 Venus flytrap plants for the purpose of resale or trade without holding a currently valid permit as a Venus flytrap dealer.

Subsection G.S. 106-202.19(a1) makes any violation of Article 19B a Class 2 misdemeanor (absent a specific provision for greater punishment).

Because the proposed section creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 106-202.19(a1). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute.

In FY 2009-10, 25 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for the proposed broadening of the current statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Department of Correction -- Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-

sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.²

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Since the proposed legislation creates new offenses, AOC is not able to estimate the number of charges that may arise. New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff. In addition, superior court personnel could be impacted due to appeals. On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 (three hours at \$75 per hour) per indigent defendant.

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Bill Summary adapted from Bill Digest H.B. 476 (03/24/0201); Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Wildlife Resources Commission; Department of Agriculture & Consumer Services

TECHNICAL CONSIDERATIONS: None

² DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.



HOUSE BILL 476: Protect Galax & Venus Flytrap/WRC Rule Fines

2011-2012 General Assembly

Committee: House Finance	Date: May 26, 2011
Introduced by: Rep. Gillespie	Prepared by: Mariah Matheson
Analysis of: PCS to 2 nd edition (H476-CSTF-8 [v.3])	Research Assistant

SUMMARY: House Bill 476 would provide for certain protections for the galax and the venus flytrap under the Plant Protection and Conservation Act. House Bill 476 would also increase the civil penalties for violations of certain rules of the Wildlife Resources Commission.

CHANGES MADE BY PCS: The PCS would remove the requirement for galax or venus flytrap dealers to obtain a permit.

CURRENT LAW: In accordance with G.S. 106-202.19 (a1), any person convicted of violating the Plant Protection and Conservation Act would be subject to a Class 2 misdemeanor.¹ The North Carolina Plant Conservation Board may assess a civil penalty up to \$2,000 to any person guilty of violating the Act a second or subsequent time. Pursuant to G.S. 14-129, it is a Class 3 misdemeanor² to dig up, pull up, or take a venus flytrap without permission, from the land of another or public domain. However, this provision does not apply to the Counties of: Cabarrus, Carteret, Catawba, Cherokee, Chowan, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gaston, Granville, Hertford, McDowell, Pamlico, Pender, Person, Richmond, Rockingham, Rowan, and Swain.

BILL ANALYSIS: House Bill 476 would make it unlawful to engage in uprooting, digging, taking, disturbing, or removing, for any purpose, galax or venus flytrap from another person's land, without written permission, as provided under the Plant Protection and Conservation Act. The written permission must be dated and would be valid for no more than 180 days. House Bill 476 would also prohibit the following:

- The purchase of galax and venus flytrap outside of the buying season, as provided by the North Carolina Plant Conservation Board (Board).³
- The purchase of more than five pounds of galax for the purpose of resale or trade without a copy of the landowner's written permission and confirmation of the collection date.
- The purchase of more than 50 venus flytrap plants for the purpose of resale or trade, unless fully compliant with applicable regulations.

Section 2 would increase the civil penalty for offenses created by the rules of the Wildlife Resources Commission, in certain instances, from a maximum of ten dollars (\$10.00) to a maximum of twenty-five dollars (\$25.00).

EFFECTIVE DATE: This act would be effective October 1, 2011 and applies to violations and offenses committed on or after that date.

BACKGROUND: Galax (*Galax aphylla*) - Galax is an evergreen herbaceous perennial plant growing to 30 to 45 centimeters, native to the southeastern United States. However, most galax is harvested from

¹ Assuming no prior convictions, a Class II misdemeanor would be subject to 1 to 30 days community punishment.

² Only punishable by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for each offense.

³ Within the Department of Agriculture and Consumer Services (G.S. 106-202.14).

House Bill 476

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North Carolina.⁴ Galax is found throughout the State. Galax leaves are primarily harvested for the florist industry. Due to over-harvesting, collection of galax is illegal on the Blue Ridge Parkway and other national park lands, however, it is legal to harvest portions from national forest land with a permit.^{5 6} As of 2001, the USDA Forest Service implemented a seasonal harvest restriction. No galax harvest is permitted between April 15 and June 15 when new leaves are emerging and are susceptible to damage from trampling.⁷

Venus Flytrap (*Dionaea muscipula*) - The venus flytrap's native habitat is limited to a few parts of North and South Carolina, specifically within a 60-mile radius of Wilmington.⁸ Plants cultivated legally can be purchased in nurseries, garden sections of hardware stores, and supermarkets. The venus flytrap has been designated as a State species of special concern under the Plant Protection and Conservation Act.^{9 10} The venus flytrap is the State carnivorous plant (G.S. 145-22).

H476-SMTF-28(e2) v3

⁴ <http://www.sfp.forprod.vt.edu/pubs/sfpdoc9.pdf> (Page 9)

⁵ <http://www.sfp.forprod.vt.edu/pubs/sfpdoc9.pdf> (Page 7)

⁶ In 2008, 50,000 galax plants were seized from poachers between mid-February and April along the Blue Ridge Parkway (<http://www.digtriad.com/news/local/story.aspx?storyid=101955>)

⁷ http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5188147.pdf

⁸ <http://www.gardenguides.com/101742-interesting-venus-fly-trap.html#ixzz1IJFDvEMh>

⁹ 02 NCAC 48F .0301

¹⁰ "Special concern species" means any species of plant in North Carolina which requires monitoring, but which may be collected and sold under regulations adopted under the provisions of G.S. 106-202.12.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 321
Insurance Committee Substitute Adopted 4/14/11
Finance Committee Substitute Adopted 5/3/11
House Committee Substitute Favorable 5/18/11

Short Title: Surplus Lines/Premium Tax.-AB (Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO CONFORM PROVISIONS OF NORTH CAROLINA SURPLUS LINES INSURANCE LAWS TO THE FEDERAL NONADMITTED AND REINSURANCE REFORM ACT OF 2010, TO STREAMLINE APPLICATIONS FOR COMMERCIAL PURCHASERS, TO PREVENT ANY LOSS OF PREMIUM TAX REVENUE TO THE STATE, AND TO CONFORM THE DEFINITION OF RISK RETENTION GROUP TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 21 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-21-4. Nonadmitted and Reinsurance Reform Act duties.

(a) For the purposes of carrying out the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, the Commissioner is authorized to utilize the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of an individual or an entity as a surplus lines producer and for renewal of such license.

(b) In order to assist in the performance of the Commissioner's duties, under the Nonadmitted and Reinsurance Reform Act of 2010, the Commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions that the Commissioner and the nongovernmental entity may deem to be appropriate, including (i) the collection of fees related to producer licensing and (ii) the collection of the premium tax under G.S. 58-21-85. The NAIC or other entity with whom the Commissioner contracts may charge a reasonable fee to the insurer, insured, or other appropriate person for the functions performed."

SECTION 1.2. The Revenue Laws Study Committee shall, in cooperation with the Commissioner of Insurance, study the potential impact that would result from the State's entrance into a nonadmitted insurance multistate agreement or other compact or interstate agreement for the purpose of carrying out the Nonadmitted and Reinsurance Reform Act of 2010 in order to prevent the State from losing revenue after July 21, 2011, the effective date of the Nonadmitted and Reinsurance Reform Act. The Committee shall determine if entering into a compact or agreement would result in retention of surplus lines tax revenue for the State and, if so, which compact or agreement would result in the most retention of surplus lines tax revenue for the State and the most cost-efficient method of administering the collection and distribution of tax revenues. The Committee shall report its findings and recommendations, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly.

SECTION 2. G.S. 58-21-10 reads as rewritten:



"§ 58-21-10. Definitions.

As used in this Article:

- (1) "Admitted insurer" means an insurer licensed to ~~do an insurance business engage in the business of insurance~~ in this State.
- (1a) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.
- (1b) "Affiliated group" means any group of entities that are all affiliated.
- (2) "Capital", as used in the financial requirements of G.S. 58-21-20, means funds paid in for stock or other evidence of ownership.
- (2a) "Control" means an entity that has "control" over another entity if either of the following occurs:
 - a. The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent (25%) or more of any class of voting securities of the other entity.
 - b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.
- (3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-21-20.
- (4) "Export" means to place surplus lines insurance with a nonadmitted insurer.
- (5) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this State. ~~This definition~~ "Nonadmitted insurer" includes insurance exchanges authorized under the laws of various states. "Nonadmitted insurer" does not include a risk retention group, as defined in G.S. 58-22-10(10).
- (6) "Producing broker" means an agent or broker licensed under Article 33 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.
- (7) "Surplus", as used in the financial requirements of G.S. 58-21-20, means funds over and above liabilities and capital of the company for the protection of policyholders.
- (8) "Surplus lines insurance" means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, commercial aircraft insurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-28-5, life and accident or health insurance, and annuities.
- (9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to place insurance on risks resident, located, or to be performed in this State with nonadmitted insurers eligible to accept such insurance.
- (10) "Wet marine and transportation insurance" means:
 - a. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;
 - b. Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;
 - c. Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and
 - d. Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters including transportation by land, water, or air from point of origin to final destination, in

1 connection with any and all risks or perils of navigation, transit or
 2 transportation, and while being prepared for and while awaiting
 3 shipment, and during any delays, transshipment, or reshipment
 4 incident thereto."

5 **SECTION 3.** Article 21 of Chapter 58 of the General Statutes is amended by
 6 adding a new section to read:

7 **"§ 58-21-11. Home state.**

8 (a) The provisions of this Article shall apply to those transactions in which North
 9 Carolina is the home state of the insured.

10 (b) Except as provided in subsection (c) of this section, the term "home state" means,
 11 with respect to an insured, either of the following:

12 (1) The state in which an insured maintains its principal place of business or, in
 13 the case of an individual, the individual's principal residence.

14 (2) If one hundred percent (100%) of the insured risk is located out of the state
 15 referred to in subdivision (1) of this subsection, the state to which the
 16 greatest percentage of the insured's taxable premium for that insurance
 17 contract is allocated.

18 (c) Affiliated Groups. – If two or more insureds from an affiliated group are named
 19 insureds on a single nonadmitted insurance contract, the term "home state" means the home
 20 state, as determined pursuant to subsection (b) of this section, of the member of the affiliated
 21 group that has the largest percentage of premium attributed to it under that insurance contract."

22 **SECTION 4.** G.S. 58-21-15 reads as rewritten:

23 **"§ 58-21-15. Placement of surplus lines insurance.**

24 ~~Insurance may be procured through a surplus lines licensee from nonadmitted insurers~~
 25 ~~if:~~ Surplus lines may be placed by a surplus lines licensee if all of the following apply:

26 (1) Each insurer is an eligible surplus lines insurer; insurer.

27 (1a) Each insurer is authorized to write the kind of insurance in its domiciliary
 28 jurisdiction.

29 (2) The full amount or kind of insurance cannot be obtained from insurers who
 30 are admitted to do business in this State. Such full amount or kind of
 31 insurance may be procured from eligible surplus lines insurers, provided that
 32 a diligent search is made among the insurers who are admitted to transact
 33 and are actually writing the particular kind and class of insurance in this
 34 State; and State.

35 (3) All other requirements of this Article are met."

36 **SECTION 5.** Article 21 of Chapter 58 of the General Statutes is amended by
 37 adding the following new sections to read:

38 **"§ 58-21-16. Streamlined application for commercial purchasers.**

39 (a) A surplus lines licensee seeking to procure or place nonadmitted insurance in this
 40 State for an exempt commercial purchaser shall not be required to satisfy any requirement
 41 under G.S. 58-21-15 to make a due diligence search to determine whether the full amount or
 42 type of insurance sought by such exempt commercial purchaser can be obtained from admitted
 43 insurers if all of the following apply:

44 (1) The licensee procuring or placing the surplus lines insurance has disclosed to
 45 the exempt commercial purchaser that such insurance may or may not be
 46 available from the admitted market that may provide greater protection with
 47 more regulatory oversight.

48 (2) The exempt commercial purchaser has subsequently requested in writing the
 49 licensee to procure or place such insurance from a nonadmitted insurer.

50 (b) As used in this section, the following definitions apply:

1 (1) "Exempt commercial purchaser" means any person purchasing commercial
2 insurance that, at the time of placement, meets all of the following
3 requirements:

- 4 a. The person employs or retains a qualified risk manager to negotiate
5 insurance coverage.
6 b. The person has paid aggregate nationwide commercial property and
7 casualty insurance premiums in excess of one hundred thousand
8 dollars (\$100,000) in the immediately preceding 12 months.
9 c. The person meets at least one of the following criteria:
10 1. The person possesses a net worth in excess of twenty million
11 dollars (\$20,000,000), as such amount is adjusted pursuant to
12 subsection (c) of this section.
13 2. The person generates annual revenues in excess of fifty
14 million dollars (\$50,000,000), as such amount is adjusted
15 pursuant to subsection (c) of this section.
16 3. The person employs more than 500 full-time or full-time
17 equivalent employees per individual insured or is a member
18 of an affiliated group employing more than 1,000 employees
19 in the aggregate.
20 4. The person is a not-for-profit organization or public entity
21 generating annual budgeted expenditures of at least thirty
22 million dollars (\$30,000,000), as such amount is adjusted
23 pursuant to subsection (c) of this section.
24 5. The person is a municipality with a population in excess of
25 50,000 persons.

26 (2) "Qualified risk manager" means, with respect to a policyholder of
27 commercial insurance, a person who meets all of the following
28 requirements:

- 29 a. Is an employee of, or third-party consultant retained by, the
30 commercial policyholder.
31 b. Provides skilled services in loss prevention, loss reduction, or risk
32 and insurance coverage analysis, and purchase of insurance.
33 c. Has one of the following:
34 1. A bachelor's degree or higher from an accredited college or
35 university in risk management, business administration,
36 finance, economics, or any other field determined by the
37 Commissioner to demonstrate minimum competence in risk
38 management and one of the following:
39 I. Three years of experience in risk financing, claims,
40 administration, loss prevention, risk and insurance
41 analysis, or purchasing commercial lines of insurance.
42 II. One of the following designations:
43 A. Chartered Property and Casualty Underwriter
44 (CPCU) issued by the American Institute for
45 CPCU/Insurance Institute of America.
46 B. Associate in Risk Management (ARM) issued
47 by the American Institute for CPCU/Insurance
48 Institute of America.
49 C. Certified Risk Manager (CRM) issued by the
50 National Alliance for Insurance Education &
51 Research.

D. RIMS Fellow (RF) issued by the Global Risk Management Institute.

E. A designation, certification, or license determined by the Commissioner to demonstrate minimum competency in risk management.

2. Seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and has any one of the designations specified in sub-sub-sub-sub-subdivisions A. through E. of sub-sub-sub-subdivision II. of this sub-subdivision.

3. Ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.

4. A graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the Commissioner to demonstrate minimum competence in risk management.

(c) Effective on the fifth January 1 occurring after the date of the enactment of this section and each fifth January 1 occurring thereafter, the dollar amounts in sub-sub-subdivisions (b)(1)c.1., 2., 3., and 4. of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor.

"§ 58-21-17. Placement with alien insurers.

Nothing in this Article prohibits a surplus lines licensee from placing surplus lines insurance with, or procuring surplus lines insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC."

SECTION 6. G.S. 58-21-20(a) reads as rewritten:

~~"(a) No surplus lines licensee shall place any coverage with a nonadmitted insurer, unless at the time of placement, such nonadmitted insurer:~~
A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer satisfies the following:

~~(1) Has established satisfactory evidence of good repute and financial integrity; and~~

~~(2) Qualifies under one of the following subdivisions:~~

~~a. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals the greater of either:~~

~~1. This State's minimum capital and surplus requirements under G.S. 58-7-75, or G.S. 58-7-75.~~

~~2. Fifteen million dollars (\$15,000,000), (\$15,000,000),~~
~~whichever is greater, except that nonadmitted insurers already~~

~~qualified under this Article must have ten million dollars~~
~~(\$10,000,000) by December 31, 1991, twelve million five hundred~~

~~thousand dollars (\$12,500,000) by December 31, 1992, and fifteen~~
~~million dollars (\$15,000,000) by December 31, 1993. The~~

~~requirements of this sub-subdivision may be satisfied by an insurer~~
~~possessing less than the commitment capital and surplus upon an~~

~~affirmative finding of acceptability by the Commissioner. The~~

1 finding shall be based upon such factors as quality of management,
2 capital and surplus of any parent company, company underwriting
3 profit and investment income trends, and the insurer's record and
4 reputation within the industry. In no event shall the Commissioner
5 make an affirmative finding of acceptability when the insurer's
6 capital and surplus is less than four million five hundred thousand
7 dollars (\$4,500,000).

8 In addition, an alien insurer qualifies under this subdivision if it
9 complies with the capital and surplus requirements of this
10 subdivision and maintains in the United States an irrevocable trust
11 fund in either a national bank or a member of the Federal Reserve
12 System, in an amount not less than five million four hundred
13 thousand dollars (\$5,400,000) for the protection of all of its
14 policyholders in the United States, and the trust fund consists of cash,
15 securities, letters of credit, or of investment of substantially the same
16 character and quality as those which are eligible investments for the
17 capital and statutory reserves of admitted insurers authorized to write
18 like kinds of insurance in this State. The trust fund, which shall be
19 included in any calculation of capital and surplus or its equivalent,
20 shall have an expiration date which at no time shall be less than five
21 years; or The requirements of this sub-subdivision may be satisfied by
22 an insurer's possessing less than the minimum capital and surplus
23 upon an affirmative finding of acceptability by the Commissioner.
24 The finding shall be based upon such factors as quality of
25 management, capital and surplus of any parent company, company
26 underwriting profit and investment income trends, market
27 availability, and company record and reputation within the industry.
28 In no event shall the Commissioner make an affirmative finding of
29 acceptability when the nonadmitted insurer's capital and surplus is
30 less than four million five hundred thousand dollars (\$4,500,000).

- 31 b. In the case of any Lloyd's plans or other similar group of insurers,
32 which consists of unincorporated individual insurers, or a
33 combination of both unincorporated and incorporated insurers,
34 maintains a trust fund in an amount of not less than one hundred
35 million dollars (\$100,000,000) as security to the full amount thereof
36 for all policyholders and creditors in the United States of each
37 member of the group, and the trust shall likewise comply with the
38 terms and conditions established in subdivision (2)a. of this section
39 for alien insurers; and insurers.
- 40 c. In the case of an "insurance exchange" created by the laws of
41 individual states, maintain capital and surplus, or the substantial
42 equivalent thereof, of not less than seventy-five million dollars
43 (\$75,000,000) in the aggregate. For insurance exchanges which
44 maintain funds in an amount of not less than fifteen million dollars
45 (\$15,000,000) for the protection of all insurance exchange
46 policyholders, each individual syndicate shall maintain minimum
47 capital and surplus, or the substantial equivalent thereof, of not less
48 than five million dollars (\$5,000,000). If the insurance exchange does
49 not maintain funds in an amount of not less than fifteen million
50 dollars (\$15,000,000) for the protection of all insurance exchange

1 policyholders, each individual syndicate shall meet the minimum
 2 capital and surplus requirements of subdivision (2)a. of this section.
 3 d. In the case of a group of incorporated insurers under common
 4 administration, which has continuously transacted an insurance
 5 business outside the United States for at least three years
 6 immediately before this time, and which submits to this State's
 7 authority to examine its books and records and bears the expense of
 8 the examination, and maintains an aggregate policyholders' surplus
 9 of not less than ten billion dollars (\$10,000,000,000), and maintains
 10 in trust a surplus of not less than one hundred million dollars
 11 (\$100,000,000) for the benefit of United States surplus lines
 12 policyholders of any member of the group, and each insurer
 13 maintains capital and surplus of not less than twenty-five million
 14 dollars (\$25,000,000) per company.

- 15 (3) Has caused to be provided to the Commissioner a copy of its current annual
 16 statement certified by such insurer; such statement to be provided no more
 17 than two months, and for alien insurers six months, after the close of the
 18 period reported upon and that is either:
 19 a. Filed with and approved by the regulatory authority in the domicile
 20 of the nonadmitted insurer; or
 21 b. Certified by an accounting or auditing firm licensed in the
 22 jurisdiction of the insurer's domicile; or
 23 c. In the case of an insurance exchange, the statement may be an
 24 aggregate combined statement of all underwriting syndicates
 25 operating during the period reported."

26 **SECTION 7.** G.S. 58-21-35(a) reads as rewritten:

27 **"§ 58-21-35. Duty to file and retain reports.**

28 (a) Within 30 days after the placing of any surplus lines insurance, the surplus lines
 29 licensee shall file with the Commissioner a report in a format prescribed by the Commissioner
 30 regarding the insurance and including the following information:

- 31 (1) The name of the insured.
 32 (2) The identity of the insurer or insurers.
 33 (3) A description of the subject and location of the risk.
 34 (4) The amount of premium charged for the insurance.
 35 (5) The amount of premium tax for the insurance.
 36 (6) The policy period.
 37 (7) The policy number.
 38 (7a) An acknowledged statement that the surplus lines licensee has complied with
 39 ~~G.S. 58-21-15~~ G.S. 58-21-15 or G.S. 58-21-16, whichever is applicable.
 40 (8) The name, address, telephone number, facsimile telephone number, and
 41 electronic mail address of the licensee, as applicable.
 42 (9) Any other relevant information the Commissioner may reasonably require.

43 (b) The licensee shall complete and retain a copy of the report in paper or electronic
 44 form as required by the Commissioner. The report required by this section and the quarterly
 45 report required by G.S. 58-21-80 shall be completed on a standardized form or forms
 46 prescribed by the Commissioner and are not public records under G.S. 132-1 or
 47 G.S. 58-2-100."

48 **SECTION 8.** G.S. 58-21-65 reads as rewritten:

49 **"§ 58-21-65. Licensing of surplus lines licensee.**

50 (a) ~~No~~ For insureds whose home state is this State, no agent or broker licensed by the
 51 Commissioner shall procure any contract of surplus lines insurance with any nonadmitted

1 insurer, unless he possesses a current surplus lines insurance license issued by the
2 Commissioner.

3 (b) The Commissioner shall issue a surplus lines license to any qualified holder of a
4 current property broker's or agent's license, but only when the broker or agent has:

- 5 (1) Remitted the fifty dollars (\$50.00) annual fee to the Commissioner;
- 6 (2) Submitted a completed license application on a form supplied by the
7 Commissioner, and the application has been approved by the Commissioner;
- 8 (3) Passed a qualifying examination approved by the Commissioner; except that
9 all holders of a license prior to July 11, 1985 shall be deemed to have passed
10 such an examination; and
- 11 (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17, 2004.

12 (c) Corporations shall be eligible to be resident surplus lines licensees, upon the
13 following conditions:

- 14 (1) The corporate licensee shall list individuals within the corporation who have
15 satisfied all requirements of this Article to become surplus lines licensees;
16 and
- 17 (2) Only those individuals listed on the corporate license and who are surplus
18 lines licensees shall transact surplus lines business.

19 (d) Each surplus lines license shall be issued on September 1 of each year and expire
20 August 31 of the following year unless renewed. Application for renewal shall be made 30 days
21 before the expiration date. The license shall be renewed upon payment of the annual license fee
22 and compliance with the other applicable provisions of this section. Any person who places
23 surplus lines insurance without a valid surplus lines license in effect shall pay a penalty of one
24 thousand dollars (\$1,000) and be subject to such other penalties as provided by law.

25 The clear proceeds of civil penalties provided for in this subsection shall be remitted to the
26 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

27 (e) Any person who does not renew a surplus lines license and applies for another
28 surplus lines license more than two years after the expiration date of the previous license shall
29 be required to satisfy every condition in this section, including the written exam, before the
30 Commissioner issues another surplus lines license to that person.

31 ~~(f) A person licensed as a surplus lines licensee under the laws of a state bordering this
32 State may be licensed as a surplus lines licensee under this Article, if: (i) the laws of the
33 bordering state are substantially similar to the provisions of this Article and (ii) the bordering
34 state has a law or regulation substantially similar to this subsection that permits surplus lines
35 licensees licensed under this Article to be licensed by the bordering state and (iii) the person
36 complies with all requirements of this Article and submits himself or herself to the
37 Commissioner's jurisdiction. Nonresident surplus lines licensees shall be licensed in accordance
38 with Article 33 of this Chapter."~~

39 **SECTION 9.** G.S. 58-21-85 reads as rewritten:

40 "**§ 58-21-85. Surplus lines tax.**

41 (a) Gross premiums charged, less any return premiums, for surplus lines insurance on
42 insureds for whom North Carolina is the home state are subject to a premium receipts tax of
43 five percent (5%), which shall be collected by the surplus lines licensee as specified by the
44 Commissioner, in addition to the full amount of the gross premium charged by the insurer for
45 the insurance. The tax on any portion of the premium unearned at termination of insurance
46 having been credited by the State to the licensee shall be returned to the policyholder directly
47 by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee
48 is prohibited from absorbing such tax and from rebating for any reason, any part of such tax. To
49 the extent that other states in which portions of the properties, risks, or exposures reside have
50 failed to enter into a compact or reciprocal allocation procedure with this State, the premium
51 tax collected shall be retained by this State.

1 (b) At the same time that he files his quarterly report as set forth in G.S. 58-21-80, each
2 surplus lines licensee shall pay the premium receipts tax due for the period covered by the
3 report.

4 (c) This section does not apply to risks of State government agencies nor to risks of
5 local government risk pools created and operating under Article 23 of this Chapter.

6 (d) The surplus lines licensee placing the insurance and claiming the exemption in
7 subsection (c) of this section shall affirmatively show in writing to the Commissioner that the
8 risk qualifies for the exemption."

9 **SECTION 10.** G.S. 58-22-10(10) reads as rewritten:

10 "(10) "Risk retention group" means any corporation or other limited liability
11 association:

12 a. Whose primary activity consists of assuming and spreading all or any
13 portion of the liability exposure of its group members;

14 b. That is organized for the primary purpose of conducting the activity
15 described under sub-subdivision a. of this subdivision;

16 c. That

17 (i) Is chartered and licensed as a liability insurance company and
18 authorized to engage in the business of insurance under the
19 laws of any state; or

20 (ii) Before January 1, 1985, was chartered or licensed and
21 authorized to engage in the business of insurance under the
22 laws of Bermuda or the Cayman Islands and, before that date,
23 had certified to the insurance regulator of at least one state
24 that it satisfied the capitalization requirements of such state;
25 except that any such group shall be considered to be a risk
26 retention group only if it has been engaged in business
27 continuously since that date and only for the purpose of
28 continuing to provide insurance to cover product liability or
29 completed operations liability, as such terms were defined in
30 the Product Liability Risk Retention Act of 1981 before the
31 effective date of the Risk Retention Act of 1986;

32 d. That does not exclude any person from membership in the group
33 solely to provide for members of such a group a competitive
34 advantage over such person;

35 e. That

36 (i) ~~Has as its members only persons who have an ownership~~
37 ~~interest in the group and that has as its owners only persons~~
38 ~~who are members who are provided insurance by the risk~~
39 ~~retention group; or~~

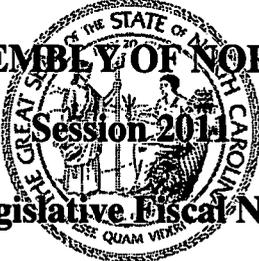
40 (ii) ~~Has as its sole member and sole owner an organization that is~~
41 ~~owned by persons who are provided insurance by the risk~~
42 ~~retention group;~~

43 (i) Has as its owners only persons who comprise the membership
44 of the risk retention group and who are provided insurance by
45 such group; or

46 (ii) Has as its sole owner an organization that meets all of the
47 following:

48 I. Its members are only persons who comprise the
49 membership of the risk retention group; and

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2011
Legislative Fiscal Note



BILL NUMBER: Senate Bill 321 (Fourth Edition)

SHORT TITLE: Surplus Lines/Premium Tax.-AB

SPONSOR(S): Senator Apodaca

FISCAL IMPACT					
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	***None Anticipated***				
EXPENDITURES	No Fiscal Impact				
POSITIONS (cumulative):	No Fiscal Impact				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance					
EFFECTIVE DATE: June 1, 2011					

BILL SUMMARY:

Section 1.1 adds a new section authorizing the Commissioner to participate in a national insurance producer database for the licensing of surplus lines insurers and to contract with nongovernmental entities to collect the appropriate licensing fees and surplus lines premium taxes.

Section 1.2 directs the Revenue Laws Study Committee, in cooperation with the Commissioner of Insurance, to study the potential impact that would result from the State's entrance into a nonadmitted insurance interstate agreement and to determine which compact or agreement would result in the most retention of surplus lines tax revenue for the State. The Committee will report its findings to the 2012 Session of the 2011 General Assembly.

Section 2 adds definitions to conform State law to the federal NRRA.

Section 3 adds a new section defining "home state" as the principal place of business or principal residence of the insured, as required by the NRRA.

Section 4 amends current law to provide that a surplus lines insurer only be required to obtain authorization to write insurance in its domiciliary state, as provided in the NRRA.

Section 5 provides a streamlined process by which a surplus lines licensee (i.e. a broker or agent) may place surplus lines coverage for certain exempt commercial purchasers without conducting a search to determine whether the insurance can be obtained from admitted insurers. To comply with the new procedure, the licensee must satisfy the following: (1) the licensee must disclose to the purchaser that the insurance may or may not be available from the admitted market; and (2) the exempt commercial purchaser must subsequently request in writing that the licensee place the insurance with a non-admitted insurer. This section also defines an "exempt commercial purchaser" for the purposes of the new statutory procedure. Section 5 also provides that nothing prohibits a licensee from procuring surplus lines insurance from a nonadmitted insurer outside of the United States, known as an "alien" insurer, listed on the NAIC Listing of Alien Insurers.

Section 6 conforms State eligibility criteria for surplus lines insurers to the NAIC Nonadmitted Insurance Model Act, as required by the federal NRRRA.

Section 7 makes conforming changes.

Section 8 provides that a NC surplus lines license is required only for those agents or brokers doing business with insureds whose home state is NC. (Under NRRRA, only an insured's home state may require a surplus lines broker to be licensed.)

Section 9 adds language to G.S. 58-21-85 governing the surplus lines premium tax providing that the tax is collected "on insureds for whom North Carolina is the home state" as required by the NRRRA. This section also provides that, to the extent portions of an insured risk are located in another state that has failed to enter into a compact with NC, any tax collected shall be retained by the State.

Section 10 revises the definition of risk retention group to conform to the definition in federal law.

Source: Research Division (May 25, 2011)

BACKGROUND:

Surplus lines insurance coverage is coverage that is not available from insurers licensed in the State, referred to as admitted insurers. This coverage must instead be purchased from insurers who are not licensed in this State, referred to as nonadmitted insurers.

The NRRRA was enacted by Congress as part of the Dodd-Frank Wall Street Reform and Protection Act, signed into law in July of 2010. The federal NRRRA supersedes aspects of state law regulating surplus lines insurers, requiring the State to make changes to conform to the federal law.

Most notably, the NRRRA provides that only the home state of the insured (i.e. the insured's principal place of business) is authorized to tax surplus lines transactions. This change could result in the loss of significant revenue to many states. The NRRRA does allow states to enter into interstate compacts for the allocation of tax revenue to prevent this loss. The NC Department of Insurance (DOI) estimates that NC may lose \$10 to \$12 million unless authority is given to the Commissioner to enter into such an agreement. *Source: Research Division (May 25, 2011)*

Surplus lines brokers will only have to pay licensing fees in their home state once the NRRRA goes into effect. As a result, N.C. will also lose licensing fees from surplus lines brokers. DOI estimates that N.C. may lose up to \$65,000 because of this change. Regardless of SB 321's implementation, DOI reports that there is no way for N.C. to recover these licensing fees after the effective date of

the NRRA. Therefore, this expected \$65,000 loss does not appear in the fiscal impact box on page 1 of this memo.

ASSUMPTIONS AND METHODOLOGY:

Section 1.2 of SB 321 directs the Revenue Laws Study Committee to determine if entering into a compact or agreement would result in the most retention of surplus lines tax revenue for the State. Because this bill directs a review of an option that is available to the State, Fiscal Research estimates that SB 321 would not generate any savings to the State. Fiscal Research anticipates that the Revenue Laws Study Committee would be able to absorb the additional requirement under Section 1.2 so there would be no added cost to the State.

Department of Insurance

SB 321 makes changes to the law governing surplus lines insurers to conform to the NRRA. Section 1.2 of the bill also directs the Commissioner of Insurance to work alongside the Revenue Laws Study Committee to study the impact of the State entering a multistate agreement to retain the maximum amount of surplus lines tax revenue.

DOI estimates that there will be no fiscal impact on its current operations to administer Senate Bill 321. Fiscal Research concurs with the assessment.

SOURCES OF DATA: Department of Insurance

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Tazra Mitchell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 25, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 321: Surplus Lines/Premium Tax.-AB

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Apodaca
Analysis of: Fourth Edition

Date: May 26, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *Senate Bill 321 makes changes to the law governing surplus lines insurers to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA effective July 21, 2011). Senate Bill 321 also directs the Revenue Laws Study Committee, in cooperation with the Commissioner of Insurance, to study the impact of the State entering a multistate agreement to retain the maximum amount of surplus lines tax revenue and to make a recommendation to the 2012 Regular Session of the 2011 General Assembly.*

[As introduced, this bill was identical to H299, as introduced by Rep. Dockham, which is currently in House Finance.]

BACKGROUND: Surplus lines insurance coverage is coverage that is not available from insurers licensed in the State, referred to as admitted insurers. This coverage must instead be purchased from insurers who are not licensed in this State, referred to as nonadmitted insurers.

The NRRA was enacted by Congress as part of the Dodd-Frank Wall Street Reform and Protection Act, signed into law in July of 2010. The federal NRRA supersedes aspects of state law regulating surplus lines insurers, requiring the State to make changes to conform to the federal law.

Most notably, the NRRA provides that only the home state of the insured (i.e. the insured's principal place of business) is authorized to tax surplus lines transactions. This change could result in the loss of significant revenue to many states. The NRRA does allow states to enter into interstate compacts for the allocation of tax revenue to prevent this loss. The NC Department of Insurance estimates that NC may lose \$10 to \$12 million unless authority is given to the Commissioner to enter into such an agreement.

BILL ANALYSIS: **Section 1.1** adds a new section authorizing the Commissioner to participate in a national insurance producer database for the licensing of surplus lines insurers and to contract with nongovernmental entities to collect the appropriate licensing fees and surplus lines premium taxes.

Section 1.2 directs the Revenue Laws Study Committee, in cooperation with the Commissioner of Insurance, to study the potential impact that would result from the State's entrance into a nonadmitted insurance interstate agreement and to determine which compact or agreement would result in the most retention of surplus lines tax revenue for the State. The Committee will report its findings to the 2012 Session of the 2011 General Assembly.

Section 2 adds definitions to conform State law to the federal NRRA.

Section 3 adds a new section defining "home state" as the principal place of business or principal residence of the insured, as required by the NRRA.

Section 4 amends current law to provide that a surplus lines insurer only be required to obtain authorization to write insurance in its domiciliary state, as provided in the NRRA.

Section 5 provides a streamlined process by which a surplus lines licensee (i.e. a broker or agent) may place surplus lines coverage for certain exempt commercial purchasers without conducting a search to determine whether the insurance can be obtained from admitted insurers. To comply with the new procedure, the licensee must satisfy the following: (1) the licensee must disclose to the purchaser that the insurance may or may not be available from the admitted market; and (2) the exempt commercial

Senate Bill 321

Page 2

purchaser must subsequently request in writing that the licensee place the insurance with a non-admitted insurer. This section also defines an "exempt commercial purchaser" for the purposes of the new statutory procedure. Section 5 also provides that nothing prohibits a licensee from procuring surplus lines insurance from a nonadmitted insurer outside of the United States, known as an "alien" insurer, listed on the NAIC Listing of Alien Insurers.

Section 6 conforms State eligibility criteria for surplus lines insurers to the NAIC Nonadmitted Insurance Model Act, as required by the federal NRRA.

Section 7 makes conforming changes.

Section 8 provides that a NC surplus lines license is required only for those agents or brokers doing business with insureds whose home state is NC. (Under NRRA, only an insured's home state may require a surplus lines broker to be licensed.)

Section 9 adds language to G.S. 58-21-85 governing the surplus lines premium tax providing that the tax is collected "on insureds for whom North Carolina is the home state" as required by the NRRA. This section also provides that, to the extent portions of an insured risk are located in another state that has failed to enter into a compact with NC, any tax collected shall be retained by the State.

Section 10 revises the definition of risk retention group to conform to the definition in federal law.

EFFECTIVE DATE: Senate Bill 321 becomes effective June 1, 2011.

Tim Hovis and Cindy Avrette, both with the Research Division, substantially contributed to this summary.

S321-SMTM-23(e4) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE June 1, 2011

S. B. No. 321

Amendment No. 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE X

(Rep.) Julia Howard
Sen.)

1 moves to amend the bill on page 10, line 20

2 () WHICH CHANGES THE TITLE

3 by deleting "June 1, 2011." and substituting

4 "July 21, 2011."

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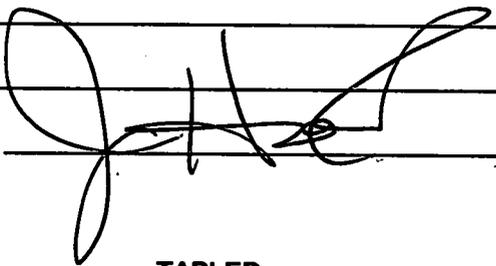
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17 _____

18 _____

19 _____

SIGNED 

ADOPTED FAILED TABLED

**Rep. McGee, Chair: HB 518 Authorize Add'l Person County
Occupancy Tax** conforms to the occupancy tax guidelines and was reported favorably by the subcommittee on Occupancy Tax and referred to the Committee on Finance.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 518
PROPOSED COMMITTEE SUBSTITUTE H518-CSSVx-8 [v.1]

4/26/2011 8:15:28 PM

Short Title: Authorize Add'l Person County Occupancy Tax. (Local)

Sponsors:

Referred to:

March 30, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE AN ADDITIONAL ONE PERCENT OCCUPANCY TAX FOR
3 PERSON COUNTY.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. Section 14 of S.L. 1997-364 reads as rewritten:
6 "Section 14. Person County occupancy tax. (a) Authorization and scope. = The Person
7 County Board of Commissioners may levy a room occupancy tax of up to five percent (5%) of
8 the gross receipts derived from the rental of any room, lodging, or accommodation furnished by
9 a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax
10 imposed by the State under G.S. 105-164.4(a)(3).
11 This tax is in addition to any State or local sales tax. This tax does not apply to
12 accommodations furnished by nonprofit charitable, educational, or religious organizations
13 when furnished in furtherance of their nonprofit purpose.
14 (a) Authorization of Additional Tax. – In addition to the tax authorized by subsection
15 (a) of this section, the Person County Board of Commissioners may levy an additional room
16 occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of
17 accommodations taxable under subsection (a) of this section. The levy, collection,
18 administration, and repeal of the tax authorized by this subsection shall be in accordance with
19 the provisions of this section. Person County may not levy a tax under this subsection unless it
20 also levies the tax authorized under subsection (a) of this section.
21 (b) Administration. – Except as otherwise provided in this section, a tax levied under
22 this section shall be levied, administered, collected, and repealed as provided in
23 G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this
24 section.
25 (c) Distribution and use of tax revenue. – Person County shall, on a quarterly basis,
26 remit the net proceeds of the occupancy tax to the Person Tourism Development Authority. ~~Of~~
27 ~~the net proceeds that accrue during the first four years that a tax is levied under this section, the~~
28 ~~Authority may use up to two thirds only for the following tourism related expenditures: (i)~~
29 ~~constructing or operating the Person County Historical Museum, (ii) developing Lake Mayo for~~
30 ~~fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the~~
31 ~~lake from outside the county, and (iii) supporting the May Festival and other festivals designed~~
32 ~~to attract tourists from outside the county. The Authority shall use the remaining net proceeds~~
33 ~~that accrue during the first four years that a tax is levied under this section only to promote~~
34 ~~travel and tourism in Person County.~~



1 ~~Of the net proceeds that accrue after this four-year period, the~~ The Authority shall use at
2 least two-thirds of the funds remitted to it under this subsection to promote travel and tourism
3 in Person County and shall use the remainder for tourism-related expenditures.

4 The following definitions apply in this subsection:

- 5 (1) Net proceeds. – Gross proceeds less the cost to the county of administering
6 and collecting the tax, as determined by the finance officer, not to exceed
7 three percent (3%) of the gross proceeds.
- 8 (2) Promote travel and tourism. – To advertise or market an area or activity,
9 publish and distribute pamphlets and other materials, conduct market
10 research, or engage in similar promotional activities that attract tourists or
11 business travelers to the area; the term includes administrative expenses
12 incurred by the Authority in engaging in the listed activities.
- 13 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
14 Authority, are designed to increase the use of lodging facilities, meeting
15 facilities, and convention facilities in a county or to attract tourists or
16 business travelers to the county. The term includes tourism-related capital
17 expenditures."

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

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 518 (First Edition)

SHORT TITLE: Authorize Add'l Person County Occupancy Tax.

SPONSOR(S): Representative Wilkins

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	\$33,446	\$35,637	\$37,659	\$39,245	\$40,579
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Person County					
EFFECTIVE DATE: This act is effective when it becomes law					

BILL SUMMARY:

House Bill 518 amends Section 14 of SL 1997-364 to allow Person County to levy an additional room occupancy tax of up to (1%) one percent of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to the state's sales tax under GS 105-164.4(a)(3). It prohibits Person County from levying the additional tax unless it levies the (5%) five percent occupancy tax previously authorized. The bill specifies that proceeds from the additional (1%) one percent tax are earmarked for operating the Person County Museum of History.

ASSUMPTIONS AND METHODOLOGY:

Person County currently collects a (5%) five percent room occupancy tax. According to the North Carolina Department of State Treasurer, the county collected \$152,669 in occupancy tax revenue for Tax Year 2010. Assuming that an additional (1%) one percent would generate (1/5) one-fifth of current collections, and forecasting based on the leisure and hospitality portion of North Carolina Gross State Product, it's estimated that an additional (1%) one percent occupancy tax would yield Person County \$33,446 in FY11-12.

SOURCES OF DATA: North Carolina Department of State Treasurer; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: April 26, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 518: Authorize Add'l Person County Occupancy Tax

2011-2012 General Assembly

Committee: House Finance

Date: April 28, 2011

Introduced by: Rep. Wilkins

Prepared by: Trina Griffin

Analysis of: PCS to First Edition
H518-CSSVx-8

Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 518 would authorize Person County to levy an additional 1% room occupancy tax, and it deletes unnecessary language relating to how the proceeds of the existing 5% tax were to be spent during the first four years of levy. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.*

CURRENT LAW: In 1997, the General Assembly authorized Person County to levy a room occupancy tax of up to 5%. The net proceeds are required to be distributed to the Person County Tourism Development Authority. The legislation provided that during the first four years of levy, the net proceeds were to be used as follows:

- Up to 2/3 may be used only for the following tourism-related expenditures:
 - Constructing or operating the Person County Museum of History.
 - Developing Lake Mayo for fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the lake from outside the county.
 - Supporting the May Festival and other festivals designed to attract tourists from outside the county.
- The remainder must be used to promote travel and tourism in Person County.

After the first four years, at least two-thirds of the funds must be used for tourism promotion and the remainder for tourism-related expenditures.

BILL ANALYSIS: The PCS would authorize Person County to levy an additional 1% room occupancy tax. It also deletes language referring to the use of the proceeds during the first four years of the levy of the existing 5% tax since that time period has expired. The net proceeds of the additional 1% would be used in the same manner as the existing 5%, which is in accordance with the House Finance guidelines for occupancy tax: at least two-thirds for tourism promotion and the remainder for tourism-related expenditures.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,¹ which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below.

¹ G.S. 153A-155 and G.S. 160A-215.

House PCS 518

Page 2

Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term “net proceeds”, “promote travel and tourism”, and “tourism related expenditures” are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H518-SMSV-31(CSSVx-8) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 571*
PROPOSED COMMITTEE SUBSTITUTE H571-CSTD-39 [v.11]

5/31/2011 1:22:56 PM

Short Title: Prepaid Wireless/Point of Sale Collection. (Public)

Sponsors:

Referred to:

March 31, 2011

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A BILL TO BE ENTITLED

AN ACT IMPOSING A SERVICE CHARGE ON EACH RETAIL TRANSACTION OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR ANY PURPOSE OTHER THAN RESALE OCCURRING IN THIS STATE, REQUIRING THAT THE SERVICE CHARGE BE COLLECTED BY THE SELLER OF PREPAID WIRELESS TELECOMMUNICATION SERVICE AND REMITTED TO THE DEPARTMENT OF REVENUE, AND PROVIDING THAT THE DEPARTMENT OF REVENUE SHALL TRANSFER ALL SERVICE CHARGES COLLECTED, MINUS THE COSTS OF COLLECTION, TO THE 911 FUND TO SUPPORT 911 SERVICES IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 62A-43(b) reads as rewritten:

"(b) Prepaid Wireless. - ~~A voice communications service provider of prepaid wireless telephone service must collect and remit to the 911 Board the monthly service charge imposed upon prepaid wireless telephone subscribers in the State under one of the following methods:~~

- (1) ~~Collecting the service charge from each active prepaid wireless telephone service subscriber whose account balance is equal to or greater than the amount of the service charge.~~
- (2) ~~Dividing the provider's total earned prepaid wireless telephone service revenue received for the month from each active prepaid wireless telephone service subscriber by fifty dollars (\$50.00) and multiplying the quotient by the amount of the service charge. The monthly service charge for 911 service is not imposed on prepaid wireless telephone service."~~

SECTION 1.(b) This section is effective when it becomes law.

SECTION 2. G.S. 62A-40 reads as rewritten:

"§ 62A-40. Definitions.

The following definitions apply in this Article.

- ... (15) Prepaid wireless telecommunications service. - A wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount. A right that meets all of the following requirements:



- 1 a. ~~Authorizes the purchase of CMRS, either exclusively or in conjunction with~~
 2 ~~other services.~~
 3 b. ~~Must be paid for in advance.~~
 4 c. ~~Is sold in units or dollars whose number or dollar value declines with use~~
 5 ~~and is known on a continuous basis.~~

6 ...
 7 (18a) Retail transaction. – The sale of prepaid wireless telecommunications service
 8 for any purpose other than resale."

9 SECTION 3. G.S. 62A-43, as amended by Section 1 of this act, reads as rewritten:

10 "**§ 62A-43. Service charge for 911 service.**

11 (a) Charge Imposed. – A monthly 911 service charge is imposed on each active voice
 12 communications service connection that is capable of accessing the 911 system. The service
 13 charge for service other than prepaid wireless telecommunications service is seventy cents
 14 (70¢) or a lower amount set by the 911 Board under subsection (d) of this section. The service
 15 charge is payable by the subscriber to the voice communications service provider. The provider
 16 may list the service charge separately from other charges on the bill. Partial payments made by
 17 a subscriber are applied first to the amount the subscriber owes the provider for the voice
 18 communications service.

19 (b) Prepaid Wireless. ~~– The monthly service charge for 911 service is not imposed on~~
 20 ~~prepaid wireless service. A 911 service charge is imposed on each retail purchase of prepaid~~
 21 ~~wireless telecommunications service occurring in this State of seventy cents (70¢) for each~~
 22 ~~retail transaction of prepaid wireless telecommunications service or a lower amount set as~~
 23 ~~provided by subsection (d) of this section. The service charge is collected and remitted as~~
 24 ~~provided in G.S. 62A-54.~~

25 (c) Remittance to 911 Board. – A voice communications service provider must remit
 26 the service charges collected by it under subsection (a) of this section to the 911 Board. The
 27 provider must remit the collected service charges by the end of the calendar month following
 28 the month the provider received the charges from its subscribers. A provider may deduct and
 29 retain from the service charges it receives from its subscribers and remits to the 911 Board an
 30 administrative allowance equal to the greater of one percent (1%) of the amount of service
 31 charges remitted or fifty dollars (\$50.00) a month.

32 (d) Adjustment of Charge. – The 911 Board must monitor the revenues generated by the
 33 ~~service charge charges imposed by this section.~~ If the 911 Board determines that the ~~rate~~
 34 ~~produces rates produce~~ revenue that exceeds or is less than the amount needed, the 911 Board
 35 may adjust the ~~rate rates~~. The ~~rate rates~~ must ensure full cost recovery for voice
 36 communications service providers and for primary PSAPs over a reasonable period of time.
 37 The 911 Board must set the service charge for prepaid wireless telecommunications service at
 38 the same rate as the monthly service charge for non-prepaid service. A change in ~~the amount of~~
 39 the rate becomes effective only on July 1. The 911 Board must notify providers of a change in
 40 the ~~rate rates~~ at least 90 days before the change becomes effective. The 911 Board must notify
 41 the Department of Revenue of a change in the rate for prepaid wireless telecommunications
 42 service at least 90 days before the change becomes effective. The Department of Revenue must
 43 provide notice of a change in the rate for prepaid wireless telecommunications service at least
 44 45 days before the change becomes effective only on the Department's website.

45"

46 SECTION 4. G.S. 62A-44(b) reads as rewritten:

47 "(b) Allocation of Revenues. – The 911 Board may deduct and retain for its
 48 administrative expenses a percentage of the total service charges remitted to it under
 49 G.S. 62A-43 for deposit in the 911 Fund. The percentage may not exceed two percent (2%).
 50 The percentage is one percent (1%) unless the 911 Board sets the percentage at a different
 51 amount. The 911 Board must monitor the amount of funds required to meet its financial

1 commitment to provide technical assistance to primary PSAPs and set the rate at an amount
2 that enables the 911 Board to meet this commitment. The remaining revenues remitted to the
3 911 Board for deposit in the 911 Fund are allocated as follows:

- 4 (1) A percentage of the funds remitted by CMRS providers, other than
5 the funds remitted by the Department of Revenue from prepaid wireless
6 telecommunications service, to the 911 Fund are allocated for
7 reimbursements to CMRS providers pursuant to G.S. 62A-45.
- 8 (2) A percentage of the funds remitted by CMRS providers, all funds
9 remitted by the Department of Revenue from prepaid wireless
10 telecommunications service, and all funds remitted by all other voice
11 communications service providers are allocated for monthly distributions to
12 primary PSAPs pursuant to G.S. 62A-46 and grants to PSAPs pursuant to
13 G.S. 62A-47.
- 14 (3) The percentage of the funds remitted by CMRS providers allocated to
15 CMRS providers and PSAPs shall be set by the 911 Board and may be
16 adjusted by the 911 Board as necessary to ensure full cost recovery for
17 CMRS providers and, to the extent there are excess funds, for distributions
18 to primary PSAPs."

19 SECTION 5. Article 3 of Chapter 62A of the General Statutes is amended by
20 adding a new section to read:

21 "§ 62A-54. Service charge for prepaid wireless telecommunications service; seller collects
22 911 service charge on each retail transaction occurring in this State;
23 remittances to Department of Revenue and transfer to 911 Fund.

24 (a) Retail Collection. – A seller of prepaid wireless telecommunications service shall
25 collect the 911 service charge for prepaid wireless from the consumer on each retail transaction
26 occurring in this State. The 911 service charge for prepaid wireless telecommunications service
27 is in addition to the sales tax imposed on the sale or recharge of prepaid telephone calling
28 service under G.S. 105-164.4(4d). The amount of the 911 service charge for prepaid wireless
29 must be separately stated on an invoice, receipt, or other reasonable notification provided to the
30 consumer by the seller at the time of the retail transaction. For purposes of this Article, a retail
31 transaction is occurring in this State if the sale is sourced to this State under
32 G.S.105-164.4B(a).

33 (b) Administrative Allowance; Remittance to Department of Revenue. – A seller may
34 deduct and retain from the 911 service charges it collects from consumers and remits to the
35 Department of Revenue an administrative allowance of five percent (5%). A seller shall remit
36 the 911 service charge for prepaid wireless service collected by it under subsection (a) of this
37 section in either of the following ways:

- 38 (1) At the times and in the manner provided under Article 5 of Chapter 105 of
39 the General Statutes, provided no seller is required to prepay the 911 service
40 charge for prepaid wireless service.
- 41 (2) Semi-annually to the Department of Revenue. The service charges collected
42 in the first six months of the calendar year are due by July 20. The service
43 charges collected in the second six months of the calendar year are due by
44 January 20.

45 (c) Administration. – Administration, making returns, promulgation of rules and
46 regulations by the Secretary of Revenue, additional taxes and liens, assessments, refunds, and
47 penalty provisions of Article 9 of Chapter 105 of the General Statutes apply to the collection of
48 the 911 service charge for prepaid wireless service. Excessive and erroneous collections of the
49 service charge will be subject to G.S. 105-164.11. The Department of Revenue shall establish
50 procedures for a seller of prepaid wireless telecommunications service to document that a sale
51 is not a retail transaction, and the procedures established shall substantially coincide with the

1 procedures for documenting a sale for resale transaction under G.S. 105-164.28. The Secretary
2 of Revenue may retain the costs of collection from the remittances received under subsection
3 (b) of this section, not to exceed two percent (2%) of the total 911 service charges for prepaid
4 wireless telecommunications service remitted to the Department. The Secretary of Revenue
5 shall transfer all remaining remitted 911 service charges for prepaid wireless
6 telecommunications service to the 911 Fund established under G.S. 62A-44 within 45 days of
7 receipt of the funds.

8 (d) **Liability of Consumer.** – The 911 service charge for prepaid wireless
9 telecommunications service is the liability of the consumer and not of the seller or of any
10 provider, except that the seller shall be liable for remitting to the Department of Revenue all
11 911 service charges for prepaid wireless telecommunications service that the seller collects
12 from consumers as provided in subsection (b) of this section. The seller is not liable for service
13 charges billed to a consumer but not collected by the seller.

14 **"§ 62A-55. Limitation of liability, prepaid wireless.**

15 In addition to the limitation of liability provided in subsection G.S. 62A-53, each provider
16 and seller of prepaid wireless telecommunications service is entitled to the following
17 limitations of liability:

18 (1) No provider or seller of prepaid wireless telecommunications service shall
19 be liable for damages to any person resulting from or incurred in connection
20 with the provision of or the failure to provide 911 service, or for identifying
21 or failing to identify the telephone number, address, location, or name
22 associated with any person or device that is accessing or attempting to access
23 911 service.

24 (2) No provider or seller of prepaid wireless telecommunications service shall
25 be liable for damages to any person resulting from or incurred in connection
26 with the provision of any lawful assistance to any investigative or law
27 enforcement officer of the United States, this State or any other state, or any
28 political subdivision of this State or any other state, in connection with any
29 lawful investigation or other law enforcement activity by the law
30 enforcement officer.

31 **"§ 62A-56. Exclusivity of 911 service charge for prepaid wireless service.**

32 The 911 service charge for prepaid wireless imposed by this Article is the only 911 funding
33 obligation imposed with respect to prepaid wireless telecommunication service in this State,
34 and no tax, fee, surcharge, or other charge shall be imposed in this State, any subdivision of this
35 State, or any intergovernmental agency, for 911 funding purposes, upon any provider, seller, or
36 consumer with respect to the sale, purchase, use, or provision of prepaid wireless
37 telecommunications service."

38 **SECTION 6.** Chapter 105 of the General Statutes is amended by adding a new
39 Article to read as follows:

40 **"Article 5H.**

41 **"911 Service Charge for Prepaid Wireless.**

42 **"§ 105-187.70. Department comply with Article 4 of Chapter 62A of the General Statutes.**

43 The Department of Revenue shall comply with the provisions of Article 3 of Chapter 62A
44 of the General Statutes to receive and transfer to the 911 Fund the 911 service charge for
45 prepaid wireless collected on retail transactions occurring in this State."

46 **SECTION 7.** Notwithstanding G.S. 62A-60(b), as enacted by Section 5 of this act,
47 sellers that collect the 911 service charge for prepaid wireless telecommunications service may
48 retain all of the service charges collected in the first three calendar months beginning on or
49 after July 1, 2013.

50 **SECTION 8.** Notwithstanding G.S. 62A-60(c), as enacted by Section 5 of this act,
51 the Department of Revenue may retain up to 3% of the total 911 service charges for prepaid

1 wireless telecommunications service remitted to it in the first 12 calendar months beginning on
2 or after October 1, 2013.

3 **SECTION 9.** Unless otherwise provided, this act becomes effective July 1, 2013,
4 and applies to all retail transactions occurring in this State, as that term is defined in this act, on
5 or after that date.
6



HOUSE BILL 571: Prepaid Wireless/Point of Sale Collection

2011-2012 General Assembly

Committee:	House Finance	Date:	May 31, 2011
Introduced by:	Reps. Sager, Justice, Bryant, Brawley	Prepared by:	Heather Fennell Committee Counsel
Analysis of:	PCS to Second Edition H571-CSTD-39		

SUMMARY: *The proposed committee substitute for House Bill 571 would provide for the collection of the 911 service charge on prepaid wireless service at the point of retail sale.*

[As introduced, this bill was identical to S302, as introduced by Sens. Hartsell, McKissick, which is currently in Senate Finance.]

CURRENT LAW: Prior to 2007, North Carolina local government entities collected a 911 service charge from subscribers of local telephone providers, and the Wireless 911 Board collected a monthly service charge from subscribers of wireless providers. In 2007, the local 911 service charge was eliminated, and a new statewide administrative system was adopted for collection and distribution of the 911 service charge. Part of the 2007 changes addressed the collection of the 911 charge from prepaid wireless customers. G.S. 62A-40 authorizes the collection of the 911 fee from prepaid wireless providers in one of the following two ways:

- Decrement – collecting the service charge from each active prepaid wireless customer with an account balance equal to or greater than the amount of the service charge.
- Average Rate Per User - A monthly payment for 911 charges for each provider of prepaid wireless service is determined based on its sales of prepaid revenue in the State during the month. The provider's prepaid revenue in the state is divided by the "average revenue per user" and then multiplied by the amount of the fee. The average rate per user in the statute is currently \$50.

There has been a moratorium on the collection of the 911 charge from prepaid customers since the 2007 changes. The moratorium on collection of the 911 fee from prepaid wireless is in effect through calendar year 2011.¹

The current charge for 911 service is 60¢ per month. The charge is imposed on each subscriber of postpaid phone service, regardless of the technology used to offer the service. The statutes provide that the fee may not be greater than 70¢ per month, however, the 911 Board may set the fee at a lower amount if the revenues are sufficient to fund 911 service.

BILL ANALYSIS:

Section 1: Repeals the current method of collection of the 911 service charge for prepaid wireless service.

Sections 2 and 3: Provides the 911 service charge for prepaid wireless service is 70¢ on each retail transaction of prepaid wireless service, or a lower amount set by the Board. The 911 service charge for prepaid wireless would be the same as the monthly charge for 911 service imposed on all other phone subscribers. The current fee is 60¢ per month.

¹ Section 43 of S.L. 2010-95.
Research Division

House PCS 571

Page 2

Section 4: Currently a portion of the 911 service charges is allocated to reimburse wireless providers to pay for upgrades to their system necessary for the implementation for enhanced 911. The upgrades allow the wireless phone systems to provide address and location information to the 911 call centers. The remainder of the 911 service charges are distributed to public safety answering points (PSAPs) for 911 service. This section clarifies that the 911 service charge from prepaid wireless service will be allocated for reimbursements for wireless providers. The 911 service charge from prepaid wireless will be distributed to PSAPs.

Section 5: Provides for the collection of the 911 service charge for prepaid wireless at retail.

Retail collection: Each seller of prepaid wireless will collect the 911 service charge and remit the charge to the Department of Revenue. A seller must remit the charges either in the same manner as the sales tax, or semiannually. Each retailer is allowed to retain for administrative costs 5% of the 911 service charges for prepaid wireless that it collects. However, **Section 7** of the bill provides that each retailer is allowed to retain for administrative costs all of the fees collected in the first three months after the effective date of the act.

Administration by Department of Revenue: The Department of Revenue will collect the 911 service charge for prepaid wireless from the retailers and remit the fee to the 911 Board within 45 days of receipt of the funds. The Department of Revenue may retain for administrative costs 2% of the fees remitted to it. However, **Section 8** of the bill provides that the Department may retain 3% of the service charges remitted to it for 12 months beginning October 2013.

EFFECTIVE DATE: This act is effective July 1, 2013 and applies to retail transactions on or after that date.

H571-SMTD-62(CSTD-39) v3

STAFF
GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: June 1, 2011

TO: House Finance Committee

FROM: Sandra Johnson and Mark Bondo
Fiscal Research Division

RE: Proposed Committee Substitute House Bill 571 (Unknown Edition)

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES			\$7,881,985	\$8,259,203	\$8,661,242
EXPENDITURES					
Retailer's Discount			(2,266,071)	(412,960)	(433,062)
NC DOR Admin Allowance			(177,345)	(185,832)	(173,225)
<i>Add'l DOR Admin Expenditures</i>			(534,189)	(352,146)	(398,625)
NET COLLECTIONS			(\$4,904,381)	(\$7,308,265)	(\$7,656,330)
POSITIONS (cumulative):			6	6	6
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue: Financial Services					
EFFECTIVE DATE: July 1, 2013					

BILL SUMMARY: The proposed committee substitute for House Bill 571, Prepaid Wireless/Point of Sale Collection, amends G.S. 62A-43(b) to provide that the monthly service charge for E911 services under G.S. 62A-43(b) is applied to prepaid wireless transactions. The E911 service charge is currently 60¢ on each retail transaction occurring in North Carolina.

Effective July 1, 2013, the bill allows sellers that collect prepaid wireless E911 service charges to retain all of the services charges collected in the first three calendar months after the effective date of the act, July 1, 2013 through October 1, 2013. After October 1, 2013, prepaid wireless retailers may retain up to five percent of all fees collected. The Department of Revenue, for administrative purposes, retains three percent of all collections October 1, 2013 through October 1, 2014. The bill ascribes a two percent administrative allowance to the Department of Revenue from October 1, 2014 onward.

ASSUMPTIONS AND METHODOLOGY:

REVENUE: Fiscal Research estimates that HB 571 will generate \$8.3 million to \$9.1 million in total revenue per fiscal year. After deducting the administrative allowances that HB 571 provides to retailers and the Department of Revenue, the bill is expected to generate roughly \$7.6 million in E911 fees when fully implemented. The revenue estimate is based on data from the Federal Communications Commission, the International Association for the Wireless Telecommunications Industry (CTIA), U.S. Census 2007 Economic Census, and the New Millennium Research Council. The paragraphs below provide more detail on methodology.

The CTIA, December 2010 *End of the Year Industry Report* estimated a total of 302.9 million active cell phone lines in the U.S. Fiscal Research adjusted the U.S. cellular phone estimates based on North Carolina's share of the U.S. cellular industry as provided by the 2007 Economic Census. North Carolina salaries, according to Census data, account for 2.48% of the U.S. cellular industry payroll. Utilizing this data, Fiscal Research developed an estimate of 7.5 million cellular phones in North Carolina.

According to New Millennium Research Council (NMRC) data, prepaid wireless customers account for 25% of the cellular phone industry (7.5 million North Carolina cellular phones *0.25= 1.89 million). NMRC divides prepaid wireless subscribers into two groups, 1) those with "pay as you go" services which account for 48% of all prepaid wireless users, and 2) those with unlimited services which account for 52% of all prepaid wireless users. The purchasing habits of the two groups differ significantly.

The Minnesota Department of Revenue, in estimating the fiscal impact of applying an E911 service charge to prepaid wireless services, assumed that the average prepaid customer has 11.6 transactions per year. Fiscal Research applied the 11.6 per year transaction estimate to 48% of all prepaid wireless customers, the pay as you go group. The second prepaid group, the group with unlimited services, was assumed to have one prepaid wireless purchase per fiscal year. The fiscal estimate assumes that a total of 11.4 million prepaid wireless transactions occur annually. Given the current E911 fee of \$0.60 per transaction, HB 571 if applied in FY 2010-11 would generate \$6.85 million in total revenue ($\$0.60 * 11.4$ million transactions).

Prepaid wireless services represent a growing portion of the wireless communications industry. Because the industry is dependent, not only on changes in the economy, but also demographic changes, adjusting the estimates by inflation alone would be inaccurate. Legislative researchers in New Mexico and Minnesota cite prepaid wireless annual industry growth rates between 6.3% and

19%. Fiscal Research utilized a conservative growth factor based on North Carolina's annual 18-30 year old population growth and inflation. These two factors combined equaled on average 4.72%. In sum, the \$6.85 million figure is adjusted upward by 4.72% to reflect the total revenue figures represented in the fiscal impact summary.

EXPENDITURES: The Department of Revenue estimates that it will take six additional personnel, an upgrade to the Tax Information Management System (TIMS), additional software licenses, and related supplies in order to implement, administer, and enforce the service charge on prepaid retail wireless accounts. Two auditors will be required to audit the various entities collecting the fee across the state and an additional auditor will be required to provide requested reviews of assessments and technical and administrative direction. One revenue tax technician and an information processing technician will be required to field any questions from those subject to the fee. One additional revenue collection officer will be required for forced collections. Under the Bill, the Department is allowed to retain 3% of collections for administration from October 2013 until October 2014 and 2% of collections thereafter. This administrative allowance is taken into account in the table below. Figures were inflated based on inflation guidelines in the 2011 Legislative Fiscal Note Manual.

Table 1: North Carolina Department of Revenue Administrative Expenditures, HB 571

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Salary and Benefits			\$454,194	\$493,618	\$526,394
Supplies Recurring			\$11,110	\$11,442	\$11,724
Postage, Mailing and Coupon Books			\$31,962	\$32,918	\$33,731
Supplies Non-Recurring			\$11,558		
TIMS			\$178,300		
TaxMaster: Create Audit Report Package			\$21,226		
Information Technology			\$3,184		
Subtotal			\$711,534	\$537,978	\$571,850
Less DOR Administrative Allowance			\$(177,345)	\$(185,832)	\$(173,225)
Total Cost			\$534,189	\$352,146	\$398,625

SOURCES OF DATA:

Federal Communications Commission, "Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services," available at: <http://transition.fcc.gov/14report.pdf>.

International Association for the Wireless Telecommunications Industry, "Background on CTIA's Semi-Annual Wireless Industry Survey," available at: http://files.ctia.org/pdf/CTIA_Survey_Year_End_2010_Graphics.pdf.

New Millennium Research Council, "Net10 Prepaid Wireless Consumer Trends National Poll,"
Published November 2010, available at:
http://www.newmillenniumresearch.org/archive/110410_NMRC_Net10_prepaid_trends_survey_report.pdf.

U.S. Census Bureau. 2007 Economic Census. Sector 51: EC0751A1: Information: Geographic Area Series: Summary Statistics for the United States, NAICS 5172102.

North Carolina Department of Revenue

Population projections and inflation data based on Moody's Economy.com projections.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

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HOUSE BILL 662

Short Title: Electronic Monitoring Fee. (Public)

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

Referred to: Finance.

April 7, 2011

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE COUNTIES THAT PROVIDE ELECTRONIC MONITORING
FOR OFFENDERS TO COLLECT A FEE TO RECOVER THE ACTUAL COSTS OF
PROVIDING THAT MONITORING.

The General Assembly of North Carolina enacts:

SECTION 1. Article 28 of Chapter 7A of the General Statutes is amended by
adding a new section to read:

"§ 7A-313.1. Fee for costs of electronic monitoring.

A county that provides the personnel, equipment, and other costs of providing electronic
monitoring as a condition of an offender's bond or pretrial release may collect a fee from the
offender of no more than the actual costs of providing the electronic monitoring."

SECTION 2. This act becomes effective July 1, 2011.





HOUSE BILL 662: Electronic Monitoring Fee

2011-2012 General Assembly

Committee:	House Finance	Date:	May 26, 2011
Introduced by:	Reps. Cook, Shepard	Prepared by:	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 662 would authorize counties that provide electronic monitoring imposed as a condition of a defendant's bond or pretrial release to collect a fee from the defendant for the actual costs of providing the monitoring. This bill would become effective July 1, 2011.*

CURRENT LAW: In 2009, the General Assembly made changes concerning the process for determining the conditions of pretrial release. House arrest with electronic monitoring ("Electronic house arrest" or "EHA") was established as a fifth type of pretrial release and, if imposed, requires the defendant to execute a secured bond. House arrest with electronic monitoring requires a defendant to remain at his or her residence unless the court has authorized the defendant to leave for the purpose of employment, counseling, a course of study, or vocational training. The defendant is also required to wear a device that permits the supervising agency to electronically monitor the defendant's compliance with the condition. The legislation did not provide any funds to implement EHA for pretrial release purposes. Upon conviction, a defendant who was placed on EHA within the scope of pretrial release services administered by a county agency is assessed a one-time \$15 fee,¹ which is remitted to the county providing the service.² However, there is no statutory authority to assess a fee for defendants who are not convicted or for an amount greater than \$15 for those who are convicted. Therefore, other than the \$15 fee as described, counties currently bear the cost of EHA.³

The cost of administering an EHA program varies. As a reference, it costs the Department of Correction \$11.07 per defendant per day for GPS monitoring; Pitt County indicates that it costs \$16.00 per defendant per day to implement its program. Also, a defendant who is subject to house arrest as a special condition of probation or who is subject to satellite-based monitoring due to conviction of certain sex offenses must pay a one-time \$90 electronic monitoring device fee, which is paid to the clerk of court. The fee may be waived for good cause and upon motion of the defendant.

BILL ANALYSIS: House Bill 662 would authorize counties that provide the personnel, equipment, and other costs of providing electronic monitoring as a condition of an offender's bond or pretrial release to collect a fee directly from the defendant representing the actual cost of providing the electronic monitoring. "Actual costs" could cover rental of the equipment as well as administrative costs for personnel and other aspects of the program. The fee may vary from county to county depending on how a county calculates its actual cost.

EFFECTIVE DATE: This act becomes effective July 1, 2011.

H662-SMSV-51(e1) v2

¹ G.S. 7A-304(a)(5).

² The cost may only be assessed if the defendant was accepted and released to the supervision of the agency providing the pretrial release service.

³ S.L. 2008-20, which is a local act that applies only to Randolph County, authorizes the clerk of superior court in that county to accept payment of the fee charged by the county sheriff for offenders ordered to participate in pretrial electronic monitoring.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 662

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H662-ASV-14 [v.1]

Page 1 of 1

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

Date 6-1 ,2011

Representative David Lewis

- 1 moves to amend the bill on page 1, line 11, by inserting the following after the period:
- 2 "A county may not collect a fee from an offender who is determined to be indigent and entitled
- 3 to court-appointed counsel."
- 4
- 5

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____





North Carolina General Assembly
House Committee on Finance

Minutes

~
June 2, 2011

The House Committee on Finance met on Thursday, June 2, 2011 at 8:00 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Folwell and Setzer; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Ken Kirby and Earl Coker. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Judy Collier, Heather Fennell, Kory Goldsmith, Trina Griffin, Sandra Johnson, Giles Perry, Greg Roney, and Brian Slivka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Starnes called the meeting to order at 8:00 am and recognized the five (5) pages present (1) Zoe Clarke of Buncombe County sponsored by Representative Kever; (2) Leondra Holmes of Cumberland County sponsored by Representative Glazier; (3) Erica Marion of Wilkes County sponsored by Representative Randleman; (4) Seth Bumgarner of Wilkes County sponsored by Representative Randleman; and (5) Amy Miller of Wilkes County sponsored by Representative Randleman.

The first bill to be heard by the Committee was **HB 571 Prepaid Wireless/Point of Sale Collection** (see **attachment 3**). This bill was displaced temporarily on June 1, 2011 by Representative Brawley. Chairman Starnes recognized Representative Collins who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Representatives Brawley, Sager and Bryant were recognized to explain the proposed committee substitute. The Chair recognized Representative McGee who moved that HB 571 be given a favorable report to the proposed committee substitute #2, unfavorable report to committee substitute #1. The motion carried.

The next bill considered by the Committee was **SB 590 Terminal Rental Adjustment Clauses** (see **attachment 4**). Chairman Starnes recognized Senator Vaughan to explain the bill. The Chair then recognized Representative McGee who moved that SB590 be given a favorable report. The motion carried.

Chairman Starnes re-referred **HB 96 Additional Alleghany Occupancy Tax** to the Subcommittee on Occupancy Tax.

The next bill before the Committee was **HB 409 Guilford Tech. May Lease Property** (see **attachment 5**). Chairman Starnes recognized Representative Lewis who moved to adopt the proposed committee substitute for the purpose of discussion. The Chair recognized Representatives Jeffus and Faircloth to explain the proposed committee substitute. The Chair invited people from the audience to speak on the bill. The Chair recognized David Hauser with the North Carolina Center for Global Logistics who spoke in favor of the bill. Chairman Starnes recognized Representative Carney who moved that HB 409 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

Next before the Committee was **SB 118 Downtown Service District Definition** (see **attachment 6**). Chairman Starnes recognized Representative Howard who moved to adopt the proposed committee substitute for the purpose of discussion. The Chair recognized Senator Preston to explain the proposed committee substitute. The Chair then recognized Representative Weiss who moved that SB 118 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill before the Committee was **HB 552 Greater Asheville Reg. Airport Authority** (see **attachment 7**). Chairman Starnes recognized Representative McCormick who moved to adopt the proposed committee substitute for the purpose of discussion. The Chair then recognized Representative Moffitt to explain the proposed committee substitute. Representative Moffitt sent forth amendment 1 that moved to amend the bill on page 3, line 16 and on page 5, line 51 (see **attachment 8**). Being no further discussion or debate, the Chair called for the ayes and noes on the adoption of amendment 1. Amendment 1 was adopted. The Chair recognized Representative Setzer who moved that HB 552 be given a favorable report as amended and rolled into a new proposed committee substitute 2, unfavorable report to committee substitute 1. Chairman Starnes called for a show of hands for the motion for favorable report. The vote being 16 affirmative and 8 against. The motion carried.

The next bill to be heard by Committee was **HB 896 Facilitate Electronic Listing** (see **attachment 9**). The Chair recognized Representative Rhyne who moved to adopt the proposed committee substitute for the purpose of discussion. Chairman Starnes recognized Representative Carney to explain the proposed committee substitute. The Chair then recognized Representative Howard who moved that HB 896 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

HB 384 Register of Deeds/Fees (see **attachment 10**) was the next bill considered by the Committee. Chairman Starnes recognized Representative Jordan who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representative Howard to explain the proposed committee substitute. Chairman Starnes recognized Representative Stam who sent forth amendment 1 that moved to amend the bill on page

1, line 3; and on page 2, lines 39 and 40; and on page 2, line 41 (see **attachment 11**). Representative Stam explained his amendment. Being no further discussion or debate, the Chair called for the ayes and noes on the adoption of amendment 1. Amendment 1 was adopted. The Chair recognized Representative Howard who sent forth amendment 2 that moved to amend the bill on page 2, line 41 (see **attachment 12**). Representative Howard explained the amendment. Being no further discussion or debate, the Chair called for the ayes and noes on the adoption of amendment 2. Amendment 2 was adopted. The Chair then invited members of the audience to speak on the bill. The Chair recognized David Brinson, Duplin County Register of Deeds and Brent Shoaf, Davie County Register of Deeds who spoke in favor of the bill. Chairman Starnes then recognized Representative Carney who moved that HB 384 be given a favorable report as amended and rolled into a new proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next before the Committee was **HB 895 Butner Fire & Police District Modifications** (see **attachment 13**). The Chair recognized Representative Warren who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Starnes then recognized Representative Crawford to explain the proposed committee substitute. Representative Howard was then recognized to send forth amendment 1 that moved to amend the bill on page 5, line 9 (see **attachment 14**). Representative Howard explained the amendment. Being no further discussion or debate, the Chair called for the ayes and noes on the adoption of amendment 1. Amendment 1 was adopted. The Chair recognized Representative Carney who moved that HB 895 be given a favorable report to the proposed committee substitute as amended and rolled into a new proposed committee substitute, unfavorable report to the original bill and be re-referred to the Committee on Appropriations. The motion carried.

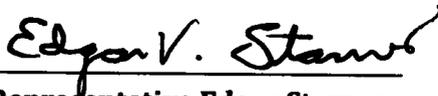
The final bill heard by the Committee was **HB 289 Authorize Various Special Plates** (see **attachment 15**). The Chair recognized Representative McGuirt who moved to adopt the proposed committee substitute for the purpose of discussion. Chairman Starnes then recognized Representative Gillespie to explain the bill. Chairman Starnes recognized Representative Folwell who moved that HB 289 be given a favorable report on the proposed committee substitute 2, unfavorable report to the committee substitute 1. The motion was set aside for further discussion. The Chair recognized Representative Luebke who sent forth amendment 1 that moved to amend the bill on page 18, line 50, through page 19, line 3 (see **attachment 16**). Representative Luebke explained his amendment. Chairman Starnes called for a show of hands for the adoption of amendment 1. The vote being 12 affirmative and 16 against. The adoption of amendment 1 failed. Chairman Starnes recognized Representative Alexander who sent forth amendment 2 that moved to amend the bill on page 2, lines 28 and 29; and on page 11, lines 48-49; and on page 16, lines 2-3; and on page 23, lines 5-6 (see **attachment 17**). Representative Alexander explained his amendment. The Chair then recognized Representative Weiss who sent forth a perfecting amendment to amendment 2 (see **attachment 18**). Being no further discussion or debate, the Chair called for ayes and noes on the perfecting amendment to amendment 2. The perfecting amendment to amendment 2 was adopted. Back before the Committee was the adoption of amendment 2. The Chair called for the ayes and noes on amendment 2. The adoption of

amendment 2 failed. Chairman Starnes recognized Representative Ross who sent forth amendment 3 that moved to amend the bill on page 19, line 3 (see **attachment 19**). Representative Ross explained her amendment. Being no further discussion or debate, the Chair called for a show of hands for the adoption of amendment 3. The vote being 11 affirmative and 16 against. The adoption of amendment 3 failed. Chairman Starnes recognized Representative Folwell who restated his motion that HB 289 be given a favorable report the proposed committee substitute 2, unfavorable report to the committee substitute 1. The Chair requested a roll call vote on the motion. The vote being 17 affirmative and 13 against (see **attachment 20**). The motion carried.

Due to time, **HB 334 Tax Credits for Children With Disabilities, HB 494 Continuous Alcohol Monitoring Law Changes, HB 799 Licensure By Endorsement/Military/Spouses, and SB 155 Local Stormwater Utility Fees** were unable to be heard and is scheduled to be re-calendared on Friday, June 3, 2011.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 9:53 am.

Respectfully submitted,



Representative Edgar Starnes
Presiding Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 289 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE VARIOUS SPECIAL REGISTRATION PLATES.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 384 A BILL TO BE ENTITLED AN ACT TO SIMPLIFY THE FEES CHARGED FOR REGISTERING INSTRUMENTS WITH A REGISTER OF DEEDS IN THIS STATE.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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_____ 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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 409 A BILL TO BE ENTITLED AN ACT TO ALLOW GUILFORD TECHNICAL COMMUNITY COLLEGE TO LEASE A PORTION OF ITS PROPERTY TO THE NORTH CAROLINA CENTER FOR GLOBAL LOGISTICS.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 552 A BILL TO BE ENTITLED AN ACT TO CREATE THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 895 A BILL TO BE ENTITLED AN ACT TO MAKE MODIFICATIONS TO THE BUTNER PUBLIC SAFETY DIVISION.

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

(FOR JOURNAL USE ONLY)

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 896 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE COUNTIES TO ACCEPT ELECTRONIC LISTING OF PROPERTY FOR PROPERTY TAX PURPOSES.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 118 A BILL TO BE ENTITLED AN ACT TO EXPAND THE DEFINITION OF
DOWNTOWN REVITALIZATION IN THE MUNICIPAL SERVICE DISTRICT LAW.

With a favorable report as to the House committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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resolution No. _____) is placed on the Unfavorable Calendar.

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 590 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT TERMINAL RENTAL ADJUSTMENT CLAUSES DO NOT CREATE A SALE OR SECURITY INTEREST IN THE LEASED VEHICLE.

With a favorable report.

(FOR JOURNAL USE ONLY)

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 571 A BILL TO BE ENTITLED AN ACT IMPOSING A SERVICE CHARGE ON EACH PURCHASE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR ANY PURPOSE OTHER THAN RESALE OCCURRING IN THIS STATE, REQUIRING THAT THE SERVICE CHARGE BE COLLECTED BY THE SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE AND REMITTED TO THE DEPARTMENT OF REVENUE, AND PROVIDING THAT THE DEPARTMENT OF REVENUE SHALL TRANSFER ALL SERVICE CHARGES COLLECTED, MINUS THE COSTS OF COLLECTION, TO THE 911 FUND TO SUPPORT 911 SERVICES IN THE STATE.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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AGENDA
House Finance Committee

Thursday, June 2, 2011
8:00 am

Room 544 LOB

Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 96 Additional Alleghany Occupancy Tax
Representative Stevens

HB 289 Authorize Various Special Plates
Representative Gillespie

HB 344 Tax Credits for Children With Disabilities
Representatives Stam, Randleman, Jordan, Jones

HB 384 Register of Deeds/Fees
Representatives Howard, West, Rapp, Wilkins

HB 409 Guilford Tech. May Lease Prop.
Representatives Jeffus, Harrison, Adams, Faircloth

HB 494 Continuous Alcohol Monitoring Law Changes
Representatives M. Alexander, Guice, T. Moore, Stam

HB 552 Greater Asheville Reg. Airport Authority
Representatives Moffitt, McGrady

HB 571 Prepaid Wireless/Point of Sale Collection
Representatives Sager, Justice, Bryant, Brawley

HB 734 Require Photo ID/Food Stamps Program
Representatives Warren, L. Brown, Lewis, T. Moore

HB 799 Licensure By Endorsement/Military/Spouses
Representatives Martin, Killian

HB 895 Butner Fire & Police District Modifications
Representative Crawford

HB 896 Authorize Electronic Listing

Representative Brubaker

SB 118 Downtown Service District Definition

Senator Preston

SB 155 Local Stormwater Utility Fees

Senator Stein

SB 590 Terminal Rental Adjustment Clauses

Senator Vaughan

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: JUNE 2, 2011 Room: 544

*Name: Zoë Clarke

County: Buncombe

Sponsor: Patsy Keever

*Name: Leandra Holmes

County: Cumberland

Sponsor: Rick Glazier

*Name: Erica Marion

County: Wilkes

Sponsor: Shirley Randleman

*Name: Seth Dunganer

County: Wilkes

Sponsor: Shirley Randleman

*Name: Amy Miller

County: Wilkes County

Sponsor: Shirley Randleman

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: KEN KIRBY

2. Name: JOHN BRANDON

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

June 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Albrecht Trencher	NCAAC
Kevin Leonard	NCAAC
Brent Sp	NCARD
_____	DHHA
OSP	NCB
JB	NC GIC
Deane Ferson	- City of Charlotte
Karen Brown	NC Correction Enterprises
Sandy Robinson	The
Lisa Martin	NC Home Builders
Mark Swann	

VISITOR REGISTRATION SHEET

House Finance

June 2, 2011

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Date

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NAME

FIRM OR AGENCY AND ADDRESS

Darrell Allison	Parents for Edu. Freedom
David Hauser	NC CENTER FOR GLOBAL LOGISTICS
Kathleen Patterson	NC Center for Global Logistics
Nancy Sollosi	Guilford Tech Comm. College
Dana Simpson	Smith Anders
Katherine Joyce	NCASA
Leanne Wimmer	NCSBA
Phil Farrell	NCSBA
David Barnes	PS
Wendy Kelly	Policy Group
Bob Strick	NCSBA

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House Finance

June 2, 2011

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Date

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NAME	FIRM OR AGENCY AND ADDRESS
Dean Simpson	DHHS / DSS
David Lorklan	DHHS / DSS
Herb Crenshaw	AT&T North Carolina
Bill Knight	Verizon wireless
Bubba Holt	NCRIZ
Melissa Reed	PPHS
Sarah Preston	ACLU-NC
Tom M	Edel W Mee
Angie	NCM
Elizabeth	NCM
Rob Kayler	RW Kayler Law Firm

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

ZEB ALLEY

NMRS

Don Hrew

Williams Mewen

Allison Fowler

NC Grange

VISITOR REGISTRATION SHEET

House Finance

June 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JERRY LEPPART	N.C. SUB VETS
TOM DIXON	NCDOR
Elizabeth Colcord	NCDOR
David Baker	NCDOR
Chuck Greene	AT+T
CARLOS SANCHEZ	AT+T
Dave Rich	The Arc
Karen Wells	arts NC
John Lyon	AT+T
H. TASAICO	NC DOT
Julia Adams	The Arc of NC



VISITOR REGISTRATION SHEET

House Finance
Name of Committee

June 2, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
<i>Joni Allen</i>	<i>BEGINNINGS</i>
<i>[Signature]</i>	<i>DEAN</i>
<i>David Ferris</i>	<i>NCLTA</i>
<i>Jim Wynn</i>	<i>Honey Hill Construction, PLLC Oxford NC</i>
<i>Chip Killian</i>	<i>Nelson Mullin</i>
<i>Mike Robertson</i>	<i>NCDMV</i>
<i>Fred Baggett</i>	<i>Smith Mason Co.</i>
<i>Jessi Hayes</i>	<i>NCHBA</i>
<i>Emily Guinness</i>	<i>MWK</i>
<i>Rachelle Pulliam</i>	<i>Dmd Wainwright's Office</i>
<i>Sam Walker</i>	<i>Rep. K Alexander office</i>



VISITOR REGISTRATION SHEET

House Finance

June 2, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

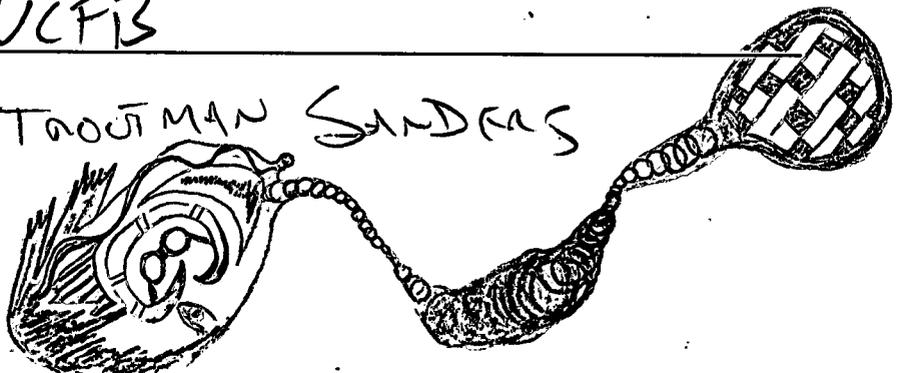
FIRM OR AGENCY AND ADDRESS

Michael Hunter	NC Dept of Revenue
Kay Natcher	DMV
Chris Valanri	Valanri Group, LLC
Rogge Holley	The Longmire Group
David McAnam	NC Realtors
Cady Thomas	n w
Nessi Hayes	NCHBA
Jennifer Mahan	ASNC
Paul Meyer	NCLM
MICHELLE HEALY	SMITH ANDERSON
Steve Woodan	NCFB

DANIEL BAUM

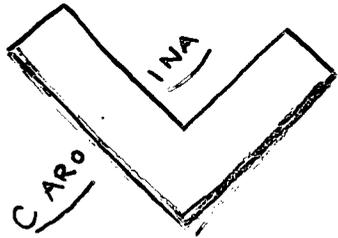


TROUTMAN SANDERS



Government

Mr. Speaker I would like to debate the bill
Shouts out a red faced Mr. Hill
Permission granted as the speaker glances to the window sill.
Why can't the house peacefully till.
and refill soil with bills.
Carolina's fertile soil speak to kill.
Mr. Hill, please don't this of Mr. Hill.
The speaker demands



infrared

Margaret Sanger

Come to Hickory Nut Gap
Climb in the trees bleeding sap
walk meander even run
to the top of Mt. Ferguson

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 571*
PROPOSED COMMITTEE SUBSTITUTE H571-CSTD-46 [v.4]

6/1/2011 5:10:09 PM

Short Title: Prepaid Wireless/Point of Sale Collection.

(Public)

Sponsors:

Referred to:

March 31, 2011

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A BILL TO BE ENTITLED

AN ACT IMPOSING A SERVICE CHARGE ON EACH RETAIL TRANSACTION OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR ANY PURPOSE OTHER THAN RESALE OCCURRING IN THIS STATE, REQUIRING THAT THE SERVICE CHARGE BE COLLECTED BY THE SELLER OF PREPAID WIRELESS TELECOMMUNICATION SERVICE AND REMITTED TO THE DEPARTMENT OF REVENUE, AND PROVIDING THAT THE DEPARTMENT OF REVENUE SHALL TRANSFER ALL SERVICE CHARGES COLLECTED, MINUS THE COSTS OF COLLECTION, TO THE 911 FUND TO SUPPORT 911 SERVICES IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 62A-43(b) reads as rewritten:

"(b) Prepaid Wireless. - ~~A voice communications service provider of prepaid wireless telephone service must collect and remit to the 911 Board the monthly service charge imposed upon prepaid wireless telephone subscribers in the State under one of the following methods:~~

- (1) ~~Collecting the service charge from each active prepaid wireless telephone service subscriber whose account balance is equal to or greater than the amount of the service charge.~~
- (2) ~~Dividing the provider's total earned prepaid wireless telephone service revenue received for the month from each active prepaid wireless telephone service subscriber by fifty dollars (\$50.00) and multiplying the quotient by the amount of the service charge. The monthly service charge for 911 service is not imposed on prepaid wireless telephone service."~~

SECTION 1.(b) This section is effective when it becomes law.

SECTION 2. G.S. 62A-40 reads as rewritten:

"§ 62A-40. Definitions.

The following definitions apply in this Article.

- ...
- (15) Prepaid wireless telephone telecommunications service. - A wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount. ~~A right that meets all of the following requirements:~~



- 1 a. ~~Authorizes the purchase of CMRS, either exclusively or in conjunction with~~
 2 ~~other services.~~
 3 b. ~~Must be paid for in advance.~~
 4 c. ~~Is sold in units or dollars whose number or dollar value declines with use~~
 5 ~~and is known on a continuous basis.~~

6 ...
 7 (18a) Retail transaction. – The sale of prepaid wireless telecommunications service
 8 for any purpose other than resale."

9 SECTION 3. G.S. 62A-43, as amended by Section 1 of this act, reads as rewritten:

10 "**§ 62A-43. Service charge for 911 service.**

11 (a) Charge Imposed. – A monthly 911 service charge is imposed on each active voice
 12 communications service connection that is capable of accessing the 911 system. The service
 13 charge for service other than prepaid wireless telecommunications service is seventy cents
 14 (70¢) or a lower amount set by the 911 Board under subsection (d) of this section. The service
 15 charge is payable by the subscriber to the voice communications service provider. The provider
 16 may list the service charge separately from other charges on the bill. Partial payments made by
 17 a subscriber are applied first to the amount the subscriber owes the provider for the voice
 18 communications service.

19 (b) Prepaid Wireless. ~~– The monthly service charge for 911 service is not imposed on~~
 20 ~~prepaid wireless service. A 911 service charge is imposed on each retail purchase of prepaid~~
 21 ~~wireless telecommunications service occurring in this State of seventy cents (70¢) for each~~
 22 ~~retail transaction of prepaid wireless telecommunications service or a lower amount set as~~
 23 ~~provided by subsection (d) of this section. The service charge is collected and remitted as~~
 24 ~~provided in G.S. 62A-54.~~

25 (c) Remittance to 911 Board. – A voice communications service provider must remit
 26 the service charges collected by it under subsection (a) of this section to the 911 Board. The
 27 provider must remit the collected service charges by the end of the calendar month following
 28 the month the provider received the charges from its subscribers. A provider may deduct and
 29 retain from the service charges it receives from its subscribers and remits to the 911 Board an
 30 administrative allowance equal to the greater of one percent (1%) of the amount of service
 31 charges remitted or fifty dollars (\$50.00) a month.

32 (d) Adjustment of Charge. – The 911 Board must monitor the revenues generated by the
 33 ~~service charge charges imposed by this section.~~ If the 911 Board determines that the ~~rate~~
 34 ~~produces rates produce~~ revenue that exceeds or is less than the amount needed, the 911 Board
 35 may adjust the ~~rate rates.~~ The ~~rate rates~~ must ensure full cost recovery for voice
 36 communications service providers and for primary PSAPs over a reasonable period of time.
 37 The 911 Board must set the service charge for prepaid wireless telecommunications service at
 38 the same rate as the monthly service charge for non-prepaid service. A change in the amount of
 39 the rate becomes effective only on July 1. The 911 Board must notify providers of a change in
 40 the rate rates at least 90 days before the change becomes effective. The 911 Board must notify
 41 the Department of Revenue of a change in the rate for prepaid wireless telecommunications
 42 service at least 90 days before the change becomes effective. The Department of Revenue must
 43 provide notice of a change in the rate for prepaid wireless telecommunications service at least
 44 45 days before the change becomes effective only on the Department's website.

45"

46 SECTION 4. G.S. 62A-44(b) reads as rewritten:

47 "(b) Allocation of Revenues. – The 911 Board may deduct and retain for its
 48 administrative expenses a percentage of the total service charges remitted to it under
 49 G.S. 62A-43 for deposit in the 911 Fund. The percentage may not exceed two percent (2%).
 50 The percentage is one percent (1%) unless the 911 Board sets the percentage at a different
 51 amount. The 911 Board must monitor the amount of funds required to meet its financial

1 commitment to provide technical assistance to primary PSAPs and set the rate at an amount
2 that enables the 911 Board to meet this commitment. The remaining revenues remitted to the
3 911 Board for deposit in the 911 Fund are allocated as follows:

- 4 (1) A percentage of the funds remitted by CMRS providers, other than
5 the funds remitted by the Department of Revenue from prepaid wireless
6 telecommunications service, to the 911 Fund are allocated for
7 reimbursements to CMRS providers pursuant to G.S. 62A-45.
- 8 (2) A percentage of the funds remitted by CMRS providers, all funds
9 remitted by the Department of Revenue from prepaid wireless
10 telecommunications service, and all funds remitted by all other voice
11 communications service providers are allocated for monthly distributions to
12 primary PSAPs pursuant to G.S. 62A-46 and grants to PSAPs pursuant to
13 G.S. 62A-47.
- 14 (3) The percentage of the funds remitted by CMRS providers allocated to
15 CMRS providers and PSAPs shall be set by the 911 Board and may be
16 adjusted by the 911 Board as necessary to ensure full cost recovery for
17 CMRS providers and, to the extent there are excess funds, for distributions
18 to primary PSAPs."

19 **SECTION 5.** Article 3 of Chapter 62A of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 62A-54. Service charge for prepaid wireless telecommunications service; seller collects**
22 **911 service charge on each retail transaction occurring in this State;**
23 **remittances to Department of Revenue and transfer to 911 Fund.**

24 (a) Retail Collection. – A seller of prepaid wireless telecommunications service shall
25 collect the 911 service charge for prepaid wireless from the consumer on each retail transaction
26 occurring in this State. The 911 service charge for prepaid wireless telecommunications service
27 is in addition to the sales tax imposed on the sale or recharge of prepaid telephone calling
28 service under G.S. 105-164.4(4d). The amount of the 911 service charge for prepaid wireless
29 must be separately stated on an invoice, receipt, or other reasonable notification provided to the
30 consumer by the seller at the time of the retail transaction. For purposes of this Article, a retail
31 transaction is occurring in this State if the sale is sourced to this State under
32 G.S.105-164.4B(a).

33 (b) Administrative Allowance; Remittance to Department of Revenue. – A seller may
34 deduct and retain from the 911 service charges it collects from consumers and remits to the
35 Department of Revenue an administrative allowance of five percent (5%). A seller shall remit
36 the 911 service charge for prepaid wireless service collected by it under subsection (a) of this
37 section in either of the following ways:

38 (1) Monthly to the Department of Revenue. The service charges collected in a
39 month are due by the 20th day of the month following the calendar month
40 covered by the return.

41 (2) Semi-annually to the Department of Revenue. The service charges collected
42 in the first six months of the calendar year are due by July 20. The service
43 charges collected in the second six months of the calendar year are due by
44 January 20.

45 (c) Administration. – Administration, auditing, requests for review, making returns,
46 promulgation of rules and regulations by the Secretary of Revenue, additional taxes and liens,
47 assessments, refunds, and penalty provisions of Article 9 of Chapter 105 of the General Statutes
48 apply to the collection of the 911 service charge for prepaid wireless service. An audit of the
49 collection of the 911 service charge for prepaid telecommunications wireless service shall only
50 be conducted in connection with an audit of the taxes imposed by Article 5 of Chapter 105 of
51 the General Statutes. Underpayments shall be subject to the same interest rate as imposed for

1 taxes under G.S. 105-241.21. Overpayments shall be subject to the same interest rate as
2 imposed for taxes under G.S. 105-241.21(c)(2). Excessive and erroneous collections of the
3 service charge will be subject to G.S. 105-164.11. The Department of Revenue shall establish
4 procedures for a seller of prepaid wireless telecommunications service to document that a sale
5 is not a retail transaction, and the procedures established shall substantially coincide with the
6 procedures for documenting a sale for resale transaction under G.S. 105-164.28. The Secretary
7 of Revenue may retain the costs of collection from the remittances received under subsection
8 (b) of this section, not to exceed five hundred thousand dollars (\$500,000) a year of the total
9 911 service charges for prepaid wireless telecommunications service remitted to the
10 Department. Within 45 days of the end of each month in which 911 service charges for prepaid
11 wireless telecommunications service are remitted to the Department, the Secretary of Revenue
12 shall transfer the total 911 service charges remitted to the Department less the costs of
13 collection to the 911 Fund established under G.S. 62A-44.

14 (d) Liability of Consumer. – The 911 service charge for prepaid wireless
15 telecommunications service is the liability of the consumer and not of the seller or of any
16 provider, except that the seller shall be liable for remitting to the Department of Revenue all
17 911 service charges for prepaid wireless telecommunications service that the seller collects
18 from consumers as provided in subsection (b) of this section.

19 **"§ 62A-55. Limitation of liability, prepaid wireless.**

20 In addition to the limitation of liability provided in subsection G.S. 62A-53, each provider
21 and seller of prepaid wireless telecommunications service is entitled to the following
22 limitations of liability:

23 (1) No provider or seller of prepaid wireless telecommunications service shall
24 be liable for damages to any person resulting from or incurred in connection
25 with the provision of or the failure to provide 911 service, or for identifying
26 or failing to identify the telephone number, address, location, or name
27 associated with any person or device that is accessing or attempting to access
28 911 service.

29 (2) No provider or seller of prepaid wireless telecommunications service shall
30 be liable for damages to any person resulting from or incurred in connection
31 with the provision of any lawful assistance to any investigative or law
32 enforcement officer of the United States, this State or any other state, or any
33 political subdivision of this State or any other state, in connection with any
34 lawful investigation or other law enforcement activity by the law
35 enforcement officer.

36 **"§ 62A-56. Exclusivity of 911 service charge for prepaid wireless service.**

37 The 911 service charge for prepaid wireless imposed by this Article is the only 911 funding
38 obligation imposed with respect to prepaid wireless telecommunication service in this State,
39 and no tax, fee, surcharge, or other charge shall be imposed in this State, any subdivision of this
40 State, or any intergovernmental agency, for 911 funding purposes, upon any provider, seller, or
41 consumer with respect to the sale, purchase, use, or provision of prepaid wireless
42 telecommunications service."

43 **SECTION 6.** Chapter 105 of the General Statutes is amended by adding a new
44 Article to read as follows:

45 **"Article 5H.**

46 **"911 Service Charge for Prepaid Wireless.**

47 **"§ 105-187.70. Department comply with Article 4 of Chapter 62A of the General Statutes.**

48 The Department of Revenue shall comply with the provisions of Article 3 of Chapter 62A
49 of the General Statutes to receive and transfer to the 911 Fund the 911 service charge for
50 prepaid wireless collected on retail transactions occurring in this State."

1 **SECTION 7.** Notwithstanding G.S. 62A-60(b), as enacted by Section 5 of this act,
2 sellers that collect the 911 service charge for prepaid wireless telecommunications service may
3 retain all of the service charges collected in the first three calendar months beginning on or
4 after July 1, 2013.

5 **SECTION 8.** Notwithstanding G.S. 62A-60(c), as enacted by Section 5 of this act,
6 the Department of Revenue may retain the cost of collection not to exceed seven hundred
7 thousand dollars (\$700,000) of the 911 service charges for prepaid wireless
8 telecommunications service remitted to it from collections by sellers of the charge for the first
9 12 calendar months beginning on or after July 1, 2013.

10 **SECTION 9.** Unless otherwise provided, this act becomes effective July 1, 2013,
11 and applies to all retail transactions occurring in this State, as that term is defined in this act, on
12 or after that date.
13



HOUSE BILL 571: Prepaid Wireless/Point of Sale Collection

2011-2012 General Assembly

Committee: House Finance	Date: June 2, 2011
Introduced by: Reps. Sager, Justice, Bryant, Brawley	Prepared by: Heather Fennell
Analysis of: PCS to Second Edition H571-CSTD-46	Committee Counsel

SUMMARY: *The proposed committee substitute for House Bill 571 would provide for the collection of the 911 service charge on prepaid wireless service at the point of retail sale.*

This PCS makes the following changes from the PCS that was considered by the Committee yesterday:

- *Clarifies that retailers may remit the 911 service charges for prepaid wireless monthly or semiannually.*
- *Clarifies the enforcement authority of the Department of Revenue includes auditing, but auditing of the 911 fee may only be conducted in connection with a sales tax audit.*
- *Increases the amount the Department of Revenue may retain for the costs of administration. The Department may retain the costs of collection not to exceed \$700,000 in the first year and \$500,000 in the subsequent years.*

[As introduced, this bill was identical to S302, as introduced by Sens. Hartsell, McKissick, which is currently in Senate Finance.]

CURRENT LAW: Prior to 2007, North Carolina local government entities collected a 911 service charge from subscribers of local telephone providers, and the Wireless 911 Board collected a monthly service charge from subscribers of wireless providers. In 2007, the local 911 service charge was eliminated, and a new statewide administrative system was adopted for collection and distribution of the 911 service charge. Part of the 2007 changes addressed the collection of the 911 charge from prepaid wireless customers. G.S. 62A-40 authorizes the collection of the 911 fee from prepaid wireless providers in one of the following two ways:

- Decrement – collecting the service charge from each active prepaid wireless customer with an account balance equal to or greater than the amount of the service charge.
- Average Rate Per User - A monthly payment for 911 charges for each provider of prepaid wireless service is determined based on its sales of prepaid revenue in the State during the month. The provider's prepaid revenue in the state is divided by the "average revenue per user" and then multiplied by the amount of the fee. The average rate per user in the statute is currently \$50.

There has been a moratorium on the collection of the 911 charge from prepaid customers since the 2007 changes. The moratorium on collection of the 911 fee from prepaid wireless is in effect through calendar year 2011.¹

The current charge for 911 service is 60¢ per month. The charge is imposed on each subscriber of postpaid phone service, regardless of the technology used to offer the service. The statutes provide that

¹ Section 43 of S.L. 2010-95.
Research Division

House PCS 571

Page 2

the fee may not be greater than 70¢ per month, however, the 911 Board may set the fee at a lower amount if the revenues are sufficient to fund 911 service.

BILL ANALYSIS:

Section 1: Repeals the current method of collection of the 911 service charge for prepaid wireless service.

Sections 2 and 3: Provides the 911 service charge for prepaid wireless service is 70¢ on each retail transaction of prepaid wireless service, or a lower amount set by the Board. The 911 service charge for prepaid wireless would be the same as the monthly charge for 911 service imposed on all other phone subscribers. The current fee is 60¢ per month.

Section 4: Currently a portion of the 911 service charges is allocated to reimburse wireless providers to pay for upgrades to their system necessary for the implementation for enhanced 911. The upgrades allow the wireless phone systems to provide address and location information to the 911 call centers. The remainder of the 911 service charges are distributed to public safety answering points (PSAPs) for 911 service. This section clarifies that the 911 service charge from prepaid wireless service will be allocated for reimbursements for wireless providers. The 911 service charge from prepaid wireless will be distributed to PSAPs.

Section 5: Provides for the collection of the 911 service charge for prepaid wireless at retail.

Retail collection: Each seller of prepaid wireless will collect the 911 service charge and remit the charge to the Department of Revenue. A seller must remit the charges either monthly, or semiannually. Each retailer is allowed to retain for administrative costs 5% of the 911 service charges for prepaid wireless that it collects. However, **Section 7** of the bill provides that each retailer is allowed to retain for administrative costs all of the fees collected in the first three months after the effective date of the act.

Administration by Department of Revenue: The Department of Revenue will collect the 911 service charge for prepaid wireless from the retailers and remit the fee to the 911 Board each month within 45 days of the end of the month the service charges were collected. The Department of Revenue may retain the costs of collection not to exceed \$500,000 a year. However, **Section 8** of the bill provides that the Department may retain the cost of collection not to exceed \$700,000 for the first year after the effective date of this act.

EFFECTIVE DATE: This act is effective July 1, 2013 and applies to retail transactions on or after that date.

H571-SMTD-67(CSTD-46) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: June 2, 2011

TO: House Finance Committee

FROM: Sandra Johnson and Mark Bondo
Fiscal Research Division

RE: PCS HB 571 Prepaid Wireless/Point of Sale Collections

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES			\$7,881,985	\$8,259,203	\$8,661,242
EXPENDITURES					
Retailer's Discount			(2,266,071)	(412,960)	(433,062)
NC DOR Admin Allowance			(700,000)	(500,000)	(500,000)
NET COLLECTIONS			\$4,915,914	\$7,346,243	\$7,728,179
<i>Add'l DOR Admin Expenditures</i>			<i>(11,534)</i>	<i>(37,978)</i>	<i>(71,850)</i>
POSITIONS (cumulative):			6	6	6
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue: Financial Services					
EFFECTIVE DATE: July 1, 2013					

BILL SUMMARY: The proposed committee substitute for House Bill 571, Prepaid Wireless/Point of Sale Collection, amends G.S. 62A-43(b) to provide that the monthly service

charge for E911 services under G.S. 62A-43(b) is applied to prepaid wireless transactions. The E911 service charge is currently 60¢ on each retail transaction occurring in North Carolina.

Effective July 1, 2013, the bill allows sellers that collect prepaid wireless E911 service charges to retain all of the services charges collected in the first three calendar months after the effective date of the act, July 1, 2013 through October 1, 2013. After October 1, 2013, prepaid wireless retailers may retain up to five percent of all fees collected. The Department of Revenue, for administrative purposes, retains \$700,000 of the tax collected in FY 2013-14 and \$500,000 in subsequent fiscal years.

ASSUMPTIONS AND METHODOLOGY:

REVENUE: Fiscal Research estimates that HB 571 will generate \$8.3 million to \$9.1 million in total revenue per fiscal year. After deducting the administrative allowances that HB 571 provides to retailers and the Department of Revenue, the bill is expected to generate roughly \$7.6 million in E911 fees when fully implemented. The revenue estimate is based on data from the Federal Communications Commission, the International Association for the Wireless Telecommunications Industry (CTIA), U.S. Census 2007 Economic Census, and the New Millennium Research Council. The paragraphs below provide more detail on methodology.

The CTIA, December 2010 *End of the Year Industry Report* estimated a total of 302.9 million active cell phone lines in the U.S. Fiscal Research adjusted the U.S. cellular phone estimates based on North Carolina's share of the U.S. cellular industry as provided by the 2007 Economic Census. North Carolina salaries, according to Census data, account for 2.48% of the U.S. cellular industry payroll. Utilizing this data, Fiscal Research developed an estimate of 7.5 million cellular phones in North Carolina.

According to New Millennium Research Council (NMRC) data, prepaid wireless customers account for 25% of the cellular phone industry (7.5 million North Carolina cellular phones *0.25= 1.89 million). NMRC divides prepaid wireless subscribers into two groups, 1) those with "pay as you go" services which account for 48% of all prepaid wireless users, and 2) those with unlimited services which account for 52% of all prepaid wireless users. The purchasing habits of the two groups differ significantly.

The Minnesota Department of Revenue, in estimating the fiscal impact of applying an E911 service charge to prepaid wireless services, assumed that the average prepaid customer has 11.6 transactions per year. Fiscal Research applied the 11.6 per year transaction estimate to 48% of all prepaid wireless customers, the pay as you go group. The second prepaid group, the group with unlimited services, was assumed to have one prepaid wireless purchase per fiscal year. The fiscal estimate assumes that a total of 11.4 million prepaid wireless transactions occur annually. Given the current E911 fee of \$0.60 per transaction, HB 571 if applied in FY 2010-11 would generate \$6.85 million in total revenue (\$0.60*11.4 million transactions).

Prepaid wireless services represent a growing portion of the wireless communications industry. Because the industry is dependent, not only on changes in the economy, but also demographic changes, adjusting the estimates by inflation alone would be inaccurate. Legislative researchers in

New Mexico and Minnesota cite prepaid wireless annual industry growth rates between 6.3% and 19%. Fiscal Research utilized a conservative growth factor based on North Carolina's annual 18-30 year old population growth and inflation. These two factors combined equaled on average 4.72%. In sum, the \$6.85 million figure is adjusted upward by 4.72% to reflect the total revenue figures represented in the fiscal impact summary.

EXPENDITURES: The Department of Revenue estimates that it will take six additional personnel, an upgrade to the Tax Information Management System (TIMS), additional software licenses, and related supplies in order to implement, administer, and enforce the service charge on prepaid retail wireless accounts. Two auditors will be required to audit the various entities collecting the fee across the state and an additional auditor will be required to provide requested reviews of assessments and technical and administrative direction. One revenue tax technician and an information processing technician will be required to field any questions from those subject to the fee. One additional revenue collection officer will be required for forced collections. Under the PCS, the Department is allowed to retain up to \$700,000 of collections for administration for FY 2014 and \$500,000 of collections thereafter. This administrative allowance is taken into account in the table below. The salary and cost figures were inflated based on inflation guidelines in the 2011 Legislative Fiscal Note Manual.

Table 1: North Carolina Department of Revenue Administrative Expenditures, HB 571

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Salary and Benefits			\$454,194	\$493,618	\$526,394
Supplies Recurring			\$11,110	\$11,442	\$11,724
Postage, Mailing and Coupon Books			\$31,962	\$32,918	\$33,731
Supplies Non-Recurring			\$11,558		
TIMS			\$178,300		
TaxMaster: Create Audit Report Package			\$21,226		
Information Technology			\$3,184		
Subtotal			\$711,534	\$537,978	\$571,850
Less DOR Administrative Allowance			(\$700,000)	(\$500,000)	(\$500,000)
Total Cost			\$11,534	\$37,978	\$71,850

SOURCES OF DATA:

Federal Communications Commission, "Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services," available at: <http://transition.fcc.gov/14report.pdf>.

International Association for the Wireless Telecommunications Industry, "Background on CTIA's Semi-Annual Wireless Industry Survey," available at: http://files.ctia.org/pdf/CTIA_Survey_Year_End_2010_Graphics.pdf.

New Millennium Research Council, "Net10 Prepaid Wireless Consumer Trends National Poll,"
Published November 2010, available at:

http://www.newmillenniumresearch.org/archive/110410_NMRC_Net10_prepaid_trends_survey_report.pdf.

U.S. Census Bureau. 2007 Economic Census. Sector 51: EC0751A1: Information: Geographic Area Series: Summary Statistics for the United States, NAICS 5172102.

North Carolina Department of Revenue

Population projections and inflation data based on Moody's Economy.com projections.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 590

Short Title: Terminal Rental Adjustment Clauses. (Public)

Sponsors: Senators Vaughan; and Bingham.

Referred to: Finance.

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT TERMINAL RENTAL ADJUSTMENT CLAUSES DO NOT
CREATE A SALE OR SECURITY INTEREST IN THE LEASED VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding
a new section to read:

**"§ 20-78.1. Terminal rental adjustment clauses; vehicle leases that are not sales or
security interests.**

**Notwithstanding any other provision of law, a lease transaction does not create a sale or
security interest in a motor vehicle or trailer merely because the lease contains a terminal rental
adjustment clause that provides that the rental price is permitted or required to be adjusted up or
down by reference to the amount of money realized upon the sale or other disposition of the
motor vehicle or trailer."**

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





SENATE BILL 590: Terminal Rental Adjustment Clauses

2011-2012 General Assembly

Committee: House Finance	Date: June 2, 2011
Introduced by: Sen. Vaughan	Prepared by: Greg Roney
Analysis of: First Edition	Committee Counsel

SUMMARY: *Senate Bill 590 would provide that a terminal rental adjustment clause (TRAC) does not create a sale or security interest in a leased vehicle or trailer.*

BACKGROUND: Terminal rental adjustment clauses (TRAC) are used in commercial leases for fleets of motor vehicles. Terminal rental adjustment clauses adjust the rental price based upon the actual sale price of the motor vehicle or trailer at the end of the lease.

BILL ANALYSIS: Senate Bill 590 would provide that lease transactions do not create a sale or security interest in a motor vehicle or trailer because the lease contains a terminal rental adjustment clause.

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

Brenda J. Carter, counsel to Senate Transportation, substantially contributed to this summary.

SS90-SMTM-25(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 409
PROPOSED COMMITTEE SUBSTITUTE H409-CSSV-12 [v.1]

5/2/2011 1:36:19 PM

Short Title: Guilford Tech. May Lease Property.

(Local)

Sponsors:

Referred to:

March 21, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW GUILFORD TECHNICAL COMMUNITY COLLEGE TO LEASE A
3 PORTION OF ITS PROPERTY TO THE NORTH CAROLINA CENTER FOR GLOBAL
4 LOGISTICS.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. Notwithstanding G.S. 115D-15, Article 12 of Chapter 160A of the
7 General Statutes, Chapter 66 of the General Statutes, or any other provision of law, the board of
8 trustees of Guilford Technical Community College may lease at private sale to The North
9 Carolina Center for Global Logistics, LLC, a portion of its land and improvements now or
10 hereafter located on the Donald W. Cameron Campus of Guilford Technical Community
11 College. The terms and conditions of the lease shall be set by the board of trustees of Guilford
12 Technical Community College and may include rental at less than fair market value. The lease
13 shall not be subject to the prior approval of the State Board of Community Colleges.
14 SECTION 2. Notwithstanding G.S. 115D-15 or any other provision of law, the
15 board of trustees of Guilford Technical Community College may use the proceeds of the lease
16 for current operating expenses or for capital outlay purposes.
17 SECTION 3. Notwithstanding G.S. 66-58(a), the personnel and facilities of
18 Guilford Technical Community College may, with the consent of the trustees of the college, be
19 used in support of economic development through the operation of the Donald W. Cameron
20 Campus of Guilford Technical Community College and its companion facilities as an event
21 venue. Proceeds generated shall be used either to pay the operational costs of the college's
22 facilities, to support the event venue, or to support the mission of the college.
23 SECTION 4. This act is effective when it becomes law.





HOUSE BILL 409: Guilford Tech. May Lease Property

2011-2012 General Assembly

Committee:	House Finance	Date:	June 2, 2011
Introduced by:	Reps. Jeffus, Harrison, Adams, Faircloth	Prepared by:	Trina Griffin
Analysis of:	PCS to First Edition H409-CSSV-12		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 409 allows Guilford Technical Community College (GTCC) to lease a portion of its property to the NC Center for Global Logistics at less than market value, use the proceeds of the lease for current operating expenses or for capital outlay purposes, and, with the consent of the GTCC trustees, use the personnel and facilities at GTCC in support of economic development through the operation of the Donald W. Cameron Campus of GTCC and its companion facilities as an event venue.*

CURRENT LAW: G.S. 115D-15 governs the sale, lease, or exchange of real property owned by a community college. The Board of Trustees of a community college may sell, exchange, or lease real property owned or held by the Board with the prior approval of the NC Community Colleges System Office.

Article 12 of G.S. Chapter 160A of the General Statutes applies to the disposal or sale of any real or personal property owned or held by a community college. The proceeds of any sale or lease must be used for capital outlay purposes.

G.S. 66-58 provides that units, departments, and agencies of State government may not engage in the sale of merchandise or services in competition with private enterprise. The statute also provides a number of exceptions to the general rule.

BILL ANALYSIS: Section 1 of House Bill 409 authorizes the board of trustees of Guilford Technical Community College (GTCC) to lease at private sale a portion of its land and improvements located on the Donald W. Cameron Campus to the North Carolina Center for Global Logistics (NCCGL). The terms and conditions of the lease may include rental at less than fair market value.

The NCCGL is a nonprofit economic development organization representing a collaboration between 20 colleges, universities, and community colleges, 14 local and regional economic development agencies, and a multitude of local, regional, national, and international transportation and logistics businesses located in the Piedmont Triad Region.

Section 2 of the bill provides that the proceeds of the lease may be used by the Board for current operating expenses or for capital outlay purposes.

Section 3 of the bill exempts GTCC from the Umstead Act for purposes of allowing the use of its the personnel and facilities, with the consent of the Board, in support of economic development through the operation of the Donald W. Cameron Campus and its facilities as an event venue. Proceeds generated shall be used either to pay the operations cost of GTCC's facilities, to support the event venue, or to support the mission of the college.

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

BACKGROUND: This bill would allow GTCC to partner with the NCCGL to further economic development efforts in the Piedmont Triad Region around the transportation, logistics, and supply chain industry cluster.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 118
PROPOSED HOUSE COMMITTEE SUBSTITUTE S118-CSRbx-47 [v.1]

6/1/2011 5:39:13 PM

Short Title: Downtown Service District Definition.

(Public)

Sponsors:

Referred to:

February 24, 2011

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A BILL TO BE ENTITLED
AN ACT TO EXPAND THE DEFINITION OF DOWNTOWN REVITALIZATION IN THE
MUNICIPAL SERVICE DISTRICT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-536(b) reads as rewritten:

"(b) Downtown Revitalization Defined. - As used in this section "downtown revitalization projects" are improvements, services, functions, promotions, and developmental activities intended to further the public health, safety, welfare, convenience, and economic well-being of the central city or downtown area. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a service district do not prejudice a city's authority to undertake urban renewal projects in the same area. Examples of downtown revitalization projects include by way of illustration but not limitation all of the following:

- (1) improvements - ~~Improvements~~ to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements ~~therefor, the construction~~ easements.
- (2) Construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and ~~off-street, and other improvements~~ off-street.
- (3) Construction of public buildings, restrooms, docks, visitor centers, and tourism facilities.
- (4) Improvements ~~intended~~ to relieve traffic congestion in the central city, city and improve pedestrian and vehicular access ~~thereto, reduce~~ to it.
- (5) Improvements to reduce the incidence of crime ~~therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of crime in the central city.~~
- (6) Providing city services or functions in addition to or to a greater extent than those provided or maintained for the entire city. ~~A downtown revitalization~~



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~~project may also include promotion and developmental activities (such as sponsoring~~
(6) Sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) ~~designed to improve the economic well being of the downtown area and further the public health, safety, welfare, and convenience. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a service district shall not prejudice the city's authority to undertake urban renewal projects in the same area."~~

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



SENATE BILL 118: Downtown Service District Definition

2011-2012 General Assembly

Committee: House Finance	Date: June 1, 2011
Introduced by: Sen. Preston	Prepared by: Cindy Avrette
Analysis of: PCS to First Edition S118-CSRbx-47	Committee Counsel

SUMMARY: *Senate Bill 118 expands the list of examples of improvements authorized in a municipal service district for downtown revitalization to include public buildings, restrooms, docks, visitor centers, and tourism facilities. The bill received a favorable report from the House Government Committee. The Proposed House Committee Substitute rearranges the subsection to put the substantive provisions at the beginning of the subsection and the illustrative list of projects in a list. By putting the projects in a list, it clarifies that the new example included in the list, the construction of various types of facilities, must all be public facilities.*

CURRENT LAW: Article V, Sec. 2(4) of the North Carolina Constitution allows the General Assembly to enact *general* laws authorizing the governing board of a local governmental unit to define territorial areas and to levy additional taxes within those areas to finance a service that is provided to a greater extent in that area than is provided to the entire area of the governmental unit. Based on that provision, Article 23 of Chapter 160A authorizes a city to define a municipal service district and to levy a property tax in that district that is in addition to those levied through the city. A city may incur debt, as allowed under general law, to finance services within a service district. When there is no longer a need for the service district, the district may be abolished.

To create a district, a city must hold a public hearing on a proposed resolution. The resolution must define the service district and find that the area defined is in need of one or more of the services for which a district may be created to a demonstrably greater extent than the remainder of the city. The resolution may become effective at the beginning of a fiscal year. Once a district is created, the city must provide or let contracts for the service for which the residents of the district are being taxed within one year of the effective date of the district.

The purposes for which a service district may be created are many: Beach erosion control and flood and hurricane protection works; any service which the municipality may by law provide, such as placing utility wiring underground; downtown revitalization projects; transit-oriented development projects; drainage projects; sewage collection and disposal systems; lighting at interstate highway interchange ramps; off-street parking facilities; and watershed improvement projects.

BILL ANALYSIS: Senate Bill 118 expands the list of examples of improvements authorized in a municipal service district for downtown revitalization to include public buildings, restrooms, docks, visitor centers, and tourism facilities. The Proposed House Committee Substitute rearranges the subsection that defines "Downtown Revitalization" to separate the definition of the term from the illustrative list of projects that are given as examples of types of projects that may be financed in a service district created for downtown revitalization.

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

S118-SMRB-69(CSRbx-47) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 552
Committee Substitute Favorable 4/21/11
PROPOSED COMMITTEE SUBSTITUTE H552-PCS90116-LB-61

Short Title: Greater Asheville Reg. Airport Authority. (Local)

Sponsors:

Referred to:

March 31, 2011

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A BILL TO BE ENTITLED
AN ACT TO CREATE THE GREATER ASHEVILLE REGIONAL AIRPORT
AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Greater Asheville Regional Airport Authority Act."

SECTION 2. There is hereby created the Greater Asheville Regional Airport Authority, which shall be a body corporate and politic, having the powers, authority, and jurisdiction hereinafter enumerated and such other and additional powers and authority as shall be conferred upon it by future acts of the General Assembly.

SECTION 3. Unless the context requires otherwise, the following definitions apply throughout this act to the defined words and phrases and their cognates:

- (1) "Airport facilities" means airport facilities of all kinds, including, but not limited to, landing fields, hangars, fixed base operations, shops, restaurants and catering facilities, terminals, buildings, and parking facilities and all other facilities necessary, beneficial, and/or helpful for the landing, taking off, operating, servicing, repairing, and parking of aircraft, the loading, unloading, and handling of cargo and mail, express and freight, and the accommodation, convenience, and comfort of crews and passengers, together with related transportation facilities, all necessary, beneficial, and/or helpful appurtenances, machinery, and equipment, and all lands, properties, rights, easements, and franchises relating thereto and considered necessary, beneficial, and/or helpful by the Authority in connection therewith.
- (2) "ARAA member" means a member of the Asheville Regional Airport Authority in existence when this act becomes law.
- (3) "Authority" means the Greater Asheville Regional Airport Authority created by this act or, if such Authority is abolished, the authority, board, body, commission, or other entity succeeding to the principal functions thereof.
- (4) "Member" means an individual who is appointed to the Authority as provided by this act.



1 **SECTION 4.(a)** The Authority shall consist of seven members, (i) one of whom
2 must have experience in aviation, (ii) one of whom must have experience in travel and tourism,
3 and (iii) one of whom must have experience in one or more of marketing, business
4 development, or economic development. In addition, the appointing authorities are encouraged
5 to appoint members who, when practical, have experience in logistics, construction and/or
6 facilities management, law, accounting and/or finance. The seven members shall be appointed
7 as follows:

- 8 (1) Two shall be registered voters of the City of Asheville appointed by the
9 Asheville City Council.
- 10 (2) Two shall be registered voters of the County of Buncombe appointed by the
11 Board of Commissioners of Buncombe County.
- 12 (3) Two shall be registered voters of the County of Henderson appointed by the
13 Board of Commissioners of Henderson County.
- 14 (4) One shall be appointed by majority vote of the other six members.

15 **SECTION 4.(a1)** No person holding any elected public office may be a member of
16 the Authority, provided that if an ARAA member also holds an elective public office when this
17 act becomes effective, that member may serve as a member of the Authority until the
18 completion of the term of elective office and until a successor is appointed and qualified.

19 **SECTION 4.(b)** No person who, at the time of appointment, is transacting business
20 with the Authority or who is reasonably expected to transact business with the Authority, or is
21 an employee, agent, or consultant of an entity transacting or expecting to transact business with
22 the Authority, may be appointed as a member of the Authority, provided this sentence does not
23 apply to a person who is an employee of a public utility which is the sole available supplier for
24 the Authority. No person who, at the time of appointment, is an employee or agent of or
25 consultant to the Authority may be appointed as a member of the Authority.

26 **SECTION 4.(c)** Members of the Authority shall serve four-year terms and may
27 serve up to a total of two successive four-year terms. A member may not be reappointed to the
28 Authority except after a lapse of four years following the most recent term served. In the event
29 a member is appointed to fill an unexpired term, and at least two years of the unexpired term
30 remain to be served, such appointment shall be counted in applying the two-term limit,
31 otherwise it shall not be counted. Notwithstanding the foregoing, those individuals serving as
32 ARAA members as of the effective date of this act may continue to serve as members of the
33 Authority until the completion of their respective then current terms and until their successors
34 are appointed and qualified. In the event an ARAA member resigns or is removed, the
35 appointing authority under the agreement between the County of Buncombe and the City of
36 Asheville shall forthwith appoint a replacement ARAA member to complete the unexpired
37 term. Thereafter, and with respect to the four ARAA members whose terms expire June 30,
38 2012, the Asheville City Council, the Board of Commissioners of Buncombe County, and the
39 Board of Commissioners of Henderson County each shall appoint one member of the
40 Authority, and the other members shall appoint, by majority vote, the fourth member. With
41 respect to the three ARAA members whose terms expire June 30, 2014, the Asheville City
42 Council, the Board of Commissioners of Buncombe County, and the Board of Commissioners
43 of Henderson County each shall appoint one member of the Authority.

44 **SECTION 4.(d)** Any vacancy occurring among the membership of the Authority
45 shall be filled within 60 days after notice thereof by appointment of the appointing authority of
46 a member to serve for the remainder of the unexpired term.

47 **SECTION 4.(e)** Members of the Authority and their successors shall take and
48 subscribe to an oath of office before an officer authorized to administer oaths, which oath shall
49 be filed with the Authority.

50 **SECTION 4.(f)** Any member of the Authority may be suspended or removed from
51 office by that member's appointing authority for cause affecting that member's duties and

1 responsibilities as a member; for misfeasance, malfeasance, or nonfeasance in office; or for
2 conduct tending to undermine any decisions of the Authority, or conduct exposing the
3 Authority to liability for damages.

4 **SECTION 4.(g)** Members of the Authority shall not be personally liable, in any
5 manner, for their acts or omissions as members of the Authority, except for malfeasance.

6 **SECTION 4.(h)** Each member may continue to serve until a successor has been
7 duly appointed and qualified, but not for more than 60 days.

8 **SECTION 5.(a)** The organization and business of the Authority shall be conducted
9 as provided in this act.

10 **SECTION 5.(b)** Members of the Authority shall constitute the governing board of
11 the Authority and may, among other things and from time to time, adopt suitable bylaws, not
12 inconsistent with the provisions of this act.

13 **SECTION 5.(c)** The Authority shall appoint from its members a chair, vice-chair,
14 and such other officers as it may from time to time deem necessary, beneficial, and/or helpful
15 for the orderly conduct of its business. The term of office of the chair and vice-chair is two
16 years, and a chair and vice-chair may not serve more than two successive two-year terms.

17 **SECTION 5.(d)** Each member of the Authority, including the chair, shall have one
18 vote. A majority of the members of the Authority shall constitute a quorum, and all actions of
19 the Authority shall be determined by a majority vote of all the members, that is four votes in
20 favor.

21 **SECTION 5.(e)** The Authority shall hold meetings at least monthly at such times
22 and places as it from time to time may designate and at such other times on the call of the chair
23 or by four members of the Authority. Notice of meetings shall be provided as required by
24 Article 33C of Chapter 143 of the General Statutes. A monthly meeting of the Authority may
25 be cancelled if it is determined by the chair or four members that such meeting is not required.

26 **SECTION 5.(f)** Members may receive payment or reimbursement for travel,
27 lodging, and meal expenses incurred in transacting business on behalf of the Authority.
28 Members may also receive free parking at any airport owned, leased, subleased, or controlled
29 by the Authority, which members may use for official and nonofficial purposes during the
30 respective member's term of office.

31 **SECTION 5.(g)** The fiscal year of the Authority shall begin on July 1 and end on
32 June 30. On or before May 15 of each year, the Authority shall prepare and adopt a proposed
33 budget for the next ensuing fiscal year and deliver copies of such proposed budget to the
34 Buncombe and Henderson County Boards of Commissioners and the Asheville City Council.

35 **SECTION 5.(h)** All meetings and closed sessions of the Authority shall be
36 conducted in accordance with Article 33C of Chapter 143 of the General Statutes as it may be
37 amended or in accordance with any successor statute.

38 **SECTION 6.(a)** The Authority shall constitute a body, both corporate and politic,
39 and shall have the power and authority to do the following:

- 40 (1) Adopt and from time to time revise an official seal.
- 41 (2) Maintain an office or offices at such place or places as it may designate
42 within Buncombe or Henderson Counties only.
- 43 (3) Purchase, acquire, develop, establish, construct, own, control, lease, equip,
44 improve, administer, maintain, operate, and/or regulate airports and/or
45 landing fields for the use of airplanes and other aircraft and all facilities
46 incidental thereto, within the limits of Buncombe and/or Henderson
47 Counties; and for any of such purposes, purchase, acquire, own, develop,
48 hold, lease, sublease, and operate real and/or personal property.
- 49 (4) Purchase real and personal property.
- 50 (5) Sue and be sued in the name of the Authority, to acquire by purchase or
51 otherwise and to hold lands for the purpose of constructing, maintaining,

- 1 and/or helpful operating any airport within the limits of said counties, and to
2 make such contracts and to hold such personal property as may be necessary,
3 beneficial, and/or helpful for the exercise of the powers of the Authority.
4 The Authority may acquire by purchase or otherwise any existing lease,
5 sublease, leasehold right, or other interest in any existing airport facility
6 located in the Counties of Buncombe and/or Henderson.
- 7 (6) Charge and collect fees, royalties, rents, and/or other charges, including fuel
8 flowage fees, for the use and/or occupancy of property owned, leased,
9 subleased, or otherwise controlled or operated by the Authority or for
10 services rendered in the operation thereof.
- 11 (7) Make all reasonable rules, regulations, and policies as it may from time to
12 time deem to be necessary, beneficial, or helpful for the proper maintenance,
13 use, occupancy, operation, and/or control of any airport or airport facility
14 owned, leased, subleased, or controlled by the Authority; provide and
15 enforce civil and criminal penalties for the violation of such rules,
16 regulations, and/or policies; provided that such rules, regulations, policies,
17 and penalties are not in conflict with any applicable law, rule, or regulation
18 of the State of North Carolina, the United States, or any agency, department,
19 or subdivision of either of them, including the rules and regulations of the
20 Federal Aviation Administration.
- 21 (8) Sell, exchange, lease, sublease, or otherwise dispose of, any property, real or
22 personal, belonging to the Authority, or grant easements over, through,
23 under, or across any real property belonging to the Authority, or donate to
24 another governmental entity within this State or to the United States any
25 surplus, obsolete, or unused personal property; provided that Article 12 of
26 Chapter 160A of the General Statutes does not apply and is not applicable to
27 any such sale, exchange, lease, sublease, grant, donation, or other
28 disposition.
- 29 (9) Purchase such insurance and insurance coverages as the Authority may from
30 time to time deem to be necessary, beneficial, or helpful.
- 31 (10) Maintain and/or operate any airport or landing field jointly with any county
32 or counties adjoining either the County of Buncombe or the County of
33 Henderson or both of them and/or with other aviation/airport authority or
34 authorities operating under authorization from one or more adjoining
35 counties and/or any municipality located therein.
- 36 (11) Deposit, invest, and/or reinvest any of its funds as provided by the Local
37 Government Finance Act for the deposit or investment of unit funds.
- 38 (12) Issue revenue bonds and/or refunding bonds pursuant to the Local
39 Government Revenue Bond Act.
- 40 (13) Purchase any of its outstanding bonds or notes.
- 41 (14) Operate, own, lease, sublease, control, regulate, and/or grant to others the
42 right to operate on any airport premises restaurants, snack bars and vending
43 machines, food and beverage dispensing outlets, rental car services, catering
44 services, novelty shops, insurance sales, advertising media, merchandising
45 outlets, motels, hotels, barber shops, automobile parking and storage
46 facilities, automobile service stations, garage service facilities, motion
47 picture shows, personal service establishments, and/or all other types of
48 facilities as may be directly or indirectly related to the maintenance and/or
49 furnishing of the public commercial and/or general aviation airport facilities.
- 50 (15) Accept grants of money and/or materials or property of any kind for any
51 existing or future airport facilities from the State of North Carolina, the

1 United States, or any agency, department, or subdivision of either of them,
2 including the Federal Aviation Administration, or from any private agency,
3 entity, or individual, upon such terms and conditions as may be imposed,
4 and enter into contracts and grants agreements with the Federal Aviation
5 Administration, or any successor or successors thereof, and/or with the State
6 of North Carolina or any of its agencies, departments, or subdivisions in the
7 capacity of sponsor or cosponsor of any airport development project
8 involving the acquisition, construction, development, reconstruction,
9 improvement, extension, enlargement, or equipment of any existing or future
10 airport facilities.

11 (16) Employ and fix the compensation of an airport director, who shall serve at
12 the pleasure of the Authority and who shall manage the affairs of the
13 Authority under the supervision of the Authority.

14 (17) Employ, or provide for the employment of, such employees, including law
15 enforcement officers, as the Authority may from time to time deem to be
16 necessary, beneficial, or helpful. All such employees shall be employees at
17 will, and no such employee shall have a defined or definite term of
18 employment or an expectation of continued employment or an expectation of
19 continued indefinite employment.

20 (18) Employ, hire, retain, or contract with, such accountants, auditors, agents,
21 engineers, attorneys, and other persons and entities whose services may from
22 time to time be deemed by the Authority to be necessary, beneficial, or
23 helpful.

24 (19) Make or cause to be made such surveys, investigations, studies, borings,
25 maps, plans, drawings, and/or estimates of cost and revenues as the
26 Authority may from time to time deem necessary, beneficial, or helpful, and
27 prepare and adopt a comprehensive plan or plans for the location,
28 construction, improvement, and development of any project.

29 (20) Undertake and/or enter into leases, subleases, agreements, easements, and
30 contracts, and/or grant concessions, with respect to alternative energy,
31 energy conservation, energy reduction, and/or renewable energy activities,
32 programs, projects, and/or ventures, and the administration, construction,
33 development, enlargement, equipment, improvement, maintenance,
34 management, operation, regulation, and/or repair thereof.

35 (21) Exercise all of the powers conferred by Chapter 63 of the General Statutes or
36 any successor Chapter or law. In addition, this act shall be broadly construed
37 to include any additional and supplementary powers and authority that may
38 be reasonably necessary, beneficial, helpful, incidental, or expedient to
39 carrying out or performing any express power or authority provided by this
40 act or Chapter 63 of the General Statutes; provided that no such additional or
41 supplementary power may be contrary to any applicable constitutional
42 provision, law, rule, or regulation of this State, the United States, or any
43 agency, department, or subdivision of either of them, including the Federal
44 Aviation Administration.

45 **SECTION 6.(b)** The Authority has the same exemptions with respect to payment
46 of taxes and license fees as provided for municipal corporations by the laws of the State of
47 North Carolina.

48 **SECTION 7.(a)** The Authority is hereby authorized and empowered to acquire
49 from the Counties of Buncombe and Henderson and the City of Asheville, by agreement
50 therewith, and such Counties and City may grant and convey, either by gift or for such
51 consideration as it may be deemed wise, any real and/or personal property which it now owns

1 or may hereafter acquire, and which may be necessary, beneficial, or helpful for the
2 construction, development, operation, and/or maintenance of any airport or facilities of same
3 located in the Counties of Buncombe or Henderson. If the airport ceases to operate or if the
4 Authority is dissolved, any applicable real property of the Counties of Buncombe or Henderson
5 or the City of Asheville conveyed or transferred to the Authority under this act shall revert to
6 the grantor.

7 **SECTION 7.(b)** The County of Buncombe, the County of Henderson, and the City
8 of Asheville shall transfer to the Authority within 90 days after enactment of this act all its
9 right, title, and interest to the property known as the Asheville Regional Airport, except if
10 approval of a federal agency is required, then within 90 days of that approval.

11 **SECTION 7.(c)** Private property needed by the Authority for any airport, landing
12 field, or facility may be acquired by the Authority by gift, devise, or private purchase. Aviation
13 easements needed by the Authority for any airport, landing field, or facility may likewise be
14 acquired by gift, devise, or private purchase. Unless the power of eminent domain is required
15 by federal law or federal regulation, Chapter 40A of the General Statutes does not apply to the
16 Authority, and it may not exercise the power of eminent domain. If a federal law or federal
17 regulation does require the Authority to have the power to exercise eminent domain, it may
18 only do so for public use for an airport purpose or purposes, and any eminent domain
19 proceeding must be authorized jointly by all of the three appointing authorities. In no case,
20 however, may the power of eminent domain be used for purposes not necessary for the
21 operation of the airport, and more specifically no property may be acquired by eminent domain
22 for such uses as hotels, motels, restaurants, or industrial parks.

23 **SECTION 7.(d)** Any lands acquired, owned, controlled, or occupied by the
24 Authority shall and/or are hereby declared to be acquired, owned, controlled, and occupied for
25 a public purpose.

26 **SECTION 7.(e)** The Authority is not authorized to levy any tax.

27 **SECTION 7.(f)** Any claim by Henderson County against the City of Asheville or
28 the current airport authority on account of acquisition of property by either or both of them in
29 Henderson County is extinguished.

30 **SECTION 8.** The Authority shall make annual reports to the Buncombe County
31 Board of Commissioners, the Asheville City Council, and the Henderson County Board of
32 Commissioners setting forth a summary of its general operations and transactions conducted by
33 it pursuant to this act. The Authority shall be regarded as the corporate instrumentality and
34 agent for Buncombe and Henderson Counties and the City of Asheville for the purpose of
35 developing aviation facilities in the Counties of Buncombe and Henderson, but it shall have no
36 power to pledge the credit of the Counties of Buncombe or Henderson or the City of Asheville,
37 or to impose any obligation upon those counties, or the City of Asheville, except and when
38 such power is expressly granted by statute.

39 **SECTION 9.** All rights, powers, and authority given to the counties and/or
40 municipalities by the statutes of North Carolina, which may now be in effect, or which may be
41 enacted in the future, relating to the development, operation, maintenance, regulation, and/or
42 control of municipal or other governmental airports and the regulations of aircraft are hereby
43 vested in the Authority.

44 **SECTION 10.** The Authority is hereby expressly authorized to make and enter into
45 contracts, leases, subleases, conveyances, and other agreements with any political subdivision,
46 agency, department, or instrumentality of this State, any agency, department, or subdivision of
47 the United States, or any other legal entity or person for the purpose of carrying out the
48 provisions of this act.

49 **SECTION 11.** The powers and authority of the Authority created by this act shall
50 be construed liberally in favor of the Authority. No listing of powers and/or authority included
51 in this act is intended to be exclusive or restrictive, and the specific mention of, or failure to

1 mention, any particular power or authority in this act shall not be construed as limiting in any
2 way the general powers and authority of the Authority as stated in Section 6 of this act or
3 elsewhere in this act. It is the intent of this act to grant the Authority full power, authority, and
4 right to exercise all powers and authority necessary, beneficial, helpful, incidental, or expedient
5 for the effective operation and conduct of the Authority. It is further intended that the Authority
6 should have all implied powers and authority necessary, beneficial, helpful, incidental, or
7 expedient to carrying out the express powers and authority and the express purposes for which
8 the Authority is created. The fact that this act specifically states that the Authority possesses a
9 certain power or authority does not mean or imply that the Authority must exercise such power
10 unless this act specifically so requires.

11 **SECTION 12.** G.S. 66-58(a) does not apply to the Greater Asheville Regional
12 Airport Authority or a lessee or sublessee of the Greater Asheville Regional Airport Authority.

13 **SECTION 13.** If any provision of this act or its application is held invalid, the
14 invalidity does not affect other provisions or applications of this act that can be given effect
15 without the invalid provisions or application, and to this end the provisions of this act are
16 severable.

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



HOUSE BILL 552: Greater Asheville Reg. Airport Authority

2011-2012 General Assembly

Committee: House Finance	Date: June 2, 2011
Introduced by: Reps. Moffitt, McGrady	Prepared by: Greg Roney
Analysis of: PCS to Second Edition H552-CSLB-61	Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 552 would create the Greater Asheville Regional Airport Authority and require the Counties of Buncombe and Henderson and the City of Asheville to transfer to the Authority all property known as the Asheville Regional Airport.*

CURRENT LAW: The Asheville Regional Airport is governed by the Asheville Regional Airport Authority (ARAA), created by interlocal agreement, and governed by a Board from Asheville and Buncombe County.

BILL ANALYSIS: The PCS for House Bill 552 would create the Greater Asheville Regional Airport Authority (Authority) to succeed the current Asheville Regional Airport Authority (ARAA). The PCS:

- Provides for a seven member board including:
 - Two members appointed by the Asheville City Council from the registered voters of Asheville.
 - Two members appointed by the Board of Commissioners of Buncombe County from the registered voters of Buncombe County.
 - Two members appointed by the Board of Commissioners of Henderson County from the registered voters of Henderson County.
 - One member appointed by majority vote of the other six members.
 - Members may not hold elected office or conduct business with the Authority.
- Provides for current ARAA members to continue to serve until the completion of their terms.
- Provides that a majority of all members is a quorum, and action requires four votes in favor.
- Sets out the powers of the Authority including:
 - Authority to issue revenue bonds and/or refunding bonds pursuant to the Local Government Revenue Bond Act.
 - Exemption from G.S. 66 58(a) thereby allowing competition with private businesses.
- Denies the Authority the power to tax or exercise the power of eminent domain unless the power of eminent domain is required by federal law or federal regulation. If a federal law requires the Authority to have the power to exercise eminent domain, any eminent domain proceeding must be authorized jointly by all of the three appointing authorities. In no case may the power of eminent domain be used for purposes not necessary for the operation of the airport. No property may be acquired by eminent domain for such uses as hotels, motels, restaurants, or industrial parks.

EFFECTIVE DATE: The PCS is effective when it becomes law.

Giles S. Perry, counsel to House Government, substantially contributed to this summary.

H552-SMTM-27(CSLB-61) v2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

#8

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 552

DATE 6/2/11

S. B. No. _____

Amendment No. 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE PCS-90116-LB-01

(Rep.)
Sen.)

M. Fitt

1 moves to amend the bill on page 3, line 15

2 () WHICH CHANGES THE TITLE

3 by ~~deleting the word "two" and substituting the~~

4 ~~word "four"; and~~

5

6 on page 3, line 16, by rewriting the line to

7 read "years"; and

9 on page 5, line 51, by inserting between the

10 words "consideration" and "as" the phrase

11 "as allowed by federal law and".

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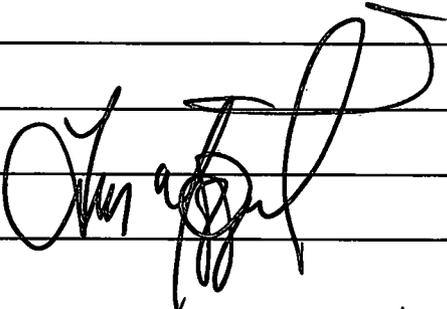
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SIGNED 

ADOPTED FAILED TABLED

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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D

HOUSE BILL 896
PROPOSED COMMITTEE SUBSTITUTE H896-CSSV-24 [v.1]

5/31/2011 7:30:01 PM

Short Title: Facilitate Electronic Listing.

(Public)

Sponsors:

Referred to:

May 5, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO FACILITATE ELECTRONIC LISTING OF PERSONAL PROPERTY FOR
3 PROPERTY TAX PURPOSES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 105-304(a1) and (b)(3) are repealed.

6 SECTION 2. G.S. 105-296(c) reads as rewritten:

7 (c) At least 10 days before the date as of which property is to be listed, ~~he~~ the assessor
8 shall advertise in a newspaper having general circulation in the county and post in at least five
9 public places in each township in the county a notice containing ~~at least the following:~~ all of the
10 items listed in this subsection. If the listing period is extended in any county by the board of
11 county commissioners, the assessor shall advertise in the newspaper in which the original
12 notice was published and post in the same places a notice of the extension and of the times
13 during which and the place or places at which lists will be accepted during the extended period.

14 The items that must be included in the notice are:

- 15 (1) The date as of which property is to be listed.
- 16 (2) The date on which listing will begin.
- 17 (3) The date on which listing will end.
- 18 (4) The times between the date mentioned in subdivision (c)(2), above, and the
- 19 date mentioned in subdivision (c)(3), above, during which lists will be
- 20 accepted.
- 21 (5) The place or places at which lists will be accepted at the times established
- 22 under subdivision (c)(4), above.
- 23 (6) A statement that all persons who, on the date as of which property is to be
- 24 listed, own property subject to taxation must list such property within the
- 25 period set forth in the notice and that any person who fails to do so will be
- 26 subject to the penalties prescribed by law.
- 27 (7) If the county has provided for electronic listing of personal property under
- 28 G.S. 105-310.1, a statement that the county allows electronic listing of
- 29 personal property and the timetable and procedures for electronic listing.

30 ~~If the listing period is extended in any county by the board of county commissioners, the~~
31 ~~assessor shall advertise in the newspaper in which the original notice was published and post in~~
32 ~~the same places a notice of the extension and of the times during which and the place or places~~
33 ~~at which lists will be accepted during the extended period."~~



SECTION 3. G.S. 105-307 reads as rewritten:

"§ 105-307. Length of listing period; extension; preliminary work.

(a) Listing Period. – Unless extended as provided in this section, the period during which property is to be listed for taxation each year begins on the first business day of January and ends on January 31.

(b) General Extensions. – The board of county commissioners may, by resolution, extend the time during which property is to be listed for taxation as provided in this subsection. Any action by the board of county commissioners extending the listing period must be recorded in the minutes of the board, and notice of the extensions must be published as required by G.S. 105-296(c). The entire period for listing, including any extension of time granted, is considered the regular listing period for the particular year within the meaning of this Subchapter.

(1) In nonrevaluation years, the listing period may be extended for up to 30 additional days.

(2) In years of octennial appraisal of real property, the listing period may be extended for up to 60 additional days.

(3) If the county has provided for electronic listing of personal property under G.S. ~~105-304~~, 105-310.1, the period for electronic listing of ~~business~~ personal property may be extended up to June 1. A resolution that provides a general extension of time for the electronic listing of personal property shall continue in effect until revised or rescinded unless otherwise stated in the resolution.

(c) Individual Extensions. – The board of county commissioners shall grant individual extensions of time for the listing of real and personal property upon written request and for good cause shown. The request must be filed with the assessor no later than the ending date of the regular listing period. The board may delegate the authority to grant extensions to the assessor. Extensions granted under this subsection shall not extend beyond April 15. Notwithstanding the individual extension time limitation under this subsection, if the county has provided for electronic listing of personal property under G.S. ~~105-304~~, the period for electronic listing of business personal property is as provided in subsection (b) of this section. 105-310.1, extensions granted for electronic listing of personal property shall not extend beyond June 1.

(d) Preliminary Work. – The assessor may conduct preparatory work before the listing period begins, but may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285."

SECTION 4. Article 17 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-310.1. Electronic listing of personal property.

(a) Personal property may be listed by electronic listing as provided in this section.

(b) The Department of Revenue may establish, after consultation with the counties, the standards and requirements for electronic listing of personal property, including the minimum requirements that must exist before electronic listing will be allowed in a county.

(c) The board of county commissioners may, by resolution, provide for electronic listing of personal property in accordance with the standards and requirements prescribed by the Department of Revenue. The board of county commissioners may, by resolution, delegate its authority to provide for electronic listing of personal property to the county assessor.

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

(1) Electronic listing. – The filing by electronic means of the abstract required by G.S. 105-309 and the affirmation required by G.S. 105-310.

(2) Electronic. – Defined in G.S. 66-312.

SECTION 5. G.S. 105-311 reads as rewritten:

"§ 105-311. ~~Duty to appear for purposes of listing~~Listing and signing affirmation; use of agents and mail, agents, mail, and electronic listing.

(a) Except as otherwise provided in this section, the person whose duty it is to list property for taxation shall ~~appear before~~file the completed abstract with the assessor for purposes of listing and shall sign the affirmation required by G.S. 105-310 to be annexed to the completed abstract on which the property is listed. The abstract must be filed with the assessor on a form approved by the Department of Revenue.

(1) In the case of an individual taxpayer who is unable to list his property, a guardian, authorized agent, or other person having knowledge of and charged with the care of the person and property of the taxpayer shall ~~appear for purposes of listing~~file the completed abstract and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs.

(2) In the case of a corporation, partnership, limited liability company, or unincorporated association, a person specified in ~~subdivision a or subdivision b, sub-subdivision a., b., or c.~~ below, shall ~~appear for purposes of listing the taxpayer's property~~file the completed abstract and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs, and no other agent shall be permitted to sign the affirmation required on such a taxpayer's abstract:

a. A principal officer of the ~~taxpayer or taxpayer.~~

b. A full-time employee of the taxpayer who has been officially empowered by a principal officer of the taxpayer in his behalf to list the taxpayer's property for taxation in the county and to sign the affirmation annexed to the abstract or abstracts on which its property is listed.

c. An agent of the taxpayer authorized by a principal officer of the taxpayer in a manner prescribed by the Department of Revenue.

~~(3) In the case of an individual who is not a resident of the county in which his property is to be listed, the taxpayer shall sign the affirmation required on the abstract on which his property is listed, but he may submit the completed abstract by mail or by an authorized agent.~~

(b) ~~Any abstract submitted by mail may be accepted or rejected by the assessor in the assessor's discretion. However, the board of county commissioners, with the approval of the Department of Revenue, may by resolution provide for the general acceptance of completed abstracts submitted by mail or submitted electronically.~~Abstracts may be submitted in person or by mail. Additionally, if the county has provided for electronic listing of personal property under G.S. 105-310.1, personal property abstracts may be submitted by electronic listing.

(1) Submission by Mail. – In no event shall an abstract submitted by mail be accepted unless the affirmation on the abstract is signed by the individual prescribed in subsection (a) of this section. ~~An electronic listing may be signed electronically in accordance with the Electronic Commerce Act, Article 11A of Chapter 66 of the General Statutes.~~ For the purpose of this Subchapter, abstracts submitted by mail are considered filed as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark, or if the postmark is not affixed by the United States Postal Service, the abstract is considered filed when received in the office of the assessor.

- 1 (2) Submission by Electronic Listing. – In no event shall an abstract submitted
2 by electronic listing be accepted unless the affirmation on the abstract is
3 signed by the individual prescribed in subsection (a) of this section. The
4 affirmation may be signed using an electronic signature method approved by
5 the Department of Revenue. For the purpose of this Subchapter, Abstracts
6 abstracts submitted by electronic listing are considered filed when received
7 in the office of the assessor-assessor as denoted by timestamps applied by
8 the receiving equipment or programs.
- 9 (c) In any dispute arising under this Subchapter, the burden of proof is on the taxpayer
10 to show that the abstract was timely filed."
11 **SECTION 6.** This act is effective when it becomes law.



PCS for HOUSE BILL 896: Facilitate Electronic Listing

2011-2012 General Assembly

Committee:	House Finance	Date:	June 1, 2011
Introduced by:	Rep. Brubaker	Prepared by:	Trina Griffin
Analysis of:	PCS to First Edition H896-CSSV-24		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 896 would authorize the Department of Revenue, in consultation with the counties, to establish standards and requirements for the electronic listing of personal property allowed by counties.*

CURRENT LAW: All property, real and personal, within the jurisdiction of this State is subject to property tax unless it is excluded by statute or exempted by the Constitution. The property must be listed annually. A board of county commissioners may, by resolution, provide for electronic listing of personal property. If a county allows electronic listing of personal property, the assessor must publish this information, including the timetable and procedures for electronic listing.

BILL ANALYSIS:

Section 1 of the bill would repeal the current statutory authority that allows counties to provide for electronic listing of personal property. The bill creates a new statute in its place (see Section 4) that allows counties to provide for electronic listing of personal property only after the Department of Revenue has established standards and minimum requirements.

Section 2 of the bill would require that a county include in the published notice regarding the listing of personal property whether the county allows electronic listing and the timetable and procedures for doing so.

Section 3 of the bill provides that a resolution that includes a general extension of time for the electronic listing of personal property continues to be in effect until the resolution is revised or rescinded. It further provides that if a board grants an individual taxpayer an extension for good cause shown for the electronic listing of personal property, the extension may not extend beyond June 1. Under current law, the period for electronic listing may only be extended to June 1, both generally and in individual cases. Other individual extensions may not extend beyond April 15.

Section 4 of the bill creates a new statute that would authorize the Department of Revenue to establish, upon consultation with the counties, standards and requirements for the electronic listing of personal property. Once the standards have been established, a county may, by resolution, provide for electronic listing. A county may also delegate this authority to the county tax assessor.

Section 5 of the bill would eliminate the requirement that a person with a duty to list property to appear before the assessor and would substitute a requirement to file a completed abstract along with the required affirmation.

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

H896-SMSV-55(CSSV-24) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 384
PROPOSED COMMITTEE SUBSTITUTE H384-CSRBF-46 [v.1]

6/1/2011 3:13:27 PM

Short Title: Register of Deeds/Fees. (Public)

Sponsors:

Referred to:

March 17, 2011

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A BILL TO BE ENTITLED
AN ACT TO SIMPLIFY THE FEES CHARGED FOR REGISTERING INSTRUMENTS
WITH A REGISTER OF DEEDS IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-10 reads as rewritten:

"§ 161-10. Uniform fees of registers of deeds.

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, ~~whether written, printed, or typewritten,~~ the fee shall be ~~twelve dollars (\$12.00)~~ twenty-six dollars (\$26.00) for the first ~~page~~ page–~~15 pages~~ plus three dollars (\$3.00)~~four dollars (\$4.00)~~ for each additional page or fraction thereof.

When a subsequent instrument, as defined in G.S. 161-14.1(a)(3), is presented for registration with reference to more than one original instrument for which recording data are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional twenty-five dollars.(\$25.00) for each additional reference.

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars (\$10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. – For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ~~twenty-eight dollars (\$28.00)~~ fifty-six dollars (\$56.00) for the first ~~page~~ page–~~15 pages~~ plus three dollars (\$3.00)~~four dollars (\$4.00)~~ for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars (\$10.00) for each additional instrument. A deed of trust or mortgage contains



1 one or more additional instruments if such additional instrument or
 2 instruments has or have different legal consequences or intent, each of which
 3 is separately executed and acknowledged and could be recorded alone.

4 For recording records of satisfaction, or the cancellation of record by any
 5 other means, of deeds of trust or mortgages, there shall be no fee....

6 (16) ~~Probate. For verification of proofs and acknowledgements as provided in~~
 7 ~~G.S. 47-14 two dollars (\$2.00).~~

8"

9 SECTION 2. G.S. 161-11.3 reads as rewritten:

10 "§ 161-11.3. Automation Enhancement and Preservation Fund.

11 Ten percent (10%) of the fees collected pursuant to G.S. 161-10 and retained by the county,
 12 or ~~three dollars and twenty cents (\$3.20)~~ six dollars and twenty cents (\$6.20) in the case of a
 13 fee collected pursuant to G.S. 161-10(a)(1a) for the first page of a deed of trust or mortgage,
 14 shall be set aside annually and placed in a nonreverting Automation Enhancement and
 15 Preservation Fund, the proceeds of which shall be expended on computer or imaging
 16 technology and needs associated with the preservation and storage of public records in the
 17 office of the register of deeds. Nothing in this section shall be construed to affect the duty of
 18 the board of county commissioners to furnish supplies and equipment to the office of the
 19 register of deeds."

20 SECTION 3. G.S. 161-11.5 reads as rewritten:

21 "§ 161-11.5. ~~Fees for General Fund support to be remitted to State Treasurer.~~

22 ~~Five dollars (\$5.00)~~ Six dollars and twenty cents (\$6.20) of each fee collected by the register
 23 of deeds ~~for registering or filing a deed of trust or mortgage pursuant to G.S. 161-10(a)(1a)~~
 24 under G.S. 161.10(a)(1) and (a)(1a) shall be remitted by the register of deeds to the county
 25 finance officer, who shall remit the funds to the State Treasurer ~~to be credited to the General~~
 26 ~~Fund as nontax revenue. The county finance officer shall remit the funds to the State Treasurer~~
 27 ~~on a monthly basis.~~ on a monthly basis to be credited as follows:

- 28 (1) Fifty-five percent (55%) to the Floodplain Mapping Fund established under
 29 G.S. 143-215.56A.
 30 (2) Twenty-four percent (24%) to the General Fund as nontax revenue.
 31 (3) Twenty-one percent (21%) to the Department of Cultural Resources to be
 32 used as provided in G.S. 121-5(e)."

33 SECTION 4. G.S. 161-11.4 and G.S. 161-11.6 are repealed.

34 SECTION 5. The Revenue Laws Study Committee must review the effect of the
 35 changes enacted by this act to determine whether they have simplified the collection and
 36 remittance of fees by the Register of Deeds for the filing of various instruments and to study
 37 the effect the fees changes have had on revenue collections in the 100 counties. The Committee
 38 must report its findings to the North Carolina General Assembly and recommend whether the
 39 provisions of this act should sunset as provided in Section 6 of this act.

40 SECTION 6. This act becomes effective October 1, 2011, and applies to
 41 instruments registered on and after that date. The act is repealed July 1, 2013, and applies to
 42 instruments registered on and after that date.



HOUSE BILL 384: Register of Deeds/Fees

2011-2012 General Assembly

Committee: House Finance	Date: June 1, 2011
Introduced by: Reps. Howard, West, Rapp, Wilkins	Prepared by: Cindy Avrette
Analysis of: PCS to First Edition H384-CSRBF-46	Committee Counsel

SUMMARY: *House Bill 384 seeks to simplify the collection and remittance of fees collected by the register of deeds for registering or filing certain instruments. The proposed committee substitute modifies the fee structure in the original bill to more nearly approximate revenue neutrality.*

CURRENT LAW: The filing fees for registering and filing documents with the county register of deeds have traditionally been a local source of revenue for the county's general fund. In recent years, the General Assembly has begun increasing the filing fees for various records and using the increased fee amount for dedicated purposes:

1983	Increased the fee for issuance of a marriage license by \$5 and required \$5 of the fee be credited to the Children's Trust Fund
1991	Increased the fee for issuance of a marriage license by \$20 and required \$30 of the \$40 fee to be credited to the Domestic Violence Center Fund
2001	Increased all of the filing fees and required 10% of the fees to be retained by the county and placed in a nonreverting Automation Enhancement and Preservation Fund, to be used by the county on computer or imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds
2008	Increased the fee for filing deeds of trust and mortgages by \$10 and required \$10 of the fee be credited to the Floodplain Mapping Fund, for the Department of Crime Control and Public Safety
2009	Increased the fee for filing deeds of trust and mortgages by \$6 and required \$5 of the fee be credited to the State General Fund as nontax revenue and a fixed amount of the fee, \$3.20, be credited to the Automation Enhancement and Preservation Fund (instead of 10% of the fee amount as initially enacted in 2001)
2009	Increased the fee for filing a deed by \$5 and required \$5 of the fee be credited to the Department of Cultural Resources to offset the costs of the Archives and Records Management Program

The result of these fee changes is varying fee amounts for different instruments and confusion and complexity for the registers of deeds who must account for the different State ear-markings each month.

BILL ANALYSIS: The PCS for House Bill 348 eliminates the different fee amount for deeds so that once again there are only two filing fees for instruments: one for deeds of trust and mortgages and one for all other instruments. The PCS also establishes a set amount of the fee revenue from those filings that must be remitted to the State Treasurer, \$6.20. It becomes the responsibility of the State to credit the appropriate percentage amount to the different accounts. The percentage distributions reflect the current fixed dollar amounts relationship to the total percent of collections distributed. The new fee range results in 1.46% increase in State collections. The bill also changes the fixed dollar amount of the fee collected to register deeds of trust and mortgages that is retained by the counties for the Automation Enhancement

House PCS 384

Page 2

and Preservation Fund to the amount necessary to hold the counties' Funds harmless: \$6.20. The new fee range results in a 4.25% increase in total collections for counties.

The new fee amounts are as follows:

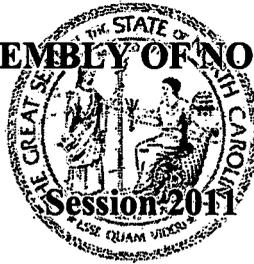
Instrument	Current Fee Amount	Proposed Fee Amount
<i>Instruments in General</i>	\$12 for the first page \$3 for each page thereafter	\$26 for the first 15 pages \$4 for each page thereafter
<i>Deeds</i>	\$17 for the first page \$3 for each page thereafter	Same as Instruments in General
<i>Indexing and filing of Subsequent Instruments</i>	No fee	\$25 for each additional reference
<i>Deeds of Trust and Mortgages</i>	\$28 for the first page \$3 for each page thereafter	\$56 for the first 15 pages \$4 for each page thereafter
<i>Satisfaction of Deeds of Trusts and Mortgages</i>	No fee	No fee; the cost of the satisfaction is included in the original filing
<i>Probate</i>	\$2	No fee

The intent of the bill is to simplify the collection and remittance of fees by the register of deeds, and to do so in a revenue neutral manner for both the State and the counties. For this reason, the bill includes a provision directing the Revenue Laws Study Committee to review the effect of these changes and to report its findings to the General Assembly. The bill also sunsets the changes; the Revenue Laws Study Committee may recommend that the sunset be lifted or retained, based upon its findings

EFFECTIVE DATE: The bill becomes effective October 1, 2011, and expires on July 1, 2013. It applies to instruments registered on and after that date.

H384-SMRB-70(CSRBf-46) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: June 2, 2011
TO: House Finance Committee
FROM: Sandra Johnson
 Fiscal Research Division
RE: Register of Deeds Fees

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
State	\$66,257	\$88,343	\$88,343	\$88,343	\$88,343
Register of Deeds	\$950,745	\$1,267,660	\$1,267,660	\$1,267,660	\$1,267,660
EXPENDITURES:					
POSITIONS					
(cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
County Register of Deeds Offices, North Carolina Department of State Treasurer					
EFFECTIVE DATE: October 1, 2011					

BILL SUMMARY: House Bill 384 simplifies the fee schedule used when filing instruments with the county register of deeds offices. The register of deeds, as defined in Chapter 161 of the North Carolina General Statutes among other capacities serves as the county records keeper. When

documents, licenses and other instruments are filed with the county, the register of deeds utilizes the fee schedule established in G.S. 161-10. House Bill 384 modifies this schedule of fees, creating a uniform fee for all types of instruments contained within G.S. 161-10. The current fees set forth in statute include:

- Deeds of trust, mortgages, cancellation of deeds of trust, and cancellation of mortgages, (\$28.00 fee for the first page, and a \$3.00 fee for each additional page),
- Records of satisfaction (\$0.00 fee), and
- Other instruments (\$ 12.00 for the first page, plus \$3.00 for each additional page).

If enacted, the proposed committee substitute for HB 384 would create uniform fees for all of the aforementioned instruments.

- The fee for deeds of trust would be set at \$56.00 per document for the first 15 pages, and \$4.00 per page for subsequent pages.
- The fee for all other documents would be set at \$26.00 per document for the first 15 pages, and \$4.00 per page for subsequent pages.

The bill also modifies G.S. 161-11.5, the statute defining how the state portion of the fees are allocated, into three funds: 1) the Floodplain Mapping Fund, 2) the Department of Cultural Resources Archives Records Management, and 3) the North Carolina General Fund. Under HB 384, the state would receive \$6.20 from each instrument registered, with 55% of total collections allocated to floodplain mapping, 21% allocated to the Department of Cultural Resources, and 24% allocated to the General Fund.

Should the bill become law, the act would be effective October 1, 2011.

ASSUMPTIONS AND METHODOLOGY: The fees set forth in HB 384 generate an additional \$88,343 in state revenue and an additional \$1.3 million in revenue for county register of deeds offices. This estimate is based on information provided by the North Carolina Association Register of Deeds. The sections below describe: 1) allocation of the additional revenue, 2) the fiscal impact to various state funds, and 3) the methodology used to calculate the fiscal impact.

Allocation of the Additional Revenue

HB 384, if enacted, modifies the fee schedule for registering documents with county register of deeds offices. The proposal generates an additional \$0.08 million per fiscal year in revenue for the state and \$1.3 million for the counties. The additional \$1.3 million would remain within the 100 county offices across North Carolina. The \$0.08 million state surplus would be allocated across three funds: 1) the Floodplain Mapping Fund, 2) the Department of Cultural Resources Archives Records Management Fund, and 3) the North Carolina General Fund. The "Fiscal Impact to Various State Funds" section provides more detail.

Fiscal Impact to Various State Funds

Table 1 provides more detail on the state revenue affected by fee changes under HB 384. The bill modifies G.S. 161-11.5, the state revenue allocated to three funds. Under HB 384, the state receives \$6.20 from each instrument filed at the register of deeds office for a total of \$6.4 million dollars each year. HB 384 modifies the amount of revenue dedicated to the three funds: 1) 55% is allocated to the Floodplain Mapping Fund, 2) 21% is allocated to the Department of Cultural Resources (DCR) Archives Records Management Fund, and 3) 24% is allocated to the North Carolina General Fund. The PCS for HB 384 provides an annual amount of \$3.5 million to floodplain mapping, and \$1.3 million DCR Archives Records Management Fund, and \$1.5 million to the General Fund. Each of the funds, when FY 2009-10 data is adjusted for annual collections, remains whole under the PCS for HB 384.

Table 1. Impact to Various State Funds Associated with Fees in HB 384				
	Citation G.S.	FY 2009-10 Collections*	Percent of Total Collections	FY 2012-13 Collections
Floodplain Mapping Fund	143-215.56A	\$3,354,455	55%	\$3,527,945
DCR, Archives Records Management**	S.L. 2009-451	\$933,852	21%	\$1,309,534
General Fund	161-11.5.56A	\$1,103,900	24%	\$1,547,990
Total		\$5,392,207	100%	\$6,385,469
*2009-10 fiscal year collections for Archives Records Management and the General Fund only represent nine months of collections. These fees were enacted during the 2008-09 session and were fully implemented in October 2009.				
**DCR, Department of Cultural Resources				

Methodology used to Estimate the Fiscal Impact

NCARD representatives asked Fiscal Research staff to propose alternatives that address the shortcomings of the first version of HB 384. The original version of HB 384 proposed a \$30 flat fee per document with \$5 per page/15+ pages. The fee changes generated roughly \$447,462 in additional annual revenue for the state, and an additional \$5.6 million for county register of deeds offices.

NCARD, for the second review of HB 384, provided complete annual collections data from a subset of 17 Registers of Deeds offices, compared to the one month of collections used in the original analysis. The subset of 17 counties included a diverse group, with register of deeds offices varied by size, population, and geographic location.

After review and discussion between Fiscal and NCARD, the groups discounted the data from two counties (Chatham and Surry) as inaccurate or incomplete. The following 15 counties were included in the analysis: 1) Camden, 2) Davidson, 3) Dare, 4) Davie, 5) Forsyth, 6) Gaston, 7) Guilford, 8) Harnett, 9) Mecklenburg, 11) Nash, 12) New Hanover, 13) Perquimans, 14) Sampson and 15) Stokes. These 15 counties account for 32% of all excise stamp conveyances collected in the state.

In addition to seeking a flat fee structure, the new proposal included several goals:

- Revenue neutrality, in total, for both state and county portions.

- Revenue neutrality, by individual county as well.
- Eliminate satisfaction fees, but increase deeds of trust fees to compensate for that.
- Rounded dollar figures, with \$5 increments as the ideal.

Fiscal produced fee structures that approximate these goals. No such structure meets all of the goals perfectly. Each county experiences a different volume of document registrations, so shifting fee structures to a flat option affected each county differently. Also, \$5 increments limited the ability to reach a revenue neutral proposal. The group diverged from goal of developing \$5 increments as well.

The table below represents the Fiscal/NCARD proposal, \$26 for Deeds and General Documents and \$56 for Deeds of Trust, with an additional page charge of \$4 for each page over 15 pages in a particular document. The portion paid to the State from each instrument is \$6.20, with the respective remaining \$19.80 or \$49.80, plus additional page charges, remaining with the county. This results in bottom line increases of 1.46% or \$88,343 in State collections (\$11,718/32%), and a 4.25% increase or \$1,146,283 in total collections for the counties (\$489,081/32%). This also results in no decreases at the individual county level for any counties in our dataset.

Table 2. Comparison of Annual Fees for SELECT Register of Deeds Offices Under HB 384*					
	Current Fee	Proposed Fee	Totals Current	Totals Proposal	Difference
Per Document	\$25.86	\$26/\$56	\$11,287,027	\$11,181,686	(\$105,341)
State	\$4.42	\$6.20	\$1,930,965	\$1,942,683	\$11,718
Register of Deeds	\$21.43	\$23.80	\$9,356,062	\$9,239,003	(\$117,059)
Fee Change: \$4 per additional pages after 15 pages					\$606,140
Register of Deeds Final Difference					\$489,081
*The data represents annual collections for 15 counties. These 15 counties account for 32% of all excise stamp conveyances collected in the state.					

The absence of data from 85 of North Carolina's 100 counties also necessitated that Fiscal Research calculate the statewide impact of HB 384. Fiscal calculated the statewide impact using the revenue associated using the excise stamp on conveyances as a proxy for document filings. Each time property is transferred from one owner to another, the county register of deeds office collects an excise stamp tax for the property being transferred. The excise stamp revenue collected in the 15 counties represents 32% of total North Carolina collections. Since property transfers serve as a proxy for document filings, Fiscal Research assumed that the NCARD data represented 32% of total collections and adjusted the estimate accordingly.

SOURCES OF DATA: North Carolina Association Register of Deeds, North Carolina Office of State Management and Budget, North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

Register of Deeds Financial Status, FY 2009-10			
	Register of Deeds-- Collections	Register of Deeds-- Expenses	Difference
Alamance	\$ 1,053,590	\$ 598,127	\$ 455,463
Alexander	181,370	248,998	(67,628)
Alleghany	168,628	227,107	(58,479)
Anson	116,682	217,224	(100,542)
Ashe	247,212	412,536	(165,324)
Avery	415,082	426,548	(11,466)
Beaufort	323,017	323,391	(374)
Bertie	112,882	259,896	(147,014)
Bladen	0	0	0
Brunswick	3,043,081	2,393,459	649,622
Buncombe	3,828,346	3,085,011	743,335
Burke	458,959	320,572	138,387
Cabarrus	1,465,118	679,620	785,498
Caldwell	317,242	461,770	(144,528)
Camden	109,242	188,556	(79,314)
Carteret	914,804	466,766	448,038
Caswell	160,227	172,724	(12,497)
Catawba	870,362	750,105	120,257
Chatham	699,571	375,699	323,872
Cherokee	449,837	358,390	91,447
Chowan	157,931	181,189	(23,258)
Clay	123,432	180,716	(57,284)
Cleveland	543,399	370,409	172,990
Columbus	301,413	586,228	(284,815)
Craven	995,672	688,791	306,881
Cumberland	2,302,868	1,719,416	583,452
Currituck	745,808	657,081	88,727
Dare	1,008,095	437,973	570,122
Davidson	933,118	486,145	446,973
Davie	290,770	277,853	12,917
Duplin	348,038	413,404	(65,366)
Durham	2,727,187	1,851,436	875,751
Edgecombe	280,276	367,323	(87,047)
Forsyth	2,814,898	1,321,114	1,493,784
Franklin	442,861	331,889	110,972
Gaston	1,353,315	1,005,960	347,355
Gates	58,176	115,496	(57,320)
Graham	69,199	162,093	(92,894)
Granville	374,764	246,426	128,338
Greene	111,383	189,111	(77,728)
Guilford	3,106,388	2,060,119	1,046,269
Halifax	271,657	350,225	(78,568)

Register of Deeds Financial Status, FY 2009-10			
	Register of Deeds-- Collections	Register of Deeds-- Expenses	Difference
Harnett	0	0	0
Haywood	395,479	573,372	(177,893)
Henderson	1,262,686	961,549	301,137
Hertford	105,925	170,314	(64,389)
Hoke	0	0	0
Hyde	76,979	158,503	(81,524)
Iredell	1,499,700	915,490	584,210
Jackson	185,688	333,871	(148,183)
Johnston	1,901,679	1,225,536	676,143
Jones	84,389	106,272	(21,883)
Lee	353,806	304,538	49,268
Lenoir	205,296	303,848	(98,552)
Lincoln	636,011	840,685	(204,674)
Macon	445,913	254,230	191,683
Madison	249,129	289,792	(40,663)
Martin	107,006	243,990	(136,984)
McDowell	198,303	348,336	(150,033)
Mecklenburg	5,519,532	3,110,961	2,408,571
Mitchell	70,668	147,172	(76,504)
Montgomery	160,089	159,360	729
Moore	1,436,060	1,314,868	121,192
Nash	344,149	368,130	(23,981)
New Hanover	924,663	1,026,565	(101,902)
Northampton	77,945	203,871	(125,926)
Onslow	1,905,890	391,323	1,514,567
Orange	1,438,432	1,242,324	196,108
Pamlico	101,986	113,729	(11,743)
Pasquotank	287,079	269,232	17,847
Pender	483,886	253,719	230,167
Perquimans	161,814	221,862	(60,048)
Person	242,954	313,610	(70,656)
Pitt	1,124,855	713,336	411,519
Polk	191,032	175,351	15,681
Randolph	755,538	608,398	147,140
Richmond	219,293	230,588	(11,295)
Robeson	478,411	503,250	(24,839)
Rockingham	524,434	622,083	(97,649)
Rowan	565,022	663,919	(98,897)
Rutherford	468,895	279,937	188,958
Sampson	0	0	0
Scotland	4,878	223,313	(218,435)
Stanly	383,232	301,427	81,805

Register of Deeds Financial Status, FY 2009-10			
	Register of Deeds-- Collections	Register of Deeds-- Expenses	Difference
Stokes	232,025	234,327	(2,302)
Surry	476,745	509,333	(32,588)
Swain	132,107	209,089	(76,982)
Transylvania	234,787	489,674	(254,887)
Tyrrell	21,548	101,915	(80,367)
Union	1,940,370	978,351	962,019
Vance	146,639	255,394	(108,755)
Wake	4,386,872	2,720,666	1,666,206
Warren	135,200	207,256	(72,056)
Washington	64,824	112,419	(47,595)
Watauga	636,214	480,474	155,740
Wayne	1,045,278	762,974	282,304
Wilkes	407,518	367,143	40,375
Wilson	648,793	387,874	260,919
Yadkin	187,962	221,176	(33,214)
Yancey	172,945	182,119	(9,174)
Total	\$ 70,744,453	\$ 54,675,734	\$ 16,068,719

Source: NC Local Government Commission, FY 2009-10, Annual Financial Information Report

NCARD 2010 REAL ESTATE FILINGS: \$26/\$56 FLAT FEE, \$4 PER EXTRA PG

FY09-10 FEES COLLECTED AS REPORTED BY REGISTERS OF DEEDS

		FY09-10 TOTAL FEES COLLECTED	FY09-10 COUNTY PORTION	TOTAL FEES	\$19.80/\$49.80 COUNTY	Increase / (Decrease) in County Portion from FY09-10
CAMDEN	DEED	\$7,339	\$5,849	\$7,748	\$5,900	
	DEED OF TRUST	\$25,863	\$20,283	\$20,832	\$18,528	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$9,803	\$9,803	\$12,818	\$9,761	
	Additional Pages > 15			\$2,268	\$2,268	
TOTALS		\$43,005	\$35,935	\$43,666	\$36,455	1.4%
DAVIDSON	DEED	\$111,321	\$88,011	\$121,212	\$92,308	
	DEED OF TRUST	\$287,571	\$211,656	\$283,416	\$252,038	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$131,212	\$131,212	\$174,226	\$132,680	
	Additional Pages > 15			\$15,396	\$15,396	
TOTALS		\$530,104	\$430,879	\$594,250	\$492,421	14.3%
DARE	DEED	\$87,698	\$68,713	\$98,722	\$75,181	
	DEED OF TRUST	\$231,711	\$184,026	\$178,024	\$158,314	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$96,719	\$96,719	\$130,208	\$99,158	
	Additional Pages > 15			\$30,656	\$30,656	
TOTALS		\$416,128	\$349,458	\$437,610	\$363,309	4.0%
DAVIE	DEED	\$30,708	\$24,543	\$32,058	\$24,413	
	DEED OF TRUST	\$108,861	\$84,096	\$92,456	\$82,220	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$37,129	\$37,129	\$44,902	\$34,195	
	Additional Pages > 15			\$8,156	\$8,156	
TOTALS		\$176,698	\$145,768	\$177,572	\$148,984	2.2%
FORSYTH	DEED	\$227,633	\$179,893	\$248,248	\$189,050	
	DEED OF TRUST	\$848,175	\$648,585	\$745,136	\$662,639	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$272,544	\$272,544	\$349,362	\$266,053	
	Additional Pages > 15			\$59,580	\$59,580	
TOTALS		\$1,348,352	\$1,101,022	\$1,402,326	\$1,177,322	6.9%
GASTON	DEED	\$146,135	\$115,810	\$157,690	\$120,087	
	DEED OF TRUST	\$382,842	\$293,982	\$331,744	\$295,015	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$58,820	\$58,820	\$83,954	\$63,934	
	Additional Pages > 15			\$24,196	\$24,196	
TOTALS		\$587,797	\$468,612	\$597,584	\$503,232	7.4%
GUILFORD	DEED	\$313,424	\$247,159	\$344,578	\$262,409	
	DEED OF TRUST	\$1,128,318	\$878,523	\$932,568	\$829,319	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$404,240	\$404,240	\$539,786	\$411,068	
	Additional Pages > 15			\$90,548	\$90,548	
TOTALS		\$1,845,982	\$1,529,922	\$1,907,480	\$1,593,345	4.1%
HARNETT	DEED	\$101,487	\$79,692	\$113,334	\$86,308	
	DEED OF TRUST	\$331,107	\$260,247	\$264,544	\$235,255	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$127,839	\$127,839	\$168,168	\$128,066	
	Additional Pages > 15			\$36,708	\$36,708	
TOTALS		\$560,433	\$467,778	\$582,754	\$486,338	4.0%

NCARD 2010 REAL ESTATE FILINGS: \$26/\$56 FLAT FEE, \$4 PER EXTRA PG

FY09-10 FEES COLLECTED AS REPORTED BY REGISTERS OF DEEDS

	TYPE OF DOCUMENT	FY09-10 TOTAL FEES COLLECTED	FY09-10 COUNTY PORTION	TOTAL FEES	\$19.80/\$49.80 COUNTY	Increase / (Decrease) in County Portion from FY09-10
MECKLENBURG	DEED	\$609,784	\$479,354	\$678,236	\$516,503	
	DEED OF TRUST	\$2,452,992	\$1,925,397	\$1,969,688	\$1,751,615	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$993,351	\$993,351	\$1,357,122	\$1,033,501	
	Additional Pages > 15			\$256,580	\$256,580	
TOTALS		\$4,056,127	\$3,398,102	\$4,261,626	\$3,558,199	4.7%
NASH	DEED	\$59,954	\$47,449	\$65,026	\$49,520	
	DEED OF TRUST	\$168,771	\$129,381	\$147,056	\$130,775	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$64,124	\$64,124	\$82,316	\$62,687	
	Additional Pages > 15			\$7,608	\$7,608	
TOTALS		\$292,849	\$240,954	\$302,006	\$250,589	4.0%
NEW HANOVER	DEED	\$168,878	\$133,873	\$182,026	\$138,620	
	DEED OF TRUST	\$643,692	\$506,142	\$513,520	\$456,666	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$211,112	\$211,112	\$273,884	\$208,573	
	Additional Pages > 15			\$64,480	\$64,480	
TOTALS		\$1,023,682	\$851,127	\$1,033,910	\$868,339	2.0%
PERQUIMANS	DEED	\$12,903	\$10,218	\$13,952	\$10,633	
	DEED OF TRUST	\$32,634	\$25,134	\$28,000	\$24,900	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$24,215	\$24,215	\$37,154	\$28,294	
	Additional Pages > 15			\$2,108	\$2,108	
TOTALS		\$69,752	\$59,567	\$81,224	\$65,935	10.7%
SAMPSON	DEED	\$47,559	\$37,689	\$51,324	\$39,085	
	DEED OF TRUST	\$83,124	\$62,589	\$76,664	\$68,176	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$40,059	\$40,059	\$55,692	\$42,412	
	Additional Pages > 15			\$3,904	\$3,904	
TOTALS		\$170,742	\$140,337	\$187,584	\$153,577	9.4%
STOKES	DEED	\$33,679	\$26,759	\$35,984	\$27,403	
	DEED OF TRUST	\$80,333	\$68,478	\$81,592	\$72,559	
	SATISFACTIONS	\$0		\$0	\$0	
	MISCELLANEOUS	\$41,364	\$41,364	\$56,706	\$43,184	
	Additional Pages > 15			\$3,952	\$3,952	
TOTALS		\$165,376	\$136,601	\$178,234	\$147,098	7.7%
TOTALS FROM ALL REPORTING COUNTIES		\$11,287,027	\$9,356,062	\$11,787,826	\$9,845,143	



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 384

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H384-ARB-38 [v.3]

Page 1 of 2

Comm. Sub. [YES]
Amends Title [NO]
PCS

Date 6.2, 2011

Representative Stam

1 moves to amend the bill on page 1, line 3, by rewriting the line to read:
2 "WITH A REGISTER OF DEEDS IN THIS STATE AND TO MODIFY THE
3 INSTRUMENT PAGE REQUIREMENTS.";

4
5 And on page 2, lines 39 and 40, by inserting a new section between those lines to read:

6 "SECTION 6. G.S. 161-14(b) reads as rewritten:

7 '(b) All instruments, except instruments conforming to the provisions of G.S. 25-9-521,
8 presented for registration on paper shall meet all of the following requirements:

- 9 (1) Be eight and one-half inches by eleven inches or eight and one-half inches
10 by fourteen inches.
- 11 (2) Have a blank margin of at least three inches at the top of the first page and blank
12 margins of ~~one-half~~ one-quarter inches on the remaining sides of the first
13 page and on all sides of subsequent pages.
- 14 (3) Be typed or printed in black on white paper in a legible font. A font size no
15 smaller than ~~10~~ 9 points shall be considered legible. Blanks in an instrument
16 may be completed in pen and corrections to an instrument may be made in
17 pen.
- 18 (4) Have text typed or printed on one side of a page only.
- 19 (5) State the type of instrument at the top of the first page.

20 If an instrument does not meet these requirements, the register of deeds shall register the
21 instrument after collecting the fee for nonstandard documents as required by G.S.
22 161-10(a)(19) in addition to all other applicable recording fees. However, if an instrument fails
23 to meet the requirements because it contains print in a font size smaller than ~~10~~ 9 points, the
24 register of deeds may register the instrument without collecting the fee for nonstandard
25 documents if, in the discretion of the register of deeds, the instrument is legible.";

26
27 And by renumbering the remaining section accordingly.

*amend the bill on page 2 line 41 by
deleting "the act" and substituting
"except for
Section 6, this act"*



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 384

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

H384-ARB-38 [v.3]

Page 2 of 2

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

#12

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 384

DATE 6.2.2011

S. B. No. _____

Amendment No. 2

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Howard
Sen.)

1 moves to amend the bill on page 2, line 41

2 () WHICH CHANGES THE TITLE
3 by deletion "is repealed" and
4
5 substituting "expires"
6
7

9
10
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19

SIGNED Howard

ADOPTED FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 895
PROPOSED COMMITTEE SUBSTITUTE H895-CSSV-27 [v.4]

6/1/2011 10:58:55 PM

Short Title: Butner Fire & Police District Modifications.

(Public)

Sponsors:

Referred to:

May 5, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO THE BUTNER PUBLIC SAFETY DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-408 reads as rewritten:

"§ 122C-408. ~~Butner Public Safety Division of the Department of Crime Control and Public Safety; Authority; jurisdiction; fire and police district.~~

(a) Authority Established. – There is hereby created an authority known as the Butner Public Safety Authority, which is a body politic and corporate, to provide fire and police protection for the territory of the Butner Reservation.

(a1) Membership. – The authority shall consist of seven voting members, three appointed by the Town of Butner, three appointed by the Secretary of Crime Control and Public Safety, and one appointed by the Granville County Board of Commissioners. The members shall be appointed within 30 days after the establishment of the authority. The initial Director of the authority shall be the Chief of the Butner Public Safety Division of the Department of Crime Control and Public Safety who is serving in that capacity on the day the authority is established. The Director shall be an ex officio, nonvoting member of the authority. No active member of the fire or police forces providing services to the authority may serve as a voting member of the authority. When the officers are elected as herein provided, the secretary of the authority shall certify to the Secretary of State the names and addresses of the officers as well as the address of the principal office of the authority and such certification shall be filed by the Secretary of State in the same manner as articles of incorporation.

(a2) Term of Membership. – One member appointed by the Town of Butner, one member appointed by the Secretary of Crime Control and Public Safety, and the member appointed by the Granville County Board of Commissioners shall serve an initial term of two years. The remaining members shall serve an initial term of four years. The beginning date of each initial term for purposes of reappointment is September 1, 2011. Thereafter, each member shall serve a term of four years.

(a3) Transfer of Property. – Within 30 days after the establishment of the authority, the State shall transfer all real, personal, and mixed assets assigned to or used by the Butner Public Safety Division of the Department of Crime Control and Public Safety to the authority in fee simple absolute.

(a4) Duties and Responsibilities. – The authority shall have the following duties and responsibilities:



- 1 (1) To adopt bylaws for the regulation of its affairs and the conduct of its
2 business.
- 3 (2) To elect officers from among its members in accordance with its bylaws.
- 4 (3) To adopt an official seal and alter the same.
- 5 (4) To maintain an office at such place or places as it may designate.
- 6 (5) To sue and be sued in its own name, plead and be impleaded.
- 7 (6) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend,
8 enlarge, equip, repair, maintain, or operate any property necessary for and
9 incidental to the operation of a fire and police force.
- 10 (7) To make and enter into all contracts and agreements necessary or incidental
11 to the performance of its duties and the execution of its powers under this
12 section, and to employ such employees and agents as may, in the judgment
13 of the authority, be deemed necessary, and to fix their compensation;
14 provided, however, that all such expenses shall be payable solely from funds
15 made available under the provisions of this section.
- 16 (8) To contract with any department of State government or any unit of local
17 government to provide services to the authority.
- 18 (9) To enter into contracts with the government of the United States or any
19 agency or instrumentality thereof, or with any political subdivision, private
20 corporation, copartnership, association, or individual providing for the
21 provision of fire and police services within the Camp Butner Reservation.
- 22 (10) To receive and accept from any federal, State, or other public agency and
23 any private agency, person, or other entity, donations, loans, grants, aid or
24 contributions of any money, property, labor or other things of value for the
25 operation of the authority, and to agree to apply and use the same in
26 accordance with the terms and conditions under which the same are provided
27 if the same are otherwise lawful.
- 28 (11) To provide for the defense of civil and criminal actions and payment of civil
29 judgments against employees and officers or former employees and officers
30 and members or former members of the governing body, as authorized by
31 G.S. 160A-167.
- 32 (12) To periodically review and recommend changes to the operational policy for
33 the authority.
- 34 (13) To develop and adopt an annual budget for the authority which it shall
35 request to be funded by the State and the Town of Butner as set out in this
36 section and to revise the annual budget based on funding actually received
37 and the needs of the authority.
- 38 (14) To do all acts and things necessary or convenient to carry out the powers
39 granted by this section.
- 40 (15) To purchase real or personal property, as provided by G.S. 160A-20 or this
41 Article.

42 (a5) ~~Police and Fire Protection. – The Secretary of Crime Control and Public Safety may~~
43 ~~employ~~ Subject to the provisions of subsection (d) below, the authority shall employ or contract
44 with a State agency or unit of local government for the provision of special police officers for
45 the territory of the Camp Butner Reservation. The Secretary of Crime Control and Public
46 Safety shall contract with the Town of Butner to provide fire and police protection to those
47 areas within the incorporated limits of the Town of Butner. The territorial jurisdiction of these
48 officers shall consist of the property shown on a map produced May 20, 2003, by the
49 Information Systems Division of the North Carolina General Assembly and kept on file in the
50 office of the Butner Town Manager and in the office of the Director of the Butner Public Safety

1 ~~Division of the Department of Crime Control and Public Safety authority~~ and such additional
2 areas which are within the incorporated limits of the Town of Butner as shown on a map to be
3 kept in the office of the Butner Town Manager and in the office of the Director of the Butner
4 ~~Public Safety Division of the Department of Crime Control and Public Safety authority.~~ The
5 ~~Secretary of Crime Control and Public Safety may organize these~~ special police officers
6 assigned to the authority shall be organized into a public safety department for that territory and
7 ~~may establish it as a division within that principal department as permitted by Chapter 143B of~~
8 ~~the General Statutes territory.~~

9 (b) Authority of Special Police Officers. – After taking the oath of office required for
10 law-enforcement officers, the special police officers authorized by this section shall have the
11 authority of deputy sheriffs of Durham and Granville Counties in those counties respectively.
12 Within the territorial jurisdiction stated in subsection (a)(a7) of this section, the special police
13 officers have the primary responsibility to enforce the laws of North Carolina, the ordinances of
14 the Town of Butner, and any rule applicable to the Camp Butner Reservation adopted under
15 authority of this Part or under G.S. 143-116.6 or G.S. 143-116.7 or under the authority granted
16 any other agency of the State and also have the powers set forth for firemen in Articles 80, 82,
17 and 83 of Chapter 58 of the General Statutes. Any civil or criminal process to be served on any
18 individual confined at any State facility within the territorial jurisdiction described in
19 subsection (a)(a7) of this section shall be forwarded by the sheriff of the county in which the
20 process originated to the Director of the ~~Butner Public Safety Division authority.~~ Special police
21 officers authorized by this section shall be assigned to transport any individual transferred to or
22 from any State facility within the territorial jurisdiction described in subsection (a)(a7) of this
23 section to or from the psychiatric service of the University of North Carolina Hospitals at
24 Chapel Hill.

25 (c) Funding. – The authority shall contract with the State to provide fire and police
26 protection to those portions of the Camp Butner Reservation outside of the corporate limits of
27 the Town of Butner. The authority shall also contract with the Town of Butner to provide fire
28 and police protection within the corporate limits of the Town of Butner. The contract between
29 ~~the Town of Butner and the Department of Crime Control and Public Safety contracts~~ shall
30 provide ~~that~~ for the following:

- 31 (1) ~~The Butner Public Safety Division of the Department of Crime Control and~~
32 ~~Public Safety shall provide the same level of service to the incorporated area~~
33 ~~known as the Town of Butner as provided to those areas of the Town of~~
34 ~~Butner served by Butner Public Safety on January 1, 2007;~~ To fund the
35 operations of the authority for the fiscal year beginning July 1, 2011, the
36 State shall pay to the authority the sum of \$1,885,181.00 and the Town of
37 Butner shall pay to the authority the sum of \$1,782,995.00. The authority
38 shall keep detailed time records tracking the amount of time spent providing
39 fire and police protection both within and outside the corporate limits of the
40 Town of Butner. Funding provided by the State pursuant to the contract in
41 subsequent fiscal years shall be a percentage of the total budget set by the
42 authority members determined by multiplying the total budget set by the
43 authority by a fraction, the numerator of which shall be the hours spent by
44 the authority providing services outside of the corporate limits of the Town
45 of Butner and the denominator of which shall be the total hours the authority
46 provided services both within the corporate limits of the Town of Butner and
47 outside the corporate limits of the Town of Butner. The authority may also
48 contract with any department of State government to provide services within
49 the Camp Butner Reservation to that department; provided, however, the
50 contract with such department shall provide enough revenue to fully cover

1 the costs of providing such services, and any receipts or expenditures
2 pursuant to such a contract shall not be considered in setting each party's
3 contribution percentage. The foregoing notwithstanding, neither party's
4 contribution percentage shall increase or decrease more than ten percent
5 (10%) per fiscal year.

6 (2) The State and the Town of Butner each shall pay to the State
7 Treasurer, authority, on or before May-July 1 of each year, for deposit in the
8 General Fund an amount equal to its funding percentage as described in
9 subdivision (1) of this subsection. the amount that actually would have been
10 collected from real and personal property ad valorem taxes due January 5,
11 2007, in the area incorporated as the Town of Butner effective July 1, 2007,
12 assuming a tax of twenty five cents (25¢) per one hundred dollars (\$100.00)
13 valuation of all real and personal property in said area increased effective
14 July 1 of each year by the increase in the percentage change in the Consumer
15 Price Index published by the U.S. Department of Labor, Bureau of Labor
16 Statistics, for the southeast region, all urban consumers (or if that data shall
17 no longer be available, the closest equivalent substitute then in publication
18 by the United States Government) for the previous year ended December
19 31st.

20 (3) If additional areas are added to the incorporated limits of the Town of
21 Butner, the payments due under the contract shall be increased by an amount
22 equal to the amount that actually would have been collected from real and
23 personal property ad valorem taxes due January 5 of the year of
24 incorporation of such area if said incorporation occurs on or before May 1 or
25 the amount collected for the preceding year if said incorporation occurs prior
26 to May 1 of the then current year assuming a tax of twenty five cents (25¢)
27 per one hundred dollars (\$100.00) valuation of all real and personal property
28 in said area and increased yearly as set out above; and

29 (4) The Town of Butner and the Department of Crime Control and Public Safety
30 may by mutual agreement modify the amounts required to be paid by the
31 Town of Butner pursuant to subdivisions (2) and (3) of this subsection.

32 (d) Hiring of Director. – The authority shall contract with the Secretary of Crime
33 Control and Public Safety to provide fire and police protection to the Camp Butner Reservation
34 and the corporate limits of the Town of Butner so long as the Department provides the level of
35 services required by the authority. In such event, the employees of the Department of Crime
36 Control and Public Safety shall remain employees of the State. While the contract between the
37 Secretary of Crime Control and Public Safety and the Town of Butner is in effect, the Secretary
38 of Crime Control and Public Safety shall consult with the voting members of the authority
39 concerning the Department's hiring of the Director of the authority. The consultation shall
40 include, but not be limited to, the voting members of the authority reviewing and providing
41 their comments to the Secretary of Crime Control and Public Safety on the credentials of the
42 applicants for said position. In performing its functions under this subsection, the voting
43 members of the authority shall have the same access to the applicants' personnel records
44 pursuant to Article 7 of Chapter 126 of the General Statutes as the Secretary of Crime Control
45 and Public Safety and are subject to the same restraints concerning the personnel information as
46 set out in that Article. After consultation with the authority, the Secretary of Crime Control and
47 Public Safety shall select and hire the Director of the authority.

48 (e) Dissolution. – In the event that either the Town of Butner or the State fails to pay
49 the authority its percentage share of the authority's budget as described in this section, the
50 nonpaying party shall cease to be a participant in the authority at the expiration of the fiscal

1 year for which it has last paid its percentage share of the budget for the authority. The
2 remaining participant may file a notice with the Secretary of State indicating that it is the sole
3 remaining participant in the authority. All of the property of the authority shall remain with the
4 authority. At the expiration of the fiscal year for which the nonpaying party last paid its
5 percentage share of the budget for the authority or at any time thereafter, the remaining
6 participant in the authority also may file articles of dissolution dissolving the authority with the
7 Secretary of State. In the case of such dissolution, the property of the authority shall be
8 distributed to the remaining party filing the articles of dissolution."

9 **SECTION 2.** G.S. 122C-411 and G.S. 160A-414 are repealed.

10 **SECTION 3.** Chapter 830 of the 1983 Session Laws, as amended by S.L. 2003-
11 346, Section 43.3 of S.L. 2005-276, and Section 14 of S.L. 2007-269, is repealed.

12 **SECTION 4.** G.S. 160A-288(d)(4) reads as rewritten:

13 "(4) Butner Public ~~Safety~~-Safety Authority."

14 **SECTION 5.** G.S. 160A-288.2(d)(3) reads as rewritten:

15 "(3) Butner Public ~~Safety~~-Safety Authority."

16 **SECTION 6.** This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

#14

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 895

DATE 6/2/11

S. B. No. _____

Amendment No. 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE CSSV-27 [v. 4]

Rep.)
Howard
Sen.)

1 moves to amend the bill on page 5, line 9

2 () WHICH CHANGES THE TITLE

3 by deleting "160A-414" and substituting "122C-414"

4 _____

5 _____

6 _____

7 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

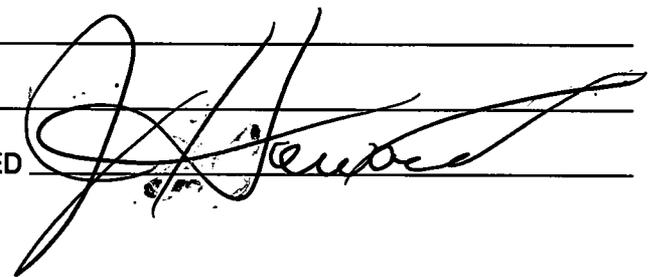
15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED 

ADOPTED FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 289
Committee Substitute Favorable 5/18/11
PROPOSED COMMITTEE SUBSTITUTE H289-CSSVf-26 [v.2]

6/1/2011 9:45:07 PM

Short Title: Authorize Various Special Plates.

(Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE VARIOUS
SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate must display the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted," unless the plate is a special registration plate authorized in G.S. 20-79.4.

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

- (1) Friends of the Great Smoky Mountains National Park.
- (2) Rocky Mountain Elk Foundation.
- (3) Blue Ridge Parkway Foundation.
- (4) Friends of the Appalachian Trail.
- (5) NC Coastal Federation.
- (6) In God We Trust.
- (7) Stock Car Racing Theme.
- (8) Buddy Pelletier Surfing Foundation.
- (9) Guilford Battleground Company.
- (10) National Wild Turkey Federation.
- (11) North Carolina Aquarium Society.



* H 2 8 9 - C S S V F - 2 6 - V - 2 *

- 1 (12) First in Forestry.
- 2 (13) North Carolina Wildlife Habitat Foundation.
- 3 (14) NC Trout Unlimited.
- 4 (15) Ducks Unlimited.
- 5 (16) Lung Cancer Research.
- 6 (17) NC State Parks.
- 7 (18) Support Our Troops.
- 8 (19) US Equine Rescue League.
- 9 (20) Fox Hunting.
- 10 (21) Back Country Horsemen of North Carolina.
- 11 (22) Hospice Care.
- 12 (23) Home Care and Hospice.
- 13 (24) NC Tennis Foundation.
- 14 (25) AIDS Awareness.
- 15 (26) Donate Life.
- 16 (27) Farmland Preservation.
- 17 (28) Travel and Tourism.
- 18 (29) Battle of Kings Mountain.
- 19 (30) NC Civil War.
- 20 (31) North Carolina Zoological Society.
- 21 (32) United States Service Academy.
- 22 (33) Carolina Raptor Center.
- 23 (34) Carolinas Credit Union Foundation.
- 24 (35) North Carolina State Flag.
- 25 (36) NC Mining.
- 26 (37) Coastal Land Trust.
- 27 (38) ARTS NC.
- 28 (39) Choose Life."

29 **SECTION 2.** G.S. 20-79.4 is amended by adding a new subsection to read:

30 "(a3) The Division shall develop, in consultation with the State Highway Patrol and the
 31 Department of Correction, a standardized format for special license plates. The format shall
 32 allow for the license plate number to be easily read by the human eye and by cameras installed
 33 along roadways as part of tolling and speed enforcement. A designated segment of the plate
 34 shall be set aside for unique design representing various groups and interests. Nothing in this
 35 subsection shall be construed to require the recall of existing special license plates."

36 **SECTION 3.** G.S. 20-79.4(b) reads as rewritten:

37 "(b) Types. – The Division shall issue the following types of special registration plates:

38 ...
 39 () American Red Cross. – Issuable to the registered owner of a motor vehicle in
 40 accordance with G.S. 20-81.12. The plate shall bear the phrase "American
 41 Red Cross Saving Lives" and a red cross.

42 ...
 43 () Arthritis Foundation. – Issuable to the registered owner of a motor vehicle in
 44 accordance with G.S. 20-81.12. The plate shall bear the phrase "Let's Move
 45 Together" and a logo selected by The Arthritis Foundation, Inc.

46 ...
 47 () ARTS NC. – Issuable to the registered owner of a motor vehicle in
 48 accordance with G.S. 20-81.12. The plate shall bear the phrase "The
 49 Creative State" with a logo designed by ARTS North Carolina, Inc.

50 ...

- 1 Q Armed Forces Expeditionary Medal Recipient. – Issuable to a recipient of
2 the Armed Forces Expeditionary Medal. The plate shall bear the phrase
3 "Armed Forces Expeditionary Medal" and a representation of the Armed
4 Forces Expeditionary Medal. The Division may not issue the plate
5 authorized by this subdivision unless it receives at least 300 applications for
6 the plate.
7 ...
- 8 (14) Autism Society of North Carolina. – Issuable to the registered owner of a
9 motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the
10 phrase "Autism Society of North Carolina", ~~the phrase "Providing Support,~~
11 ~~Promoting Opportunities"~~, and the logo of the Autism Society.
12 ...
- 13 Q Battle of Kings Mountain. – Issuable to the registered owner of a motor
14 vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase
15 "Battle of Kings Mountain" with a representation of Kings Mountain on it.
16 ...
- 17 Q Blue Knights. – Issuable to a member of the Blue Knights International Law
18 Enforcement Officers Motorcycle Club, Inc. The plate shall bear the emblem
19 of the Blue Knights International Law Enforcement Officers Motorcycle
20 Club, Inc. The Division must receive 300 or more applications for the plate
21 before this plate may be developed. A person may obtain a special
22 registration plate under this subdivision for a motor vehicle or motorcycle
23 registered in that person's name. The registration fees and the restrictions on
24 the issuance of a specialized registration plate for a motorcycle are the same
25 as for any motor vehicle.
26 ...
- 27 Q Boy Scouts of America. – Issuable to the registered owner of a motor vehicle
28 in accordance with G.S. 20-81.12. The plate shall bear the phrase "Boy
29 Scouts of America" and an emblem representing the Boy Scouts of America.
30 ...
- 31 Q Brenner Children's Hospital. – Issuable to the registered owner of a motor
32 vehicle in accordance with G.S. 20-81.12. The plate shall bear the emblem
33 of Wake Forest University Baptist Medical Center's Brenner Children's
34 Hospital.
35 ...
- 36 Q Carolina Raptor Center. – Issuable to the registered owner of a motor vehicle
37 in accordance with G.S. 20-81.12. The plate shall bear the words
38 "Imagination in Flight" and the emblem of the Carolina Raptor Center.
39 ...
- 40 Q Carolina Regional Volleyball Association. – Issuable to the registered owner
41 of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a
42 phrase and logo selected by the Association.
43 ...
- 44 Q Carolinas Credit Union Foundation. – Issuable to the registered owner of a
45 motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the
46 phrase "Carolinas Credit Union Foundation" with an emblem of the
47 Carolinas Credit Union Foundation, Inc.
48 ...
- 49 Q Carolinas Golf Association. – Issuable to the registered owner of a motor
50 vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase

- 1 "Carolinas Golf Association" and an emblem of the Carolinas Golf
2 Association.
- 3 ...
- 4 () Childhood Cancer Awareness. – Issuable to the registered owner of a motor
5 vehicle. The plate shall bear the phrase "Childhood Cancer Hurts" beside the
6 logo of a gold ribbon on the left side of the plate. The Division may not issue
7 the plate authorized by this subdivision unless it receives at least 300
8 applications for the plate.
- 9 ...
- 10 () Choose Life. – Issuable to a registered owner of a motor vehicle in
11 accordance with G.S. 20-81.12. The plate shall bear the phrase "Choose
12 Life."
- 13 ...
- 14 () City/County Clerk. – Issuable to a clerk of a city or town governing board or
15 a clerk of a county board of commissioners, of a city or county in this State.
16 For a city clerk, the plate shall bear the words "City Clerk" followed by a
17 number representing the city clerk's city or town. The number of a city shall
18 be the order of the city in an alphabetical list of cities that assigns number
19 one to the first city in the list. For a county clerk, the plate shall bear the
20 words "County Clerk" followed by a number representing the county clerk's
21 county. The number of a county shall be the order of the county in an
22 alphabetical list of counties that assigns number one to the first county in the
23 list. The Division may not issue the plate authorized by this subdivision
24 unless it receives at least 300 applications for the plate.
- 25 ...
- 26 () Coastal Land Trust. – Issuable to the registered owner of a motor vehicle in
27 accordance with G.S. 20-81.12. The plate shall bear the phrase "Coastal
28 Land Trust" with a logo designed by the North Carolina Coastal Land Trust.
- 29 ...
- 30 () Concerned Bikers Association/ABATE of North Carolina. – Issuable to the
31 registered owner of a motor vehicle or a motorcycle in accordance with
32 G.S. 20-81.12. The plate shall bear the Concerned Bikers Association logo
33 with the phrase "Concerned Bikers Association. The Division must receive
34 300 or more applications for the plate before this plate may be developed. A
35 person may obtain a special registration plate under this subdivision for a
36 motor vehicle or motorcycle registered in that person's name. The
37 registration fees and the restrictions on the issuance of a specialized
38 registration plate for a motorcycle are the same as for any motor vehicle.
- 39 ...
- 40 () Daniel Stowe Botanical Garden. – Issuable to the registered owner of a
41 motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the
42 phrase "Daniel Stowe Botanical Garden" with a logo designed by the Daniel
43 Stowe Botanical Garden Foundation, Inc.
- 44 ...
- 45 () Donate Life. – Issuable to the registered owner of a motor vehicle in
46 accordance with G.S. 20-81.12. The plate shall bear the phrase "Donate
47 Life" with a logo designed by Donate Life North Carolina.
- 48 ...
- 49 () Farmland Preservation. – Issuable to the registered owner of a motor vehicle
50 in accordance with G.S. 20-81.12. The plate shall bear a phrase and picture

1 provided by the Department of Agriculture and Consumer Services
2 appropriate to the subject of farmland preservation.

3 ...
4 () First in Turf. – Issuable to the registered owner of a motor vehicle in
5 accordance with G.S. 20-81.12. The plate shall bear the words "First in
6 Turf."

7 ...
8 () Girl Scouts. – Issuable to the owner of a registered vehicle in accordance
9 with G.S. 20-81.12. The plate shall bear the phrase "Girl Scouts" with an
10 emblem representing the Girl Scouts of the U.S.A.

11 ...
12 () High Point Furniture Market 100th Anniversary. – Issuable to the registered
13 owner of a motor vehicle. The plate shall bear the phrase "High Point
14 Furniture Market 100th Anniversary" and the emblem of the High Point
15 Market. The Division may not issue the plate authorized by this subdivision
16 unless it receives at least 300 applications for the plate.

17 ...
18 () Hollerin'. – Issuable to the registered owner of a motor vehicle. The plate
19 shall bear the phrase "Hollerin'" under a representation of a person hollering
20 on the left side of the plate. The Division may not issue the plate authorized
21 by this subdivision unless it receives at least 300 applications for the plate.

22 ...
23 () Home of American Golf. – Issuable to the registered owner of a motor
24 vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase
25 "Home of American Golf" and include the Pinehurst logo and a
26 representation relating to golf.

27 ...
28 () Jaycees. – Issuable to the registered owner of a motor vehicle in accordance
29 with G.S. 20-81.12. The plate shall bear the phrase "Jaycees" and a logo
30 designed by the North Carolina Jaycees.

31 ...
32 () Legion of Merit. – Issuable to a recipient of the Legion of Merit award. The
33 plate shall bear the emblem and name of the Legion of Merit decoration.

34 ...
35 () Lifetime Sportsman. – Issuable to the registered owner of a motor vehicle.
36 The plate shall bear a picture representing North Carolina Wildlife
37 Resources Commission emblem for a "Lifetime Sportsman." The Division
38 must receive 300 or more applications for a Lifetime Sportsman plate before
39 the plate may be developed.

40 ...
41 (83) Marine Corps League. – Issuable to a member of the Marine Corps League.
42 The plate shall bear the words "Marine Corps League" or the letters "MCL"
43 and the emblem of the Marine Corps League. The Division may not issue the
44 plate authorized by this subdivision unless it receives at least 300–150
45 applications for the plate.

46 ...
47 () Mayor. – Issuable to the mayor of a municipality in this State. The plate
48 shall bear the phrase "Mayor" and the letter "M" followed by a number that
49 indicates the municipality the mayor serves. The number of a municipality
50 shall be the order of the municipality in an alphabetical list of municipalities

1 that assigns number one to the first municipality in the list, except that
 2 municipalities incorporated with an effective date after July 1, 2009, shall be
 3 placed at the end of the list in order of date of incorporation. The Division
 4 may not issue the plate authorized by this subdivision unless it receives at
 5 least 300 applications for the plate.

6 ...
 7 (Q) Mountains-to-Sea Trail. – Issuable to the registered owner of a motor vehicle
 8 in accordance with G.S. 20-81.12. The plate shall bear the phrase
 9 "Mountains-to-Sea Trail" with a background designed by the Friends of the
 10 Mountains-to-Sea Trail, Inc.

11 ...
 12 (Q) Municipal Council. – Issuable to a municipal council member,
 13 commissioner, or alderman of a municipality in this State. The plate shall
 14 bear the words "Council Member," "Commissioner," or "Alderman,"
 15 followed first by a number representing the council member's municipality
 16 and then by a letter or number that distinguishes plates issued to council
 17 members of the same municipality. The number of a municipality shall be
 18 the order of the municipality in an alphabetical list of municipalities that
 19 assigns number one to the first municipality in the list, except that
 20 municipalities incorporated with an effective date after July 1, 2009, shall be
 21 placed at the end of the list in order of date of incorporation. The Division
 22 may not issue the plate authorized by this subdivision unless it receives at
 23 least 300 applications for the plate.

24 ...
 25 (Q) National Defense Service Medal. – Issuable to a recipient of the National
 26 Defense Service Medal. The plate shall bear a replica of the National
 27 Defense Service Medal and the phrase "National Defense Service Medal."
 28 The Division may not issue the plate authorized by this subdivision unless it
 29 receives at least 300 applications for the plate.

30 ...
 31 (95) Native American. – Issuable to the registered owner of a motor vehicle.
 32 Vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an
 33 insignia representing Native Americans. The Division must receive 300 or
 34 more applications for the plate before it may be developed.

35 ...
 36 (Q) NC Beekeepers. – Issuable to the registered owner of a motor vehicle in
 37 accordance with G.S. 20-81.12. The plate shall bear the phrase "NC
 38 Beekeepers" with a logo designed by the North Carolina Beekeepers
 39 Association, Inc.

40 ...
 41 (Q) NC Civil War. – This plate is issuable to the registered owner of a motor
 42 vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase
 43 "Freedom-Sacrifice-Memory" and a logo provided by the North Carolina
 44 Department of Cultural Resources.

45 ...
 46 (Q) NC Fisheries Association. – Issuable to the registered owner of a motor
 47 vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase
 48 "Our Oldest Industry" and the logo of the North Carolina Fisheries
 49 Association.

50 ...

- 1 () NC Horse Council. – Issuable to the registered owner of a motor vehicle in
2 accordance with G.S. 20-81.12. The plate shall bear the phrase "NC Horse
3 Council" and a logo designed by the North Carolina Horse Council, Inc.
4 ...
5 () NC Mining. – Issuable to the registered owner of a motor vehicle in
6 accordance with G.S. 20-81.12. The plate shall bear the phrase "NC Mining"
7 with a logo designed by the North Carolina Gold Foundation, Inc.
8 ...
9 () NC Veterinary Medical Association. – Issuable to a member of the NC
10 Veterinary Medical Association in accordance with G.S. 20-81.12. The plate
11 shall bear the phrase "NC Veterinary Medical Association" with an emblem
12 of the North Carolina Veterinary Medical Association.
13 ...
14 () NC Victim Assistance Network. – Issuable to the registered owner of a
15 motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the
16 emblem of the North Carolina Victim Assistance Network.
17 ...
18 () NC Wildlife Federation. – Issuable to the registered owner of a motor
19 vehicle in accordance with G.S. 20-81.12. The plate shall bear a logo
20 designed by the North Carolina Wildlife Federation, Inc.
21 ...
22 () NC Youth Soccer Association. – Issuable to the registered owner of a motor
23 vehicle in accordance with G.S. 20-81.12. The plate shall bear a logo
24 designed by the NC Youth Soccer Association.
25 ...
26 () North Carolina Emergency Management Association. – Issuable to the
27 registered owner of a motor vehicle in accordance with G.S. 20-81.12. The
28 plate shall bear the phrase "North Carolina Emergency Management" and
29 "www.readync.org."
30 ...
31 () North Carolina Master Gardener. – Issuable to the registered owner of a
32 motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the
33 letters "MG" with a logo representing the North Carolina Master Gardeners.
34 ...
35 () North Carolina State Flag. – Issuable to the registered owner of a motor
36 vehicle. The plate shall bear the image of the flag of the Great State of North
37 Carolina. The letters and numbers shall be black. The Division may not issue
38 the plate authorized by this subdivision unless it receives at least 300
39 applications for the plate.
40 ...
41 (103) North Carolina Wildlife Habitat Foundation. – Issuable to the owner of a
42 motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the
43 logo of the North Carolina Wildlife Habitat Foundation on the left side, side
44 and the background of the entire plate shall be beige or tan color. The
45 numbers or other writing on the plate shall be black and the border shall be
46 black. The plate shall be developed by the Division in consultation with and
47 approved by the North Carolina Wildlife Habitat Foundation. The Division
48 may not issue the plate authorized by this subdivision unless it receives at
49 least 300 applications for the plate.

- 1 ...
2 () Outer Banks Preservation Association. – Issuable to the registered owner of
3 a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a
4 logo designed by the Outer Banks Preservation Association, Inc.
5 ...
6 () P.E.O. Sisterhood. – Issuable to the registered owner of a motor vehicle in
7 accordance with G.S. 20-81.12. The plate shall bear the phrase "P.E.O." and
8 a logo designed by P.E.O. International.
9 ...
10 () Pamlico-Tar River Foundation. – Issuable to the registered owner of a motor
11 vehicle in accordance with G.S. 20-81.12. The plate shall bear the name of
12 the Pamlico-Tar River Foundation.
13 ...
14 () Phi Beta Sigma Fraternity. – Issuable to the registered owner of a motor
15 vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase
16 "Phi Beta Sigma Fraternity" and the logo of the Phi Beta Sigma Fraternity,
17 Inc.
18 ...
19 () Piedmont Airlines. – This plate is issuable to the registered owner of a motor
20 vehicle in accordance with G.S. 20-81.12. The plate authorized by this
21 subdivision shall bear the phrase "PA" and the Piedmont Speed Bird logo.
22 ...
23 (116) Purple Heart Recipient. – Issuable to a recipient of the Purple Heart award.
24 The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded"
25 and the letters "PH". A person may obtain from the Division a special
26 registration plate under this subdivision for the registered owner of a motor
27 vehicle or a motorcycle. A motorcycle plate issued under this subdivision
28 shall bear a depiction of the Purple Heart Medal and the phrase "Purple
29 Heart Veteran, Combat Wounded".
30 ...
31 () Relay for Life. – Issuable to the registered owner of a motor vehicle. The
32 plate shall bear the phrase "Relay for Life" with a logo designed by the
33 American Cancer Society. The Division may not issue the plate authorized
34 by this subdivision unless it receives at least 300 applications for the plate.
35 ...
36 () Ronald McDonald House. – Issuable to the registered owner of a motor
37 vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase
38 "House and Hands" with the words "Ronald McDonald House Charities"
39 below the emblem and the letters "RH."
40 ...
41 () School Board. – Issuable to a school board member in this State. The plate
42 shall bear the words "School Board" followed first by a number representing
43 the school board and then by a letter or number that distinguishes plates
44 issued to members of the same board. The number of a school board shall be
45 the order of the school board in an alphabetical list of school boards that
46 assigns number one to the first school board in the list. The Division may not
47 issue the plate authorized by this subdivision unless it receives at least 300
48 applications for the plate.
49 ...

- 1 Q Sigma Gamma Rho Sorority. – Issuable to the registered owner of a motor
2 vehicle. The plate shall bear the sorority's symbol and name. The Division
3 may not issue the plate authorized by this subdivision unless it receives at
4 least 300 applications for the plate.
5 ...
6 Q Silver Star Recipient/Disabled Veteran. – Issuable to a recipient of the Silver
7 Star who is also a veteran of the Armed Forces of the United States who
8 suffered a one hundred percent (100%) service-connected disability. The
9 plate shall bear the emblem of the Silver Star laid over the universal symbol
10 for the handicapped and the words "Silver Star." For the purposes of a fee
11 for this plate, it shall be treated as a one hundred percent (100%) Disabled
12 Veteran plate.
13 ...
14 Q S.T.A.R. – Issuable to the registered owner of a motor vehicle in accordance
15 with G.S. 20-81.12. The plate shall bear the phrase "For the Love of Horses"
16 and a logo depicting a horse rearing up on its hind legs.
17 ...
18 Q Support NC Education. – Issuable to the registered owner of a motor vehicle
19 in accordance with G.S. 20-81.12. The plate shall bear the phrase "Support
20 NC Education" with a picture of a mortar board hat and a diploma.
21 ...
22 Q Support Soccer. – Issuable to the registered owner of a motor vehicle in
23 accordance with G.S. 20-81.12. The plate shall bear the phrase "Support
24 Soccer" and a logo designed by the North Carolina Soccer Hall of Fame, Inc.
25 ...
26 Q Toastmasters Club. – Issuable to the registered owner of a motor vehicle in
27 accordance with G.S. 20-81.12. The plate shall bear the phrase
28 "Toastmasters" and a logo designed by Toastmasters International.
29 ...
30 Q Topsail Island Shoreline Protection. – Issuable to the registered owner of a
31 motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a
32 phrase and graphic selected by the Topsail Island Shoreline Protection
33 Committee.
34 ...
35 Q Town of Oak Island. – Issuable to the registered owner of a motor vehicle.
36 The plate shall bear the seal of the Town of Oak Island and the letters
37 "OKI." The Division may not issue the plate authorized by this subdivision
38 unless it receives at least 300 applications for the plate.
39 ...
40 Q Travel and Tourism. – Issuable to the registered owner of a motor vehicle in
41 accordance with G.S. 20-81.12. The plate shall bear the phrase
42 "www.visitnc.com."
43 ...
44 (146) U.S. Navy Specialty-Submarine Veteran. – Issuable to a veteran of the
45 United States Navy ~~Submariner-Submarine~~ Service. The plate shall bear the
46 phrase "~~Silent Service~~"United States Navy Submarine Veteran" and shall
47 bear a representation of the Submarine Service Qualification ~~pin~~-insignia
48 overlaid upon a representation of the State of North Carolina. The Division
49 may not issue the plate authorized by this subdivision unless it receives at
50 least ~~300~~150 applications for the plate.

1 ...
 2 () United States Service Academy. – Issuable to a graduate of one of the
 3 service academies, upon furnishing to the Division proof of graduation. The
 4 plate shall bear the name of the specific service academy with an emblem
 5 that designates the specific service academy being represented. The
 6 Division, with the cooperation of each service academy, shall develop a
 7 special plate for each of the service academies. The Division must receive a
 8 combined total of 300 or more applications for all the plates authorized by
 9 this subdivision before a specific service academy plate may be developed.

10 ...
 11 () Victory Junction Gang Camp. – Issuable to the registered owner of a motor
 12 vehicle. The plate may bear the phrase "Victory Junction Gang Camp." The
 13 Division must receive 300 or more applications for the plate before it may be
 14 developed.

15 ...
 16 () Vietnam Veterans of America. – Issuable to a member of the Vietnam
 17 Veterans of America. The plate shall bear the words "Vietnam Veterans of
 18 America" or "VVA" and the emblem of the VVA. The Division may not
 19 issue the plate authorized by this subdivision unless it receives at least 300
 20 applications for the plate.

21 "...."

22 **SECTION 4.** G.S. 20-79.7(a) reads as rewritten:

23 "(a) Fees. – Upon request, the Division shall provide and issue free of charge a single
 24 Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a
 25 recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each
 26 year. The preceding special registration plates are subject to the regular motor vehicle
 27 registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000
 28 pounds. All other special registration plates are subject to the regular motor vehicle registration
 29 fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
<u>American Red Cross</u>	<u>\$30.00</u>
<u>Animal Lovers</u>	<u>\$30.00</u>
<u>Arthritis Foundation</u>	<u>\$30.00</u>
<u>ARTS NC</u>	<u>\$30.00</u>
<u>Back Country Horsemen of NC</u>	<u>\$30.00</u>
<u>Boy Scouts of America</u>	<u>\$30.00</u>
<u>Brenner Children's Hospital</u>	<u>\$30.00</u>
<u>Carolina Raptor Center</u>	<u>\$30.00</u>
<u>Carolinas Credit Union Foundation</u>	<u>\$30.00</u>
<u>Carolinas Golf Association</u>	<u>\$30.00</u>
<u>Coastal Conservation Association</u>	<u>\$30.00</u>
<u>Coastal Land Trust</u>	<u>\$30.00</u>
<u>Crystal Coast</u>	<u>\$30.00</u>
<u>Daniel Stowe Botanical Garden</u>	<u>\$30.00</u>
<u>El Pueblo</u>	<u>\$30.00</u>
<u>Farmland Preservation</u>	<u>\$30.00</u>
<u>First in Forestry</u>	<u>\$30.00</u>
<u>Girl Scouts</u>	<u>\$30.00</u>
<u>Historical Attraction</u>	<u>\$30.00</u>
<u>Home Care and Hospice</u>	<u>\$30.00</u>

1	<u>Home of American Golf</u>	\$30.00
2	HOMES4NC	\$30.00
3	Hospice Care	\$30.00
4	In God We Trust	\$30.00
5	Maggie Valley Trout Festival	\$30.00
6	<u>Mountains-to-Sea Trail</u>	\$30.00
7	<u>NC Civil War</u>	\$30.00
8	<u>NC Coastal Federation</u>	\$30.00
9	<u>NC Veterinary Medical Association</u>	\$30.00
10	National Kidney Foundation	\$30.00
11	North Carolina 4-H Development Fund	\$30.00
12	<u>North Carolina Emergency Management Association</u>	\$30.00
13	North Carolina Libraries	\$30.00
14	<u>Outer Banks Preservation Association</u>	\$30.00
15	<u>P.E.O. Sisterhood</u>	\$30.00
16	<u>Pamlico-Tar River Foundation</u>	\$30.00
17	Personalized	\$30.00
18	<u>Ronald McDonald House</u>	\$30.00
19	Share the Road	\$30.00
20	<u>S.T.A.R.</u>	\$30.00
21	State Attraction	\$30.00
22	Stock Car Racing Theme	\$30.00
23	<u>Support NC Education</u>	\$30.00
24	Support Our Troops	\$30.00
25	<u>Toastmasters Club</u>	\$30.00
26	<u>Topsail Island Shoreline Protection</u>	\$30.00
27	<u>Travel and Tourism</u>	\$30.00
28	AIDS Awareness	\$25.00
29	Buffalo Soldiers	\$25.00
30	<u>Choose Life</u>	\$25.00
31	Collegiate Insignia	\$25.00
32	<u>First in Turf</u>	\$25.00
33	Goodness Grows	\$25.00
34	High School Insignia	\$25.00
35	Kids First	\$25.00
36	Olympic Games	\$25.00
37	National Multiple Sclerosis Society	\$25.00
38	National Wild Turkey Federation	\$25.00
39	NC Agribusiness	\$25.00
40	NC Children's Promise	\$25.00
41	NC Coastal Federation	\$30.00
42	Nurses	\$25.00
43	<u>Olympic Games</u>	\$25.00
44	Rocky Mountain Elk Foundation	\$25.00
45	Special Olympics	\$25.00
46	<u>Support Soccer</u>	\$25.00
47	Surveyor Plate	\$25.00
48	The V Foundation for Cancer Research Division	\$25.00
49	University Health Systems of Eastern Carolina	\$25.00
50	Alpha Phi Alpha Fraternity	\$20.00

1	ALS Association, Jim "Catfish" Hunter Chapter	\$20.00
2	ARC of North Carolina	\$20.00
3	Audubon North Carolina	\$20.00
4	Autism Society of North Carolina	\$20.00
5	<u>Battle of Kings Mountain</u>	<u>\$20.00</u>
6	Be Active NC	\$20.00
7	Brain Injury Awareness	\$20.00
8	Breast Cancer Earlier Detection	\$20.00
9	Buddy Pelletier Surfing Foundation	\$20.00
10	<u>Concerned Bikers Association/ABATE of North Carolina</u>	<u>\$20.00</u>
11	Daughters of the American Revolution	\$20.00
12	<u>Donate Life</u>	<u>\$20.00</u>
13	Ducks Unlimited	\$20.00
14	Greyhound Friends of North Carolina	\$20.00
15	Guilford Battleground Company	\$20.00
16	<u>Harley Owners' Group</u>	<u>\$20.00</u>
17	<u>Jaycees</u>	<u>\$20.00</u>
18	Juvenile Diabetes Research Foundation	\$20.00
19	Harley Owners' Group	\$20.00
20	Litter Prevention	\$20.00
21	March of Dimes	\$20.00
22	<u>Native American</u>	<u>\$20.00</u>
23	<u>NC Fisheries Association</u>	<u>\$20.00</u>
24	<u>NC Horse Council</u>	<u>\$20.00</u>
25	<u>NC Mining</u>	<u>\$20.00</u>
26	NC Tennis Foundation	\$20.00
27	NC Trout Unlimited	\$20.00
28	<u>NC Victim Assistance</u>	<u>\$20.00</u>
29	<u>NC Wildlife Federation</u>	<u>\$20.00</u>
30	NC Wildlife Habitat Foundation	\$20.00
31	<u>NC Youth Soccer Association</u>	<u>\$20.00</u>
32	<u>North Carolina Master Gardener</u>	<u>\$20.00</u>
33	Omega Psi Phi Fraternity	\$20.00
34	<u>Phi Beta Sigma Fraternity</u>	<u>\$20.00</u>
35	<u>Piedmont Airlines</u>	<u>\$20.00</u>
36	Prince Hall Mason	\$20.00
37	Save the Sea Turtles	\$20.00
38	Scenic Rivers	\$20.00
39	School Technology	\$20.00
40	SCUBA	\$20.00
41	Soil and Water Conservation	\$20.00
42	Special Forces Association	\$20.00
43	Support Public Schools	\$20.00
44	US Equine Rescue League	\$20.00
45	Wildlife Resources	\$20.00
46	Zeta Phi Beta Sorority	\$20.00
47	<u>Carolina Regional Volleyball Association</u>	<u>\$15.00</u>
48	Carolina's Aviation Museum	\$15.00
49	Leukemia & Lymphoma Society	\$15.00
50	Lung Cancer Research	\$15.00

1	<u>NC Beekeepers</u>	\$15.00
2	Shag Dancing	\$15.00
3	Active Member of the National Guard	None
4	100% Disabled Veteran	None
5	Ex-Prisoner of War	None
6	Gold Star Lapel Button	None
7	Legion of Valor	None
8	Purple Heart Recipient	None
9	Silver Star Recipient	None
10	All Other Special Plates	\$10.00."

SECTION 5. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) of this section among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>	<u>PRTF</u>	
19	<u>Special Plate</u>				
20	AIDS Awareness	\$10	\$15	0	0
21	Alpha Phi Alpha Fraternity	\$10	\$10	0	0
22	ALS Association, Jim "Catfish"				
23	Hunter Chapter	\$10	\$10	0	0
24	<u>American Red Cross</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
25	Animal Lovers	\$10	\$20	0	0
26	ARC of North Carolina	\$10	\$10	0	0
27	<u>Arthritis Foundation</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
28	<u>ARTS NC</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
29	Audubon North Carolina	\$10	\$10	0	0
30	Autism Society of North				
31	Carolina	\$10	\$10	0	0
32	Back Country Horsemen of NC	\$10	\$20	0	0
33	<u>Battle of Kings Mountain</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>	<u>0</u>
34	Be Active NC	\$10	\$10	0	0
35	<u>Boy Scouts of America</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
36	Brain Injury Awareness	\$10	\$10	0	0
37	Breast Cancer Earlier Detection	\$10	\$10	0	0
38	<u>Brenner Children's Hospital</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
39	Buddy Pelletier Surfing				
40	Foundation	\$10	\$10	0	0
41	Buffalo Soldiers	\$10	\$15	0	0
42	<u>Carolina Raptor Center</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
43	<u>Carolina Regional Volleyball</u>				
44	<u>Association</u>	<u>\$10</u>	<u>\$5</u>	<u>0</u>	<u>0</u>
45	Carolina's Aviation Museum	\$10	\$5	0	0
46	<u>Carolinas Credit Union Foundation</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
47	<u>Carolinas Golf Association</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
48	<u>Choose Life</u>	<u>\$10</u>	<u>\$15</u>	<u>0</u>	<u>0</u>
49	Coastal Conservation				
50	Association	\$10	\$20	0	0

1	<u>Coastal Land Trust</u>	\$10	\$20	0	0
2	<u>Concerned Bikers Association/ABATE</u>				
3	<u>of North Carolina</u>	\$10	\$10	0	0
4	Crystal Coast	\$10	\$20	0	0
5	<u>Daniel Stowe Botanical Gardens</u>	\$10	\$20	0	0
6	Daughters of the American				
7	Revolution	\$10	\$10	0	0
8	<u>Donate Life</u>	\$10	\$10	0	0
9	Ducks Unlimited	\$10	\$10	0	0
10	El Pueblo	\$10	\$20	0	0
11	<u>Farmland Preservation</u>	\$10	\$20	0	0
12	First in Forestry	\$10	\$10	\$10	0
13	<u>First in Turf</u>	\$10	\$15	0	0
14	<u>Girl Scouts</u>	\$10	\$20	0	0
15	Goodness Grows	\$10	\$15	0	0
16	Greyhound Friends of North				
17	Carolina	\$10	\$10	0	0
18	Guilford Battleground				
19	Company	\$10	\$10	0	0
20	Harley Owners' Group	\$10	\$10	0	0
21	High School Insignia	\$10	\$15	0	0
22	Historical Attraction	\$10	\$20	0	0
23	Home Care and Hospice	\$10	\$20	0	0
24	<u>Home of American Golf</u>	\$10	\$20	0	0
25	HOMES4NC	\$10	\$20	0	0
26	Hospice Care	\$10	\$20	0	0
27	In God We Trust	\$10	\$20	0	0
28	In-State Collegiate Insignia	\$10	\$15	0	0
29	<u>Jaycees</u>	\$10	\$10	0	0
30	Juvenile Diabetes Research				
31	Foundation	\$10	\$10	0	0
32	Kids First	\$10	\$15	0	0
33	Leukemia & Lymphoma Society	\$10	\$5	0	0
34	Litter Prevention	\$10	\$10	0	0
35	Lung Cancer Research	\$10	\$5	0	0
36	Maggie Valley Trout Festival	\$10	\$20	0	0
37	March of Dimes	\$10	\$10	0	0
38	<u>Mountains-to-Sea Trail</u>	\$10	\$20	0	0
39	National Kidney Foundation	\$10	\$20	0	0
40	National Multiple Sclerosis				
41	Society	\$10	\$15	0	0
42	National Wild Turkey				
43	Federation	\$10	\$15	0	0
44	<u>Native American</u>	\$10	\$10	0	0
45	NC Agribusiness	\$10	\$15	0	0
46	<u>NC Beekeepers</u>	\$10	\$5	0	0
47	NC Children's Promise	\$10	\$15	0	0
48	<u>NC Civil War</u>	\$10	\$20	0	0
49	NC Coastal Federation	\$10	\$20	0	0
50	NC 4-H Development Fund	\$10	\$20	0	0

1	<u>NC Fisheries Association</u>	\$10	\$10	0	0
2	<u>NC Horse Council</u>	\$10	\$10	0	0
3	<u>NC Mining</u>	\$10	\$10	0	0
4	NC Tennis Foundation	\$10	\$10	0	0
5	NC Trout Unlimited	\$10	\$10	0	0
6	<u>NC Veterinary Medical Association</u>	\$10	\$20	0	0
7	<u>NC Victim Assistance</u>	\$10	\$20	0	0
8	<u>NC Wildlife Federation</u>	\$10	\$10	0	0
9	<u>North Carolina Libraries</u>	\$10	\$20	0	0
10	NC Wildlife Habitat				
11	Foundation	\$10	\$10	0	0
12	<u>NC Youth Soccer Association</u>	\$10	\$10	0	0
13	<u>North Carolina Emergency</u>				
14	<u>Management Association</u>	\$10	\$20	0	0
15	<u>North Carolina Libraries</u>	\$10	\$20	0	0
16	<u>North Carolina Master Gardener</u>	\$10	\$10	0	0
17	Nurses	\$10	\$15	0	0
18	Olympic Games	\$10	\$15	0	0
19	Omega Psi Phi Fraternity	\$10	\$10	0	0
20	Out-of-state Collegiate Insignia	\$10	0	\$15	0
21	<u>Outer Banks Preservation Association</u>	\$10	\$20	0	0
22	<u>P.E.O. Sisterhood</u>	\$10	\$20	0	0
23	<u>Pamlico-Tar River Foundation</u>	\$10	\$20	0	0
24	Personalized	\$10	0	\$15	\$5
25	<u>Phi Beta Sigma Fraternity</u>	\$10	\$10	0	0
26	<u>Piedmont Airlines</u>	\$10	\$10	0	0
27	Prince Hall Mason	\$10	\$10	0	0
28	Rocky Mountain Elk				
29	Foundation	\$10	\$15	0	0
30	<u>Ronald McDonald House</u>	\$10	\$20	0	0
31	Save the Sea Turtles	\$10	\$10	0	0
32	Scenic Rivers	\$10	\$10	0	0
33	School Technology	\$10	\$10	0	0
34	SCUBA	\$10	\$10	0	0
35	Shag Dancing	\$10	\$5	0	0
36	Share the Road	\$10	\$20	0	0
37	Soil and Water Conservation	\$10	\$10	0	0
38	Special Forces Association	\$10	\$10	0	0
39	Special Olympics	\$10	\$15	0	0
40	<u>S.T.A.R.</u>	\$10	\$20	0	0
41	State Attraction	\$10	\$20	0	0
42	Stock Car Racing Theme	\$10	\$20	0	0
43	<u>Support NC Education</u>	\$10	\$20	0	0
44	Support Our Troops	\$10	\$20	0	0
45	Support Public Schools	\$10	\$10	0	0
46	<u>Support Soccer</u>	\$10	\$15	0	0
47	Surveyor Plate	\$10	\$15	0	0
48	The V Foundation for Cancer				
49	Research	\$10	\$15	0	0
50	<u>Toastmasters Club</u>	\$10	\$20	0	0

1	<u>Topsail Island Shoreline Protection</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
2	<u>Travel and Tourism</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
3	University Health Systems of				
4	Eastern Carolina	\$10	\$15	0	0
5	US Equine Rescue League	\$10	\$10	0	0
6	Wildlife Resources	\$10	\$10	0	0
7	Zeta Phi Beta Sorority	\$10	\$10	0	0
8	All other Special Plates	\$10	0	0	0."

9 **SECTION 6.** G.S. 20-81.12(b2) reads as rewritten:

10 "(b2) State Attraction Plates. – The Division must receive 300 or more applications for a
11 State attraction plate before the plate may be developed. The Division must transfer quarterly
12 the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of
13 State attraction plates to the organizations named below in proportion to the number of State
14 attraction plates sold representing that organization:

15 (1) Aurora Fossil Museum. – The revenue derived from the special plate shall
16 be transferred quarterly to the Aurora Fossil Museum Foundation, Inc., to be
17 used for educational programs, for enhancing collections, and for operating
18 expenses of the Aurora Fossil Museum.

19 ~~(1)~~(2) Blue Ridge Parkway Foundation. – The revenue derived from the special
20 plate shall be transferred quarterly to Blue Ridge Parkway Foundation for
21 use in promoting and preserving the Blue Ridge Parkway as a scenic
22 attraction in North Carolina. A person may obtain from the Division a
23 special registration plate under this subdivision for the registered owner of a
24 motor vehicle or a motorcycle. The registration fees and the restrictions on
25 the issuance of a specialized registration plate for a motorcycle are the same
26 as for any motor vehicle. The Division must receive a minimum of 300
27 applications to develop a special registration plate for a motorcycle.

28 ~~(1e)~~(3) Friends of the Great Smoky Mountains National Park. – The revenue derived
29 from the special plate shall be transferred quarterly to the Friends of the
30 Great Smoky Mountains National Park, Inc., to be used for educational
31 materials, preservation programs, capital improvements for the portion of the
32 Great Smoky Mountains National Park that is located in North Carolina, and
33 operating expenses of the Great Smoky Mountains National Park.

34 ~~(1g)~~(4) Friends of the Appalachian Trail. – The revenue derived from the special
35 plate shall be transferred quarterly to The Appalachian Trail Conference to
36 be used for educational materials, preservation programs, trail maintenance,
37 railway and viewshed acquisitions, railway and viewshed easement
38 acquisitions, capital improvements for the portions of the Appalachian Trail
39 and connecting trails that are located in North Carolina, and related
40 administrative and operating expenses.

41 ~~(1i)~~(5) North Carolina State Parks. – One-half of the revenue derived from the
42 special plate shall be transferred quarterly to Natural Heritage Trust Fund
43 established under G.S. 113-77.7, and the remaining revenue shall be
44 transferred quarterly to the Parks and Recreation Trust Fund established
45 under G.S. 113-44.15.

46 (6) "Old Baldy," Bald Head Island Lighthouse. – The revenue derived from the
47 special plate shall be transferred quarterly to the Old Baldy Foundation, Inc.,
48 for its programs in support of the Bald Head Island Lighthouse.

- 1 ~~(1j)~~(7) The North Carolina Aquariums. – The revenue derived from the special plate
2 shall be transferred quarterly to the North Carolina Aquarium Society, Inc.,
3 for its programs in support of the North Carolina Aquariums.
- 4 ~~(1m)~~(8) The North Carolina Arboretum. – The revenue derived from the special
5 plate shall be transferred quarterly to The North Carolina Arboretum Society
6 and used to help the Society obtain grants for the North Carolina Arboretum
7 and for capital improvements to the North Carolina Arboretum.
- 8 ~~(1p)~~(9) The North Carolina Maritime Museum. – The revenue derived from the
9 special plate shall be transferred quarterly to Friends of the Museum, North
10 Carolina Maritime Museum, Inc., to be used for educational programs and
11 conservation programs and for operating expenses of the North Carolina
12 Maritime Museum.
- 13 ~~(1t)~~(10) The North Carolina Museum of Natural Sciences. – The revenue derived
14 from the special plate shall be transferred quarterly to the Friends of the
15 North Carolina State Museum of Natural Sciences for its programs in
16 support of the museum.
- 17 (2)(11) The North Carolina Zoological Society. – The revenue derived from the
18 special plate shall be transferred quarterly to The North Carolina Zoological
19 Society, Incorporated, to be used for educational programs and conservation
20 programs at the North Carolina Zoo at Asheboro and for operating expenses
21 of the North Carolina Zoo at Asheboro.
- 22 (12) U.S.S. North Carolina Battleship Commission. – The revenue derived from
23 the special plate shall be transferred quarterly to the U.S.S. North Carolina
24 Battleship Commission to be used for educational programs and preservation
25 programs on the U.S.S. North Carolina (BB-55) and for operating expenses
26 of the U.S.S. North Carolina Battleship Commission."

27 SECTION 7. G.S. 20-81.12 is amended by adding the following new subsections

28 to read:

29 **(b73) American Red Cross. – The Division must receive 300 or more applications for an**
30 **"American Red Cross" plate before the plate may be developed. The Division must transfer**
31 **quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the**
32 **sale of "American Red Cross" plates to the Triangle Area Chapter of the American Red Cross**
33 **to be used to fund disaster relief, health and safety services, blood services, services to military**
34 **families, capital improvements on facilities located within the State, and related administrative**
35 **and operating costs.**

36 **(b74) ARTS NC. – The Division must receive 300 or more applications for the ARTS NC**
37 **plate before the plate may be developed. The Division must transfer quarterly the money in the**
38 **Collegiate and Cultural Attraction Plate Account derived from the sale of ARTS NC plates to**
39 **ARTS North Carolina, Inc., to provide funding to promote the arts in North Carolina.**

40 **(b75) Arthritis Foundation. – The Division must receive 300 or more applications for an**
41 **Arthritis Foundation plate before the plate may be developed. The Division shall transfer**
42 **quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the**
43 **sale of Arthritis Foundation plates to The Arthritis Foundation, Inc., to fund arthritis research**
44 **grants.**

45 **(b76) Battle of Kings Mountain. – The Division must receive 300 or more applications for**
46 **the "Battle of Kings Mountain" plate before the plate may be developed. The Division shall**
47 **transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived**
48 **from the sale of "Battle of Kings Mountain" plates by transferring fifty percent (50%) to the**
49 **Kings Mountain Tourism Development Authority and fifty percent (50%) to Kings Mountain**

1 Gateway Trails, Inc., to be used to develop tourism to the area and provide safe and adequate
2 trails for visitors to the park.

3 (b77) Battleship North Carolina. – The Division must receive 300 or more applications for
4 the "Battleship North Carolina" plate before the plate may be developed. The Division must
5 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
6 from the sale of "Battleship North Carolina" plates to the U.S.S. North Carolina Battleship
7 Commission to provide funding for information and education about the role of the Battleship
8 U.S.S. North Carolina in history and for administrative and operating costs of the U.S.S. North
9 Carolina Battleship Commission.

10 (b78) Boy Scouts of America. – The Division must receive 300 or more applications for
11 the "Boy Scouts of America" plate before the plate may be developed. The Division shall
12 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
13 from the sale of "Boy Scouts of America" plates to the Old Hickory Council of the Boy Scouts
14 of America, where the proceeds will be divided equally among the Boy Scouts of America
15 Councils in this State to be used for educational programs, preservation programs, capital
16 improvements on facilities located in this State, and related administrative and operating
17 expenses.

18 (b79) Brenner Children's Hospital. – The Division must receive 300 or more applications
19 for the "Brenner Children's Hospital" plate before the plate may be developed. The Division
20 shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account
21 derived from the sale of "Brenner Children's Hospital" plates to the NCBH Special
22 Purpose-Pediatric Unit Fund to provide funding for Brenner Children's Hospital.

23 (b80) Carolina Raptor Center. – The Division must receive 300 or more applications for a
24 "Carolina Raptor Center" plate before the plate may be developed. The Division must transfer
25 quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the
26 sale of "Carolina Raptor Center" plates to the Carolina Raptor Center to be used for educational
27 materials, preservation programs, capital improvements for the Carolina Raptor Center, and
28 operating expenses of the Carolina Raptor Center.

29 (b81) Carolina Regional Volleyball Association. – The Division must receive 300 or more
30 applications for the "Carolina Regional Volleyball Association" plate before the plate may be
31 developed. The Division must transfer quarterly the money in the Collegiate and Cultural
32 Attraction Plate Account derived from the sale of the "Carolina Regional Volleyball
33 Association" plates to the Carolina Regional Volleyball Association to promote and develop the
34 sport of volleyball throughout North Carolina.

35 (b82) Carolinas Credit Union Foundation. – The Division must receive 300 or more
36 applications for the "Carolinas Credit Union Foundation" plate before the plate may be
37 developed. The Division shall transfer quarterly the money in the Collegiate and Cultural
38 Attraction Plate Account derived from the sale of "Carolinas Credit Union Foundation" plates
39 to the Carolinas Credit Union Foundation, Inc., for youth-focused programs.

40 (b83) Carolinas Golf Association. – The Division must receive 300 or more applications
41 for the "Carolinas Golf Association" plate before the plate may be developed. The Division
42 shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account
43 derived from the sale of "Carolinas Golf Association" plates to the Carolinas Golf Association
44 to be used to promote amateur golf in North Carolina.

45 (b84) Choose Life. – The Division must receive 300 or more applications for a "Choose
46 Life" plate before the plate may be developed. The Division shall transfer quarterly the money
47 in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Choose Life"
48 plates to the Carolina Pregnancy Care Fellowship, which shall distribute the money annually to
49 nongovernmental, not-for-profit agencies that provide pregnancy services that are limited to
50 counseling and/or meeting the physical needs of pregnant women. Funds received pursuant to

1 this section shall not be distributed to any agency, organization, business, or other entity that
2 provides, promotes, counsels, or refers for abortion and shall not be distributed to any entity
3 that charges women for services received.

4 (b85) Coastal Land Trust. – The Division must receive 300 or more applications for the
5 "Coastal Land Trust" plate before the plate may be developed. The Division shall transfer
6 quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the
7 sale of the "Coastal Land Trust" plates to the North Carolina Coastal Land Trust to be used to
8 acquire open space and natural areas, to ensure conservation education, to promote good land
9 stewardship, to set aside lands for conservation, and for other administrative and operating
10 costs.

11 (b86) Concerned Bikers Association/ABATE of North Carolina. – The Division must
12 receive 300 or more applications for the "Concerned Bikers Association/ABATE of North
13 Carolina" plate before the plate may be developed. The Division shall transfer quarterly the
14 money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the
15 "Concerned Bikers Association/ABATE of North Carolina" plates to the Department of Public
16 Instruction to support the driver training and safety education program established pursuant to
17 G.S. 115C-215 and to support motorcycle safety and awareness training as part of the driver
18 training program.

19 (b87) Daniel Stowe Botanical Garden. – The Division must receive 300 or more
20 applications for the "Daniel Stowe Botanical Garden" plate before the plate may be developed.
21 The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate
22 Account derived from the sale of "Daniel Stowe Botanical Garden" plates to the Daniel Stowe
23 Botanical Garden Foundation, Inc., to provide funding for the Daniel Stowe Botanical Garden
24 outreach program.

25 (b88) Donate Life. – The Division must receive 300 or more applications for the "Donate
26 Life" plate before the plate may be developed. The Division must transfer quarterly the money
27 in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Donate Life"
28 plates to Donate Life North Carolina to be divided equally among Donate Life North Carolina
29 and each of the transplant centers in North Carolina to include Bowman Gray Medical Center,
30 Carolinas Medical Center, Duke University, East Carolina University, and the University of
31 North Carolina at Chapel Hill. The transplant centers shall use all of the proceeds received from
32 this plate to provide funding for expenses incurred by needy families, recipients, and expenses
33 related to organ donation.

34 (b89) Farmland Preservation. – The Division must receive 300 or more applications for
35 the "Farmland Preservation" plate before the plate may be developed. The Division must
36 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
37 from the sale of "Farmland Preservation" plates to the North Carolina Agricultural
38 Development and Farmland Preservation Trust Fund established pursuant to G.S. 106-744.

39 (b90) First in Turf. – The Division must receive 300 or more applications for the "First in
40 Turf" plate before the plate may be developed. The Division shall transfer quarterly the money
41 in the Collegiate and Cultural Attraction Plate Account derived from the sale of "First in Turf"
42 plates to the Center for Environmental Turfgrass Research at North Carolina State University
43 for its programs.

44 (b91) Girl Scouts. – The Division must receive 300 or more applications for the "Girl
45 Scouts" plate before the plate may be developed. The Division shall transfer quarterly the
46 money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "Girl
47 Scouts" plates to the Girl Scouts North Carolina Coastal Pines, where the proceeds will be
48 divided equally among the officially chartered Girl Scout Councils in this State to be used for
49 educational programs, preservation programs, capital improvements on facilities located in this
50 State, and related administrative and operating expenses.

1 **(b92) Home of American Golf.** – The Division must receive 300 or more applications for
2 the "Home of American Golf" plate before the plate may be developed. The Division must
3 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
4 from the sale of "Home of American Golf" plates to the Given Memorial Library, Inc., to
5 provide funding for the Given Memorial Library – The Tufts Archives.

6 **(b93) Jaycees.** – The Division must receive 300 or more applications for the "Jaycees"
7 plate before the plate may be developed. The Division shall transfer quarterly the money in the
8 Collegiate and Cultural Attraction Plate Account derived from the sale of "Jaycees" plates to
9 the North Carolina JCI Senate, Inc., to be used to support and underwrite Jaycee activities in
10 North Carolina.

11 **(b94) Mountains-to-Sea Trail.** – The Division must receive 300 or more applications for
12 the "Mountains-to-Sea Trail" plate before the plate may be developed. The Division shall
13 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
14 from the sale of "Mountains-to-Sea Trail" plates to the Friends of the Mountains-to-Sea Trail,
15 Inc., to be used to fund trail projects and related administrative and operating expenses.

16 **(b95) Native American.** – The Division must receive 300 or more applications for the
17 "Native American" plate before the plate may be developed. The Division shall transfer
18 quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the
19 sale of Native American plates to the Native American College Fund for scholarships to be
20 awarded to Native American students from North Carolina.

21 **(b96) NC Beekeepers.** – The Division must receive 300 or more applications for the "NC
22 Beekeepers" plate before the plate may be developed. The Division shall transfer quarterly the
23 money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC
24 Beekeepers" plates to North Carolina State University for research on the importance of bees to
25 agriculture and the State's agricultural economy.

26 **(b97) NC Civil War.** – The Division must receive 300 or more applications for the "NC
27 Civil War" plate before the plate may be developed. The Division must transfer quarterly the
28 money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC
29 Civil War" plates to the North Carolina Department of Cultural Resources, Division of
30 Archives and History, to provide funding to acquire, interpret, and preserve North Carolina's
31 Civil War history.

32 **(b98) NC Fisheries Association.** – The Division must receive 300 or more applications for
33 a "NC Fisheries Association" plate before the plate may be developed. The Division must
34 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
35 from the sale of "NC Fisheries Association" plates to the NC Fisheries Association to facilitate
36 the promotion of North Carolina families, heritage, and seafood through accessible data about
37 the ever-changing commercial fishing industry.

38 **(b99) NC Horse Council.** – The Division must receive 300 or more applications for the
39 "NC Horse Council" plate before the plate may be developed. The Division shall transfer
40 quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the
41 sale of "NC Horse Council" plates to the North Carolina Horse Council, Inc., to promote and
42 enhance the equine industry in North Carolina.

43 **(b100) NC Mining.** – The Division must receive 300 or more applications for the "NC
44 Mining" plate before the plate may be developed. The Division must transfer quarterly the
45 money in the Collegiate and Cultural Attraction Plate Account derived from the sale of "NC
46 Mining" plates to the North Carolina Gold Foundation, Inc., to provide funding for information
47 and education about mining in North Carolina.

48 **(b101) NC Veterinary Medical Association.** – The Division must receive 300 or more
49 applications for the "NC Veterinary Medical Association" plate before the plate may be
50 developed. The Division shall transfer quarterly the money in the Collegiate and Cultural

1 Attraction Plate Account derived from the sale of "NC Veterinary Medical Association" plates
2 to the Friends of NCVMA Foundation, Inc., to be used to provide compassionate, quality health
3 care for all animals, to protect the health of the public, to strengthen the human-animal bond,
4 and to provide advanced continuing education for the public.

5 (b102) NC Victim Assistance Network. – The Division must receive 300 or more
6 applications for a "NC Victim Assistance Network" plate before the plate may be developed.
7 The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate
8 Account derived from the sale of "NC Victim Assistance Network" plates to the NC Victim
9 Assistance Network to support the mission of the NC Victim Assistance Network to provide
10 support and information for crime victims across the State and to advocate for their fair
11 treatment.

12 (b103) NC Wildlife Federation. – The Division must receive 300 or more applications for
13 the "NC Wildlife Federation" plate before the plate may be developed. The Division shall
14 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
15 from the sale of "NC Wildlife Federation" plates to the North Carolina Wildlife Federation,
16 Inc., to provide funding for a grassroots program to involve anglers, hunters, and wildlife
17 enthusiasts in conservation issues affecting North Carolina.

18 (b104) NC Youth Soccer Association. – The Division must receive 300 or more
19 applications for the "NC Youth Soccer Association" plate before the plate may be developed.
20 The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate
21 Account derived from the sale of "NC Youth Soccer Association" plates to the North Carolina
22 Youth Soccer Association to be used to promote the sport of soccer in North Carolina.

23 (b105) North Carolina Emergency Management Association. – The Division must receive
24 300 or more applications for the "North Carolina Emergency Management Association" plate
25 before the plate may be developed. The Division shall transfer quarterly the money in the
26 Collegiate and Cultural Attraction Plate Account derived from the sale of "North Carolina
27 Emergency Management Association" plates to the North Carolina Emergency Management
28 Association to be used for training and education purposes.

29 (b106) North Carolina Master Gardener. – The Division must receive 300 or more
30 applications for the "North Carolina Master Gardener" plate before the plate may be developed.
31 The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate
32 Account derived from the sale of "North Carolina Master Gardener" plates to the Master
33 Gardener's Endowment Fund maintained by the Agricultural Foundation of North Carolina
34 State University, to be used for educational programs by trained volunteers who work in
35 partnership with their county Cooperative Extension offices to extend information in consumer
36 horticulture.

37 (b107) Outer Banks Preservation Association. – The Division must receive 300 or more
38 applications for an "Outer Banks Preservation Association" plate before the plate may be
39 developed. The Division must transfer quarterly the money in the Collegiate and Cultural
40 Attraction Plate Account derived from the sale of "Outer Banks Preservation Association"
41 plates to the Outer Banks Preservation Association to facilitate the protection of the public's
42 right to access beaches in North Carolina.

43 (b108) Pamlico-Tar River Foundation. – The Division must receive 300 or more
44 applications for the "Pamlico-Tar River Foundation" plate before the plate may be developed.
45 The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate
46 Account derived from the sale of "Pamlico-Tar River Foundation" plates to the Pamlico-Tar
47 River Foundation, Inc., to provide funding for the cleanup, preservation, and oversight of the
48 Pamlico and Tar Rivers, and their watersheds and basins.

49 (b109) P.E.O. Sisterhood. – The Division must receive 300 or more applications for the
50 "P.E.O. Sisterhood" plate before the plate may be developed. The Division shall transfer

1 quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the
2 sale of "P.E.O. Sisterhood" plates to P.E.O. International to be used for scholarships for young
3 women.

4 (b110) Phi Beta Sigma Fraternity. – The Division must receive 300 or more applications for
5 the "Phi Beta Sigma Fraternity" plate before the plate may be developed. The Division shall
6 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
7 from the sale of "Phi Beta Sigma Fraternity" plates to the Phi Beta Sigma Fraternity, Inc., to
8 provide funding for scholarships, education and professional development, or similar programs.
9 None of the proceeds from this special plate may be distributed to any board member as
10 compensation or as an honorarium.

11 (b111) Piedmont Airlines. – The Division must receive 300 or more applications for a
12 "Piedmont Airlines" plate before the plate may be developed. The Division must transfer
13 quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the
14 sale of "Piedmont Airlines" plates to Piedmont Silver Eagles Charitable Funds, Inc., to be used
15 for scholarships and family assistance for Piedmont Airlines employees and their families,
16 including surviving spouses and dependents, suffering economic hardship.

17 (b112) Ronald McDonald House. – The Division must receive 300 or more applications for
18 the "Ronald McDonald House" plate before the plate may be developed. The Division shall
19 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
20 from the sale of "Ronald McDonald House" plates to Ronald McDonald House Charities of
21 North Carolina, Inc., to be used for Ronald McDonald Houses located within North Carolina
22 and related administrative and operating expenses.

23 (b113) S.T.A.R. – The Division must receive 300 or more applications for the "S.T.A.R."
24 plate before the plate may be developed. The Division shall transfer quarterly the money in the
25 Collegiate and Cultural Attraction Plate Account derived from the sale of "S.T.A.R." plates to
26 Save the Animals Rescue, Inc., to provide funding to rescue distressed horses.

27 (b114) Support NC Education. – The Division must receive 300 or more applications for
28 the "Support NC Education" plate before the plate may be developed. The Division shall
29 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived
30 from the sale of "Support NC Education" plates to the Board of Governors of The University of
31 North Carolina to be used to provide scholarship funding at the 16 constituent universities of
32 The University of North Carolina.

33 (b115) Support Soccer. – The Division must receive 300 or more applications for the
34 "Support Soccer" plate before the plate may be developed. The Division shall transfer quarterly
35 the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of
36 "Support Soccer" plates to the North Carolina Soccer Hall of Fame, Inc., to provide funding to
37 promote the sport of soccer in North Carolina.

38 (b116) Toastmasters Club. – The Division must receive 300 or more applications for the
39 "Toastmasters Club" plate before the plate may be developed. The Division shall transfer
40 quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the
41 sale of the "Toastmasters Club" plates to Toastmasters International to be used to help North
42 Carolinians communicate more effectively, improve presentation skills, and develop leadership
43 potential.

44 (b117) Topsail Island Shoreline Protection. – The Division must receive 300 or more
45 applications for the "Topsail Island Shoreline Protection" plate before the plate may be
46 developed. The Division shall transfer quarterly the money in the Collegiate and Cultural
47 Attraction Plate Account derived from the sale of "Topsail Island Shoreline Protection " plates
48 proportionately to the Town of North Topsail Beach, the Town of Surf City, and the Town of
49 Topsail Beach to be used for support of the Topsail Island Shoreline Protection Committee and
50 beach nourishment programs or projects for the three towns on Topsail Island.

1 **(b118) Travel and Tourism.** – The Division must receive 300 or more applications for the
2 "Travel and Tourism" plate before the plate may be developed. The Division shall transfer
3 quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the
4 sale of "Travel and Tourism" plates to the Division of Tourism, Film, and Sports Development
5 to be used for programs in support of travel and tourism in North Carolina."

6 **SECTION 8.** Chapter 20 of the General Statutes is amended by adding a new
7 section to read:

8 **"§ 20-79.8. Expiration of special registration plate authorization.**

9 **(a) Expiration.** – A special registration plate authorized pursuant to G.S. 20-79.4 shall
10 expire, as a matter of law, on July 1 of the second calendar year following the year in which the
11 special plate was authorized if the number of required applications for the authorized special
12 plate has not been received by the Division. The Division shall not accept applications for nor
13 advertise any special registration plate that has expired pursuant to this section.

14 **(b) Notification.** – The Division shall notify the Revisor of Statutes in writing, not later
15 than July 15 of each year, which special registration plate authorizations have expired as a
16 matter of law pursuant to subsection (a) of this section. The Division shall publish a copy of the
17 written notification sent to the Revisor of Statutes pursuant to this subsection on a Web site
18 maintained by the Division or the Department of Transportation.

19 **(c) Revisor of Statutes Responsibilities.** – Upon notification of expiration of the
20 authorization for any special registration plate by the Division pursuant to this section, the
21 Revisor of Statutes shall verify that the authorization for each special registration plate listed
22 has expired and shall notate such expiration in the applicable statutes. If an authorization for a
23 special registration plate listed in G.S. 20-79.4 expires, the Revisor of Statutes shall revise the
24 subdivision referring to the special registration plate to leave the name of the special
25 registration plate authorized and the date the special registration plate's authorization expired. If
26 an authorization for a special registration plate listed in G.S. 20-79.4 expires, the Revisor of
27 Statutes shall also make corresponding changes to reflect the expiration of the special
28 registration plate's authorization, if applicable, in G.S. 20-63(b), 20-79.7, and 20-81.12."

29 **SECTION 9.** Notwithstanding Section 8 of this act, any special registration plate
30 authorized in G.S. 20-79.7, prior to July 1, 2011, shall expire, as a matter of law, on July 1,
31 2013, if the number of applications required for the production of the special registration plate
32 has not been received by the Division of Motor Vehicles on or before that date. Upon
33 notification of expiration of the authorization for any special plate by the Division pursuant to
34 this section, the Revisor of Statutes shall verify that the authorization for each special
35 registration plate listed has expired and shall notate such expiration in the applicable statutes. If
36 an authorization for a special registration plate listed in G.S. 20-79.4 expires, the Revisor of
37 Statutes shall revise the subdivision referring to the special registration plate to leave the name
38 of the special plate authorized and the date the special registration plate's authorization expired.
39 If an authorization for a special registration plate listed in G.S. 20-79.4 expires, the Revisor of
40 Statutes shall also make corresponding changes to reflect the expiration of the special
41 registration plate's authorization, if applicable, in G.S. 20-63(b), 20-79.7, and 20-81.12.

42 **SECTION 10.** The Revisor of Statutes is authorized to alphabetize, number, and
43 renumber the special registration plates listed in G.S. 20-79.4 to ensure that all the special
44 registration plates are listed in alphabetical order and numbered accordingly.

45 **SECTION 11.** Section 8 of this act becomes effective July 1, 2011. The remainder
46 of this act is effective when it becomes law.



HOUSE BILL 289: Authorize Various Special Plates

2011-2012 General Assembly

Committee:	House Finance	Date:	June 2, 2011
Introduced by:	Rep. Gillespie	Prepared by:	Trina Griffin
Analysis of:	PCS to Second Edition H289-CSSVf-26		Committee Counsel

SUMMARY: *House Bill 289 would authorize the issuance of a number of special license plates, and direct DMV to develop a standard format for special license plates. It would also provide for the expiration of a special plate authorization if DMV does not receive the required number of applications within two years of the time the plate is authorized.*

The PCS differs from the version that passed House Transportation as follows:

- *It incorporates HB 716 Native American License Plate Fee Increase (Rep. Graham).*
- *It incorporates HB 166 Purple Heart Motorcycle Special Plates (Rep. McGee).*
- *It authorizes a plate for the North Carolina Youth Soccer Association.*

CURRENT LAW: G.S. 29-79.4 provides that upon application and payment of the required registration fees, a person may obtain from the Department of Motor Vehicles (DMV) a special registration plate for a motor vehicle registered in that person's name if the person qualifies for the registration plate. Currently, more than 165 special plates have been authorized. The issuance of most authorized plates is contingent upon the receipt by DMV of at least 300 applications for the particular plate.

As a general rule, the fee for a special registration plate is the regular vehicle registration fee plus a \$10 special registration plate fee. The Division may issue one free registration plate to a recipient of the Legion of Valor¹ award, a 100% disabled veteran, or an ex-prisoner of war. All other special registration plates, including additional Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee of \$28² and the additional special registration plate fee of \$10.

The \$10 special registration plate fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, \$1,000,000 is annually appropriated to provide operating assistance for ten Visitor Centers.³ The Centers are located in Brunswick, Camden, Carteret, Caswell, Columbus, Macon, McDowell, Transylvania, Tyrell, and Watauga Counties.⁴ The remaining revenue in the account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Human Resources to promote travel accessibility for disabled persons (17%).

The cost of some special plates includes a fee in addition to the \$10 special registration plate fee. In those instances, the first \$10 goes to the special registration plate fund and the remainder is transferred quarterly to designated beneficiaries of the additional fee amount.

¹ The Legion of Valor plate is issuable to a recipient of one of the following: Congressional Medal of Honor, Distinguished Service Cross, Navy Cross, or Air Force Cross.

² G.S. 20-87.

³ There are 12 Visitors' Centers. The two centers that do not receive State funding are located in Dare County.

⁴ Each Visitor's Center receives \$100,000.

House PCS 289

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BILL ANALYSIS:

Section 1 of the bill expands the list of special license plates that are not required to be a "First in Flight" plate with the standard background.

Section 2 directs DMV to develop a standard format for special license plates that will allow for the plate to be easily read by the human eye and by traffic enforcement cameras.

Section 3 expands the list of special license plates that may be issued by DMV, adding more than 65 new plates as enumerated in the bill. The plates would generally be subject to the standard requirement of at least 300 applications, so that the cost of producing the plates could be recouped. The bill amends existing provisions involving the issuance of the following plates: Autism Society of North Carolina, Marine Corps League, Native American, North Carolina Wildlife Habitat Foundation, and Purple Heart.

Section 4 establishes the additional fee that will be charged for each of the plates authorized in Section 3 of the bill. The fee is over and above the regular motor vehicle registration fee, which is currently \$28 for private passenger vehicles of not more than 15 passengers.

Section 5 specifies the distribution of the fees imposed in Section 4 of the bill.

Section 6 expands the list of State Attraction Plates by adding the Aurora Fossil Museum and the Baldhead Island Lighthouse ("Old Baldy"), and designates the use of revenue derived from the sale of those plates.

Section 7 provides for the quarterly transfer of revenue in the Collegiate and Cultural Attraction Plate Account derived from the sale of specific plates; the funds are generally used to support programs and services offered by non-profit organizations that reflect the interests of persons purchasing the special plate.

Section 8 provides for the expiration of a special plate authorization if DMV does not receive the required number of applications within two years of the time the plate is authorized.

Section 9 provides that a plate issued before the July 1, 2011 effective date of the bill would expire on July 1, 2013 if the required number of applications has not been received by DMV on or before that date. To date, there are 69 authorized plates that have not met the 300 application requirement.

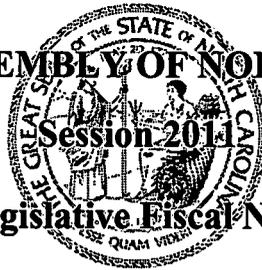
Section 10 authorizes the Revisor of Statutes to alphabetize, number, and renumber the listing of special registration plates in G.S. 20-79.4 to ensure that all the special plates are listed in alphabetical order and numbered accordingly.

EFFECTIVE DATE: Section 8 of the bill, providing for the expiration of a special plate authorization, would become effective July 1, 2011. The remainder of the bill would be effective when it becomes law.

Brenda Carter, counsel to House Transportation, substantially contributed to this summary.

H289-SMSV-57(CSSVf-26) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 289 (Second Edition)

SHORT TITLE: Authorize Various Special Plates.

SPONSOR(S): Representative Gillespie

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES					
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles					
EFFECTIVE DATE: July 1, 2011					

See Assumptions and Methodology

BILL SUMMARY:

House Bill 289 amends GS 20-79.4(b) to direct the Division of Motor Vehicles to issue various special registration license plates, contingent on receiving at least 300 applications per plate, categorized as follows:

- American Red Cross
- Armed Forces Expeditionary Medal Recipient
- Arthritis Foundation
- ARTS NC
- Battle of Kings Mountain
- Blue Knights
- Boy Scouts of America
- Brenner Children's Hospital
- Carolina Raptor Center
- Carolina Regional Volleyball Association
- Carolinas Credit Union Foundation
- Carolinas Golf Association
- Childhood Cancer Awareness
- Choose Life
- City/County Clerk
- Coastal Land Trust

- Concerned Bikers Association/ABATE of North Carolina
- Daniel Stowe Botanical Garden
- Donate Life
- First in Turf
- Farmland Preservation
- Girl Scouts
- High Point Furniture Market 100th Anniversary
- Hollerin'
- Home of American Golf
- Jaycees
- Legion of Merit
- Lifetime Sportsman
- Mayor
- Mountains-to-Sea Trail
- Municipal Council
- National Defense Service Medal
- NC Beekeepers
- NC Civil War
- NC Fisheries Association
- NC Horse Council
- NC Mining
- NC Wildlife Federation
- NC Veterinary Medical Association
- NC Victim Assistance Network
- North Carolina Emergency Management Association
- North Carolina Master Gardener
- North Carolina State Flag
- Outer Banks Preservation Association
- P.E.O. Sisterhood
- Pamlico-Tar River Foundation
- Phi Beta Sigma Fraternity
- Piedmont Airlines
- Relay for Life
- Ronald McDonald House
- School Board
- Sigma Gamma Rho Sorority
- Silver Star Recipient/ Disabled Veteran
- S.T.A.R.
- Support NC Education
- Support Soccer
- Toastmasters Club
- Topsail Island Shoreline Protection
- Town of Oak Island
- Travel and Tourism

- United States Service Academy
- Victory Junction Gang Camp
- Vietnam Veterans of America

Adds the following State Attraction Plates contingent on receiving at least 300 applications per plate:

- Aurora Fossil Museum
- "Old Baldy," Bald Head Island Lighthouse
- U.S.S. North Carolina Battleship Commission

Adds special registration license plates to the list of those identified in GS 20-63(b) that do not have to bear the phrase "First in Flight":

- ARTS NC
- Battle of Kings Mountain
- Carolina Raptor Center
- Carolinas Credit Union Foundation
- Choose Life
- Coastal Land Trust
- Donate Life
- Farmland Preservation
- NC Civil War
- NC Mining
- North Carolina State Flag
- North Carolina Zoological Society
- Travel and Tourism
- United States Service Academy.

Deletes the following special registration plate:

- Olympic Games

House Bill 289 changes the name of the US Navy Specialty plate to the US Navy Submarine Veteran plate.

The bill directs that the Division shall develop, in consultation with the State Highway Patrol and the Department of Correction, a standardized format for special license plates. Effective July 1, 2011, the bill enacts new GS 20-79.8 providing for the expiration of special registration plates authorized under GS 20-79.4 on July 1 of the second calendar year in which the plate was authorized if the required number of applications for the special plate has not been received by the DMV. The bill provides that a special plate authorization under GS 20-79.7 prior to July 1, 2011, expires as a matter of law on July 1, 2013, if the required number of applications has not been received.

Of the additional fees charged for each plate, the first ten dollars will go to the Special Registration Plate account. In cases where the fee is in excess of ten dollars, the remainder will go to the Collegiate and Cultural Attraction Plate account to be transferred quarterly to the entity nominated within the bill.

ASSUMPTIONS AND METHODOLOGY:

House Bill 289 authorizes certain special plates provided the Division receives 300 or more applications for a particular plate. The additional fees for the following plates are not specified: Armed Forces Expeditionary Medal Recipient, Blue Knights, Childhood Cancer Awareness, City/County Clerk, High Point Furniture Market 100th Anniversary, Hollerin', Legion of Merit, Lifetime Sportsman, Mayor, Municipal Council, National Defense Service Medal, North Carolina State Flag, Relay for Life, School Board, Sigma Gamma Rho Sorority, Silver Star Recipient/Disabled Veteran, Town of Oak Island, United States Service Academy, Victory Junction Gang Camp, and Vietnam Veterans of America. According to G.S. 20-79.7, the additional fee for these plates would be \$10 per plate.

The Aurora Fossil Museum, "Old Baldy," Bald Head Island Lighthouse, and U.S.S. North Carolina Battleship Commission plates qualify as State Attraction plates. According to G.S. 20-79.7, the additional fee for these plates will be \$30 per plate. The remainder of the special plate fees is specified in the bill. The chart below summarizes these fees.

Special Registration Plates: Fees Specified in HB 289

American Red Cross	\$30	NC Civil War	\$30
Arthritis Foundation	\$30	NC Fisheries Association	\$20
ARTS NC	\$30	NC Horse Council	\$20
Battle of Kings Mountain	\$20	NC Mining	\$20
Boy Scouts of America	\$30	NC Veterinary Medical Association	\$30
Brenner Children's Hospital	\$30	NC Victim Assistance Network	\$20
Carolina Raptor Center	\$30	NC Wildlife Federation	\$20
Carolina Regional Volleyball Association	\$15	North Carolina Emergency Management Association	\$30
Carolinas Credit Union Foundation	\$30	North Carolina Master Gardener	\$20
Carolinas Golf Association	\$30	Outer Banks Preservation Association	\$30
Choose Life	\$25	P.E.O. Sisterhood	\$30
Coastal Land Trust	\$30	Pamlico-Tar River Foundation	\$30
Concerned Bikers Association/ABATE of North Carolina	\$20	Phi Beta Sigma Fraternity	\$20
Daniel Stowe Botanical Garden	\$30	Piedmont Airlines	\$20
Donate Life	\$20	Ronald McDonald House	\$30
Farmland Preservation	\$30	S.T.A.R.	\$30
First in Turf	\$25	Support NC Education	\$30
Girl Scouts	\$30	Support Soccer	\$25
Home of American Golf	\$30	Toastmasters Club	\$30
Jaycees	\$20	Topsail Island Shoreline Protection	\$30
Mountains-to-Sea Trail	\$30	Travel and Tourism	\$30
NC Beekeepers	\$15		

Of the additional fees charged for each plate, the first ten dollars will go to the Special Registration Plate account. In cases where the fee is in excess of ten dollars, the remainder will go to the Collegiate and Cultural Attraction Plate account to be transferred quarterly to the entity nominated within the bill. Fiscal Research cannot estimate how many applications for each of the authorized plates will be received. Assuming there are at least 300 applications for each of these plates, they will each result in a \$3,000 revenue increase to the Special Registration Plate account for the period during which the applications are received. Each of these plates would also result in an increase in revenues to the Collegiate and Cultural Attraction Plate account for distribution to the respective entity equal to the fee in excess of ten dollars multiplied by the 300 applications. If the plates do not reach the 300 application threshold, the plates will not be created and there will be no fiscal impact.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 1, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 289

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H289-ASV-18 [v.1]

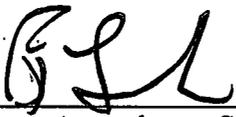
Page 1 of 1

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

Date 6.2, 2011

Representative Luebke

- 1 moves to amend the bill on page 18, line 50, through page 19, line 3, by rewriting those lines to
- 2 read:
- 3 "counseling and/or meeting the physical needs of pregnant women. Any agency, organization,
- 4 business, or other entity that receives funds under this subsection must provide counseling
- 5 about all legal pregnancy options. Funds under this subsection shall not be distributed to any
- 6 entity that charges women for services rendered."
- 7
- 8

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____

12/10





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 289

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H289-ASV-19 [v.1]

Page 1 of 1

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

Date 6.2, 2011

Representative K. Alexander

1 moves to amend the bill on page 2, lines 28 and 29, by inserting between those lines the
2 following:

3 "~~(40) Trust Women; Respect Choice.~~";

4

5 And on page 9, lines 43-44, by inserting the following between the lines:

6 "~~(0) Trust Women; Respect Choice. – Issuable to the registered owner of a motor~~
7 ~~vehicle in accordance with G.S. 20-81.12. The plate shall bear the words~~
8 ~~"Trust Women; Respect Choice."~~

9

...";

10

11 And on page 11, lines 48-49, by inserting between those lines the following:

12 "~~Trust Women; Respect Choice~~ \$25.00";

13

14 And on page 16, lines 2-3, by inserting the following between the lines:

15 "~~Trust Women; Respect Choice~~ \$10 \$15 0 0";

16

17 And on page 23, lines 5-6, by inserting between those lines the following

18 "~~(b119) Trust Women; Respect Choice. – The Division must receive 300 or more~~
19 ~~applications for the "Trust Women; Respect Choice" plate before the plate may be developed.~~
20 ~~The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate~~
21 ~~Account derived from the sale of the "Trust Women; Respect Choice" plates to Planned~~
22 ~~Parenthood Federation of America to be used to provide comprehensive reproductive health~~
23 ~~care for low income men and women in North Carolina."~~

SIGNED
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

#18

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. _____

DATE 6/2/11

perfecting
Amendment No. 2 to Amendment #2

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE ASV-19

Rep. Weiser
Sen.)

1 moves to amend the bill on page 1 of Amendment #2, line 5 21-22

2 () WHICH CHANGES THE TITLE

3 by deleting the phrase "Planned Parenthood Federation
4 of America" and substituting the phrase "Planned
5 Parenthood Health Systems, North Carolina branch
6 and Planned Parenthood of Central North Carolina".

7
8
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SIGNED Jennifer Weiser

ADOPTED FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 289

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H289-ASV-17 [v.1]

Page 1 of 1

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

Date 6.2 2011

Representative Ross

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7

moves to amend the bill on page 19, line 3, by adding the following after the period:
"Any organization receiving funds under this subsection must post, in plain sight, easily visible in both English and Spanish, a sign that reads: 'This organization is forbidden to provide, promote, counsel, or refer anyone for abortion regardless of interest or medical condition. Abortion information is available in the Yellow Pages Directory.'"

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED TABLED _____

11/16



ROLL CALL VOTE

17 13 = _____ (TOTAL)
YES NO

HB# 289
SB# _____

HOUSE STANDING COMMITTEE ON FINANCE

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Howard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moore
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Folwell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rhyne
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Setzer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Ross
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Starnes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Samuelson
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lewis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stam
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McComas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stone
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Wainwright	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Warren
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Alexander	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Weiss
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Brandon	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Womble
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brawley	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Carney	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Collins	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cotham	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Faison	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Gibson	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hackney	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hall	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Hill	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jordan	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Luebke	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	McCormick	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGee	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	McGuirt	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moffitt	<input type="checkbox"/>	<input type="checkbox"/>	



North Carolina General Assembly
House Committee on Finance

Minutes

June 3, 2011

The House Committee on Finance met on Friday, June 3, 2011 at 8:00 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Vice-Chair Lewis; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Bill Bass and Ken Kirby. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Judy Collier, Dan Ettefagh, Heather Fennell, Trina Griffin, Sandra Johnson, Jennifer McGinnis, Tazra Mitchell, Giles Perry, Greg Roney, and Brian Slivka. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairperson Howard called the meeting to order at 8:00 am.

The first bill to be heard by the Committee was **SB 431 Fontana Dam Incorporated** (see **attachment 3**). Chairperson Howard recognized Representative West to explain the bill. The Chair then recognized Representative Starnes who moved that SB 431 be given a favorable report. The motion carried.

The next bill to be heard by the Committee was **SB 155 Local Stormwater Utility Fees** (see **attachment 4**). Chairperson Howard recognized Representative Luebke to explain the bill. The Chair then recognized Representative Womble who moved that SB155 be given a favorable report. The motion carried.

Next bill before the Committee was **HB 799 Licensure By Endorsement/Military/Spouses** (see **attachment 5**). Chairperson Howard recognized Representative Martin to explain the bill. The Chair then recognized Representative Setzer who moved that HB 799 be given a favorable report. The motion carried.

The next bill to be heard by the Committee was **HB 617 Portable Electronics Insurance Coverage** (see **attachment 6**). Chairperson Howard recognized Representative Dockham to explain the bill. By request of Representative Dockham, The Chair recognized Rose Vaughan Williams, North Carolina Department of Insurance for comments in favor of the bill and to answer member's

questions. The Chair then recognized Representative Collins who moved that HB 617 be given a favorable report. The motion carried.

HB 96 Additional Alleghany Occupancy Tax (see **attachment 7**) was the next bill up before the Committee. The Chair recognized Representative McGee, Chair of the subcommittee on Occupancy Tax. Representative McGee reported the HB 96 conformed to the occupancy tax guidelines and was reported favorably and re-referred to the full Committee. Chairperson Howard then recognized Representative Samuelson who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representatives Stevens and Haire to explain the proposed committee substitute. Chairperson Howard recognized Representative McGee who moved that HB 96 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

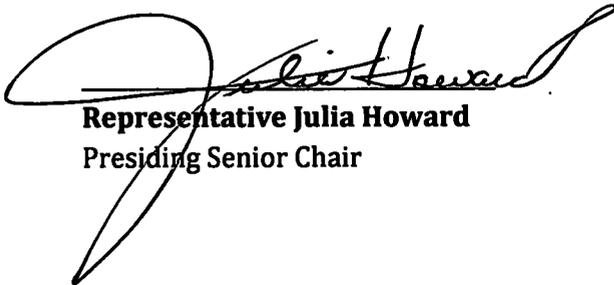
The next bill before the Committee was **HB 344 Tax Credits for Children With Disabilities** (see **attachment 8**). The Chair recognized Representative McGuirt who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairperson Howard recognized Representative Stam to explain the proposed committee substitute. Chairperson Howard then recognized Representative Faison who moved that HB 344 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion was set aside for further discussion. The Chair invited people from the audience to speak on the bill. The following people spoke for the bill: Joni Alberg, Beginnings For Parents Of Children Who Are Deaf or Hard of Hearing, Inc.; Julia Adams, The Arc of North Carolina; and Jennifer Mahan, North Carolina Autism Society. The following people spoke against the bill: Leanne Winner, North Carolina School Boards Association; Katherine Joyce, North Carolina Association of School Administrators; and Brian Lewis, North Carolina Association of Educators. Representative Stam with the assistance with staff member Kris Nordstrom from Fiscal Research answered member's questions. Being no further discussion or debate, the Chair recognized Representative Faison who restated his motion. Representative Faison moved that HB 344 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill and be re-referred to the Committee on Appropriations. Chairperson Howard called for a show of hands for the motion for favorable report. The vote being 21 affirmative and 7 against. The motion carried.

HB 469 Additional Lumberton Occupancy Tax (see **attachment 9**) was the next bill up before the Committee. The Chair recognized Representative McGee, Chair of the subcommittee on Occupancy Tax. Representative McGee reported the HB 469 conformed to the occupancy tax guidelines and was reported favorably and re-referred to the full Committee. Chairperson Howard then recognized Representative McGee who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representatives Graham and Pridgen to explain the proposed committee substitute. Chairperson Howard recognized Representative Weiss who moved that HB 469 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The final bill heard before the Committee was **HB 315 Taxpayer Information Act** (see **attachment 10**). Chairperson Howard recognized Representative Folwell, Chair of the subcommittee appointed to review this bill. Representative Folwell reported that HB 315 was amended and as a result, was reported favorably by the subcommittee. He moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair then recognized Representatives Pridgen and Folwell to explain the proposed committee substitute. The Chair invited people from the audience to speak on the bill. The following people spoke against the bill: Vance Holliman, North Carolina State Treasurer's Office and Paul Billon, Womble Carlyle Sandridge & Rice. Due to time, the bill was re-calendared for Wednesday, June 8, 2011.

There being no further business presently before the Committee, Chairperson Howard adjourned the meeting at 9:50 am.

Respectfully submitted,



Representative Julia Howard
Presiding Senior Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 344 A BILL TO BE ENTITLED AN ACT TO ALLOW AN INDIVIDUAL INCOME TAX CREDIT FOR CHILDREN WITH DISABILITIES WHO REQUIRE SPECIAL EDUCATION AND TO CREATE A FUND FOR SPECIAL EDUCATION AND RELATED SERVICES.

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

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 469 A BILL TO BE ENTITLED AN ACT TO INCREASE THE AUTHORIZATION TO LEVY AN OCCUPANCY TAX IN THE CITY OF LUMBERTON.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 617 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE REGULATION OF PORTABLE ELECTRONICS INSURANCE.

With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 799 A BILL TO BE ENTITLED AN ACT TO ALLOW LICENSURE BY ENDORSEMENT
FOR MILITARY PERSONNEL AND MILITARY SPOUSES.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 96 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ALLEGHANY COUNTY TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 155 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWNS OF GARNER, KNIGHTDALE, MORRISVILLE, WENDELL, AND ZEBULON AND THE CITIES OF DURHAM AND WINSTON-SALEM TO COLLECT DELINQUENT STORMWATER UTILITY FEES IN THE SAME MANNER AS THEY MAY COLLECT DELINQUENT PERSONAL AND REAL PROPERTY TAXES.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 431 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF
FONTANA DAM.

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 _____.

#1

AGENDA
House Finance Committee

Friday, June 3, 2011
8:00 am
Room 544 LOB
Chaired by: Representative Julia Howard

Call to Order

Introduction of Pages

Bills:

HB 96 Additional Alleghany Occupancy Tax
Representative Stevens

HB 315 Taxpayer Information Act
Representatives Pridgen, Folwell, Collins, Stone

HB 344 Tax Credits for Children With Disabilities
Representatives Stam, Randleman, Jordan, Jones

HB 469 Additional Lumberton Occupancy Tax
Representatives Graham, Pierce, Pridgen

HB 494 Continuous Alcohol Monitoring Law Changes
Representatives M. Alexander, Guice, T. Moore, Stam

HB 617 Portable Electronics Insurance Coverage
Representative Dockham

HB 799 Licensure By Endorsement/Military/Spouses
Representatives Martin, Killian

SB 155 Local Stormwater Utility Fees
Senator Stein

SB 431 Fontana Dam Incorporated
Senator Davis

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: MAY 3, 2011 Room: 544

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: KEN KIRBY

2. Name: JOHN BRANDON

5. Name: _____

3. Name: BILL BASS

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

June 3, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jessi Flays	NC HBA
Leanne Winnie	NC SBA
Ken Melton	K. M. A.
Joy Atzels	NCDAICS
Steve Woodson	NCFB
Pat Buff	NCAEE
Brian Lewis	NCAE
W. Gordon Culbreth	DLC & Assoc
Allison Waller	Nelson Mullins
Paul Pugh	NCAJ
Tom Berry	EDE

VISITOR REGISTRATION SHEET

House Finance

June 3, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Matt Farrell	NCSBA
Dana Factor	City of Charlotte
Paul Billon	Womble Carlyle Sandridge & Rice
Dona FAZZINI	Dept State Treasurer
Vance Holdman	NC Dept. State Treasurer
Tony Salas	DST
Daryl Allison	PERAK
LISA MARTIN	HBA of N. C.
John Merritt	MW LLC
Nancy Gannis	Rep Moore
CS Hollis	TSS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 431*

Short Title: Fontana Dam Incorporated.

(Local)

Sponsors: Senators Davis; Apodaca and Rabon.

Referred to: Finance.

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF FONTANA DAM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Fontana Dam is enacted to read:

"CHARTER OF THE TOWN OF FONTANA DAM.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Fontana Dam are a body corporate and politic under the name 'Town of Fontana Dam.' The Town of Fontana Dam has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Fontana Dam are as follows:

A tract of land located at Fontana Village in the Yellow Creek Township of Graham County, State of North Carolina, approximately 1.25 miles southwest of Fontana Dam, and more particularly described as follows: BEGINNING at a metal marker (Coordinates: N 646,225; E 559,660) on the west side of Fontana Village at a common corner of the land of the United States of America (Tennessee Valley Authority), the land of the Whiting Manufacturing Company and the land previously transferred in fee by the Tennessee Valley Authority to the United States Department of Agriculture under the designation of Tract XTFR-4. From the initial point with the boundary line of the land in custody of the Tennessee Valley Authority, N 67-32 E 2,818 feet passing a metal marker at 552 feet and a metal marker at the east edge of a road at 1,193 feet to a metal marker; thence, N 25-15 E 2,429 feet passing a metal marker at 1,831 feet to a metal marker; thence, N 77-06 E 1,603 feet crossing State Highway 28 at approximately 65 feet to a metal marker; thence, S 45-31 E 1,480 feet to a metal marker; thence, S 22-32 E 846 feet recrossing State Highway 28 at approximately 775 feet to a metal marker; thence, S 56-26 W 3,594 feet to a metal marker; thence, S 85-25 W 602 feet to a metal marker; thence, S 77-16 W 1,470 feet to a metal marker; thence, due south, 303 feet to a metal marker; thence, N 89-28 W 1,504 feet to a metal marker; thence, N 03-26 W 836 feet to the point of BEGINNING, containing 288.5 acres, more or less.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Fontana Dam is the Mayor and the Town Council, which shall have four members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 2011 provided for by Section 4.2 of this Charter, Tammy Dees is appointed Mayor and Tim Gamble, Craig Litz, Vanessa Litz, and Debbie Rich are appointed council members of



1 the Town of Fontana Dam, and they shall possess and exercise the powers granted to the Mayor
2 and governing body until their successors are elected or appointed and qualified pursuant to this
3 Charter. The temporary officers shall elect a person to serve as Interim Mayor Pro Tempore. If
4 any person named in this section is unable to serve, the remaining temporary officers shall, by
5 majority vote, appoint a person to serve until the initial election is held in 2011.

6 "Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of
7 the entire Town shall elect the members of the Town Council, and they shall serve for a term of
8 two years or until their successors are elected and qualified.

9 "Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of
10 the entire Town shall elect the Mayor, who shall serve for a term of two years or until the
11 Mayor's successor is elected and qualified. The Mayor shall attend and preside over meetings
12 of the Town Council, shall advise the Town Council from time to time as to matters involving
13 the Town of Fontana Dam, and shall have the right to vote as a member of the Town Council
14 on all matters before the Town Council but shall have no right to break a tie vote in which the
15 Mayor has participated. In the case of a vacancy in the office of Mayor, the remaining members
16 of the Town Council shall choose from their own number a successor for the unexpired term.

17 "Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The
18 Mayor Pro Tempore shall be elected from among the members of the Town Council at the
19 organizational meeting after the initial election in 2011 and shall serve for a term of two years.
20 The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and
21 Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the
22 Town Council present may elect a temporary chair to preside in the absence. The Mayor Pro
23 Tempore shall have the right to vote on all matters before the Town Council and shall be
24 considered a member of the Town Council for all purposes.

25 "ARTICLE IV. ELECTIONS.

26 "Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan
27 basis and results determined by a plurality as provided in G.S. 163-292.

28 "Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter
29 163 of the General Statutes, with the first regular municipal election to be held on November 8,
30 2011.

31 "Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be
32 held only as provided by general law or applicable local acts of the General Assembly.

33 "ARTICLE V. ORGANIZATION AND ADMINISTRATION.

34 "Section 5.1. **Form of Government.** The Town shall operate under the council-manager
35 form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

36 "Section 5.2. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed
37 to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the
38 Town, advise Town officials, and perform other duties as required by law or as directed by the
39 Town Council. The Town Attorney shall serve at the pleasure of the Town Council.

40 "Section 5.3. **Town Clerk.** The Town Council shall appoint a Town Clerk who shall
41 perform duties as required by law or as directed by the Town Council. The Town Clerk shall
42 serve at the pleasure of the Town Council.

43 "ARTICLE VI. TAXES AND BUDGET ORDINANCE.

44 "Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and
45 fees authorized by general law. An affirmative vote equal to a majority of all the members of
46 the Town Council shall be required to change the ad valorem tax rate from the rate established
47 during the prior fiscal year.

48 "Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2011, the citizens
49 and property in the Town of Fontana Dam shall be subject to municipal taxes levied for the
50 year beginning July 1, 2011, and for that purpose the Town shall obtain from Graham County a

1 record of property in the area herein incorporated which was listed for property taxes as of
2 January 1, 2011.

3 "Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2011-2012
4 without following the timetable in the Local Government Budget and Fiscal Control Act but
5 shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year
6 2011-2012, ad valorem taxes may be paid at par or face amount within 90 days of adoption of
7 the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the
8 taxes had been due and payable on September 1, 2011. If the effective date of the incorporation
9 is prior to July 1, 2011, the Town may adopt a budget ordinance for fiscal year 2010-2011
10 without following the timetable in the Local Government Budget and Fiscal Control Act but
11 shall follow the sequence of actions in the spirit of the act insofar as practical. No ad valorem
12 taxes may be levied for the 2010-2011 fiscal year.

13 "ARTICLE VII. ORDINANCES.

14 "Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of
15 Fontana Dam is authorized to adopt such ordinances as the Town Council deems necessary for
16 the governance of the Town."

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



SENATE BILL 431: Fontana Dam Incorporated

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Davis
Analysis of: First Edition

Date: June 2, 2011
Prepared by: Cindy Avrette
Committee Counsel

SUMMARY: *Senate Bill 431 would incorporate the community around Fontana Dam in Graham County as a municipality. The bill is identical to House Bill 447, introduced by Rep. West. The House Bill received a favorable report from the House Committee on Government April 14, 2011; House Bill 447 is currently in House Finance.*

CURRENT LAW: Municipalities may be created by the General Assembly, with powers and duties it deems advisable, pursuant to Article VII, Section 1 of the North Carolina Constitution." Rule 42.3(b) of the Senate Rules requires that a legislative proposal proposing incorporation must have attached to its bill jacket a report of the Joint Municipal Incorporations Commission prior to a favorable report by a committee of the Senate. Article 20 of Chapter 120 of the General Statutes creates the Joint Municipal Incorporation Commission and sets forth the criteria for review of a proposed incorporation. Under Article 20, people seeking to incorporate an area may petition the General Assembly to do so by collecting the signatures of 15% of the registered voters in the area proposed to be incorporated, and submitting the petition to the Commission. The Commission is required to make a recommendation to the General Assembly concerning the proposed incorporation. The Commission is prohibited from making a favorable recommendation if the proposed municipality fails to meet certain criteria, including the following:

- **Distance from existing municipality.** This criterion elaborates on the constitutional distance provisions.
- **Population and population density.** The Commission may not recommend favorably if the proposed municipality has a permanent population below 100 and a population density below 250 per square mile.
- **Level of development.** The Commission may not recommend favorably unless 40% of the area is developed (residential, commercial, industrial, institutional, or governmental) or dedicated to open space.
- **Reasonable tax rate.** The Commission may not recommend favorably unless it finds the proposed municipality can provide services at a reasonable tax rate.

Failure to get a favorable recommendation from the Commission does not prevent the General Assembly from incorporating a municipality. In the past 10 years, six petitions have failed to get a favorable recommendation, and incorporation occurred anyway. In most of those cases, the Commission found that the area seeking to be incorporated did not meet the criterion of 40% development. In the same years, eight failed petitions resulted in no incorporation.

BILL ANALYSIS: Senate Bill 431 would incorporate roughly 288.5 acres near the Tennessee Valley Authority's Fontana Dam as the Town of Fontana Dam. The territory is described in the bill. The area is located more than 25 miles from the nearest incorporated town.

The town would follow the council-manager form of government. It would elect a mayor and four Town Council members every two years, beginning in 2011. It would use the nonpartisan plurality election

Senate Bill 431

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method. The charter enacted in the bill would give the town the usual taxing, budgetary, and ordinance-making powers municipalities usually have.

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

BACKGROUND: The Joint Legislative Commission on Municipal Incorporations considered the petition for incorporation of Fontana Dam on March 16, 2009. The Commission's report noted that the petition failed to meet the standards required for a favorable recommendation, specifically the standards of population and population density. The petition said Fontana Dam has 25 to 30 people with 25 people per half square mile, and the standard is 100 people with 250 people per square mile. Based on this determination, the Commission voted not to recommend its incorporation.

As part of the petition process, the people seeking incorporation submitted a letter to the Commission stating the reasons supporting their request. The letter is contained in the Commission's report. The letter sets forth the following reasons for the request for incorporation:

- The area sought to be incorporated already has the basic infrastructure of a town. It is an organized and developed community comprised of businesses, residences, and recreational areas.
- The community has several miles of common roads and streets used by the residents and the community.
- The community maintains its own electrical system for the entire area.
- The community has constructed and maintains its own sewage plant and disposal system and waters system for the residents, visitors, businesses, and government controlled areas.
- The community provides solid waste pick-up, public boating access areas, and marina.
- The community provides these services to Fontana Dam and visitor center, which is located in close proximity to the community.
- The Fontana Village Resort, which is open to the general public and has over 100,000 visitors annually, is in the community and will provide a substantial tax base for the community.
- The community current finances these services. Incorporation would enable the community to institute a tax system to finance them and provide a means to more accurately disperse the costs on a pro rata basis to the residents and business located in the community. The community does not believe it will be able to continue to sustain the costs of these services without the ability to institute a tax system. Also, incorporation would enable the community to access federal and state grants and funding.

S431-SMRB-72(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 155*
House Committee Substitute Favorable 3/31/11

Short Title: Local Stormwater Utility Fees. (Local)

Sponsors:

Referred to:

March 2, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWNS OF GARNER, KNIGHTDALE, MORRISVILLE,
WENDELL, AND ZEBULON AND THE CITIES OF DURHAM AND
WINSTON-SALEM TO COLLECT DELINQUENT STORMWATER UTILITY FEES IN
THE SAME MANNER AS THEY MAY COLLECT DELINQUENT PERSONAL AND
REAL PROPERTY TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2005-441 reads as rewritten:

"SECTION 4. This act is effective when it becomes law and applies to stream-clearing
activities commenced on or after that date. Section 3 of this act applies only to the Cities of
Durham and Winston-Salem, the Towns of Garner, Kernersville—Kernersville,
Knightdale, Morrisville, Wendell, and Zebulon, and the Village of Clemmons."

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





SENATE BILL 155: Local Stormwater Utility Fees

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Stein
Analysis of: Second Edition

Date: June 2, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *Senate Bill 155 would allow the Cities of Durham and Winston-Salem and the Towns of Garner, Knightdale, Morrisville, Wendell, and Zebulon to bill stormwater utility fees in the same manner as property taxes and to collect them in the same manner as property taxes.*

CURRENT LAW: Cities may operate a stormwater management program as a public enterprise¹ and may establish a schedule of fees for the services furnished by the program. A city may collect delinquent fees by any remedy provided by law for collecting and enforcing private debts. As a general rule, fees for enterprisory services cannot be a lien upon the property served by the enterprisory service. In 1991, the General Assembly provided an exception to this rule for fees imposed for solid waste collection and disposal services when it allowed cities and counties to collect the fees for this service in the same manner as property taxes. Delinquent property taxes may be collected using any one or more of the remedies provided in G.S. 105-366 through G.S. 105-375:

- Levy upon and sell or attach personal property.
- Attachment and garnishment of wages and other compensation, rents, bank deposits, the proceeds of property subject to levy, or any other intangible property.
- Foreclosure of real property.

By local acts, the General Assembly has authorized numerous cities and counties to collect delinquent water and sewer fees or sewer treatment fees in the same manner as property taxes.² In 2005, the General Assembly authorized the Town of Kernersville and the Village of Clemmons to collect delinquent stormwater management fees in the same manner as property taxes.

BILL ANALYSIS: Senate Bill 155 is a local act that would add the Cities of Durham and Winston-Salem and the Towns of Garner, Knightdale, Morrisville, Wendell, and Zebulon to the local legislation enacted for Kernersville and Clemmons in 2005. Senate Bill 155 would allow these towns to adopt an ordinance providing that stormwater utility fees may be billed with property taxes and may be collected in the same manner as delinquent property taxes. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee.

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

Giles Perry and Cindy Avrette, both with the Research Division, substantially contributed to this summary.

S155-SMTM-26(e2) v2

¹ Other types of public enterprises a city may operate include electric power generation, water and sewer systems, natural gas distribution, public transportation systems, cable television systems, parking facilities, and solid waste collection and disposal.

² S.L. 1993-768, City of Durham; S.L. 1995-577, Counties of Camden, Chowan, Currituck, Pasquotank, Perquimans, Tyrrell, and Washington; S.L. 2003-270, Counties of Davie, Duplin, and Lenoir and the municipalities in those counties; S.L. 2003-270, the municipalities in Columbus County; S.L. 2004-96, Town of Holden Beach; S.L. 2006-54, Oak Island; S.L. 2010-29, Caswell Beach; S.L. 2010-59, City of Locust and the towns of New London and Stanfield.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 799

Short Title: Licensure by Endorsement/Military/Spouses. (Public)

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

Referred to: Homeland Security, Military, and Veterans Affairs, if favorable, Finance.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW LICENSURE BY ENDORSEMENT FOR MILITARY PERSONNEL
AND MILITARY SPOUSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B of the General Statutes is amended by adding a new section to read:

"§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

- (1) Has completed a military program of training, been awarded a military occupational specialty, and performed in that specialty at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification,



1 or registration are substantially equivalent to or exceed the requirements for
2 licensure, certification, or registration of the occupational licensing board for
3 which the applicant is seeking licensure, certification, or registration in this
4 State.

5 (2) Can demonstrate competency in the occupation through methods as
6 determined by the Board, such as having completed continuing education
7 units or having had recent experience for at least two of the five years
8 preceding the date of the application under this section.

9 (3) Has not committed any act in any jurisdiction that would have constituted
10 grounds for refusal, suspension, or revocation of a license to practice that
11 occupation in this State at the time the act was committed.

12 (4) Is in good standing and has not been disciplined by the agency that had
13 jurisdiction to issue the license, certification, or permit.

14 (5) Pays any fees required by the occupational licensing board for which the
15 applicant is seeking licensure, certification, or registration in this State.

16 (c) All relevant experience of a military service member in the discharge of official
17 duties or, for a military spouse, all relevant experience, including full-time and part-time
18 experience, regardless of whether in a paid or volunteer capacity, shall be credited in the
19 calculation of years of practice in an occupation as required under subsection (a) or (b) of this
20 section.

21 (d) A nonresident licensed, certified, or registered under this section shall be entitled to
22 the same rights and subject to the same obligations as required of a resident licensed, certified,
23 or registered by an occupational licensing board in this State.

24 (e) Nothing in this section shall be construed to apply to the practice of law as regulated
25 under Chapter 84 of the General Statutes.

26 (f) An occupational licensing board may issue a temporary practice permit to a
27 military-trained applicant or military spouse licensed, certified, or registered in another
28 jurisdiction while the military-trained applicant or military spouse is satisfying the
29 requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has
30 licensure, certification, or registration standards substantially equivalent to the standards for
31 licensure, certification, or registration of an occupational licensing board in this State. The
32 military-trained applicant or military spouse may practice under the temporary permit until a
33 license, certification, or registration is granted or until a notice to deny a license, certification,
34 or registration is issued in accordance with rules adopted by the occupational licensing board.

35 (g) An occupational licensing board may adopt rules necessary to implement this
36 section.

37 (h) Nothing in this section shall be construed to prohibit a military-trained applicant or
38 military spouse from proceeding under the existing licensure, certification, or registration
39 requirements established by an occupational licensing board in this State."

40 SECTION 2. Within one year from the effective date of this act, each occupational
41 licensing board regulating an occupation in this State and subject to the provisions of Chapter
42 93B of the General Statutes shall implement the requirements of G.S. 93B-15.1, as enacted by
43 Section 1 of this act.

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



HOUSE BILL 799: Licensure by Endorsement/Military/Spouses

2011-2012 General Assembly

Committee: House Finance
Introduced by: Reps. Martin, Killian
Analysis of: First Edition

Date: June 2, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *House Bill 799 would allow military-trained applicants who have been awarded a military occupational specialty and military-spouse applicants who are licensed in another jurisdiction to receive occupational licenses in this State. The applicants must meet requirements, either in the military or in another jurisdiction, that are substantially equivalent to or exceed the State requirements for licensure. State occupational licensing boards may issue temporary practice permits to these applicants until a license is granted or a notice to deny a license is issued.*

CURRENT LAW: An "occupational licensing board" means any board established for the primary purpose of regulating the entry of persons into a particular profession and the conduct of persons within the profession that is authorized to issue licenses. Occupational licensing board does not include State agencies staffed by full-time State employees who issue licenses as part of their regular duties.

BILL ANALYSIS: House Bill 799 would require occupational licensing boards to issue occupational licenses to military-trained applicants and military-spouse applicants if the following requirements are met:

- A military-trained applicant must
 - Complete a military program of training.
 - Be awarded a military occupational specialty.
 - Perform in that specialty at a level that is substantially equivalent to or exceeds the requirements for licensure.
 - Engage in the active practice of the occupation in the discharge of official duties for at least two of the five years preceding the date of the application.
 - Not commit any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license.
 - Pay any fees required by the occupational licensing board.
- A military-spouse applicant must
 - Hold a current license from another jurisdiction that has requirements for licensure substantially equivalent to or exceed the requirements for licensure.
 - Demonstrate competency in the occupation through methods as determined by the occupational licensing board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
 - Not commit any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license.
 - Be in good standing and not be disciplined by the agency that had jurisdiction to issue the license.
 - Pay any fees required by the occupational licensing board.

House Bill 799

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House Bill 799 would also require occupational licensing boards to credit in the calculation of years of practice all relevant experience of military-trained applicants in the discharge of official duties and all relevant experience of military-spouse applicants including full-time and part-time experience, regardless of whether in a paid or volunteer capacity.

House Bill 799 would authorize State occupational licensing boards to issue temporary practice permits to these applicants until a license is granted or a notice to deny a license is issued. House Bill 799 would also authorize State occupational licensing boards to issue regulations for military-trained applicants and military-spouse applicants.

House Bill 799 would not apply to the practice of law.

BACKGROUND: The following table lists occupational licensing boards which have issued regulations under Title 21 of the NC Administrative Code:

Acupuncture	Interpreter Transliterator Board	Physical Therapy Examiners
Architecture	Landscape Architects	Plumbing, Heating and Fire
Athletic Trainer Examiners	Landscape Contractors	Sprinkler Contractors
Auctioneers	Locksmith Licensing Board	Podiatry Examiners
Barber Examiners	Massage and Bodywork Therapy	Professional Counselors
CPA Examiners	Marital and Family Therapy	Psychology
Chiropractic Examiners	North Carolina Medical Board	Engineers and Surveyors
Employee Assist Professionals	Midwifery Joint Committee	Real Estate Appraisal Board
General Contractors	Funeral Service	Real Estate Commission
Cosmetic Art Examiners	Nursing	Refrigeration Examiners
Dental Examiners	Nursing Home Administrator	Respiratory Care Board
Dietetics, Nutrition	Occupational Therapy	Environmental Health Specialist
Electrical Contractors	On-Site Wastewater Contractors	Social Work Certification
Electrolysis Examiners	Opticians	Speech and Language
Foresters	Optometry	Pathologists Audiologists
Geologists	Pastoral Counselors, Fee-Based	Recreational Therapy Licensure
Hearing Aid Dealers and Fitters	Pharmacy	Veterinary Medical Board
		Substance Abuse Professional
		Soil Scientists

EFFECTIVE DATE: House Bill 799 is effective when it becomes law. Each occupational licensing board must implement the new statute within one year from the effective date (i.e., when House Bill 799 becomes law).

Hal Pell, counsel to House Homeland Security, substantially contributed to this summary.

H799-SMTM-29(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 617
Committee Substitute Favorable 5/18/11

Short Title: Portable Electronics Insurance Coverage.

(Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE REGULATION OF PORTABLE ELECTRONICS
INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new
Article to read:

"Article 44A.

"Portable Electronics Insurance.

"§ 58-44A-1. Definitions.

As used in this Article, the following definitions apply:

- (1) Customer. – A person who purchases portable electronics or services.
- (2) Enrolled customer. – A customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.
- (3) Location. – Any physical location in the State of North Carolina or any Web site, call center site, or similar location directed to residents of the State of North Carolina.
- (4) Portable electronics. – Electronic devices that are portable in nature, their accessories, and services related to the use of the device.
- (5) Portable electronics insurance. – Insurance providing coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against any one or more of the following causes of loss: (i) loss, (ii) theft, and (iii) inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss. The term does not include the following:
 - a. A service contract or extended warranty providing coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of the property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear.
 - b. A policy of insurance covering a seller's or a manufacturer's obligations under a warranty.
 - c. A homeowner's, renter's, private passenger automobile, commercial multiperil, or similar policy.
- (6) Portable electronics transaction. – Either of the following:
 - a. The sale or lease of portable electronics by a vendor to a customer.
 - b. The sale of a service related to the use of portable electronics by a vendor to a customer.



1 (7) Supervising entity. – A business entity that is a licensed insurer or insurance
2 producer.

3 (8) Vendor. – A person in the business of engaging in portable electronics
4 transactions directly or indirectly.

5 **"§ 58-44A-5. Licensure of vendors.**

6 (a) A vendor is required to hold a limited lines license to sell or offer coverage under a
7 policy of portable electronics insurance.

8 (b) A limited lines license issued under this section shall authorize any employee or
9 authorized representative of the vendor to sell or offer coverage under a policy of portable
10 electronics insurance to a customer at each location at which the vendor engages in portable
11 electronics transactions.

12 (c) Notwithstanding any other provision of law, a license issued pursuant to this section
13 shall authorize the licensee and its employees or authorized representatives to engage in those
14 activities that are permitted in this section.

15 **"§ 58-44A-10. Requirements for sale of portable electronics insurance.**

16 (a) At every location where portable electronics insurance is offered to customers,
17 brochures or other written materials shall be made available to a prospective customer. Those
18 materials shall do the following:

19 (1) Disclose that portable electronics insurance may provide a duplication of
20 coverage already provided by a customer's homeowner's insurance policy,
21 renter's insurance policy, or other source of coverage.

22 (2) State that the enrollment by the customer in a portable electronics insurance
23 program is not required in order to purchase or lease portable electronics or
24 services.

25 (3) Summarize the material terms of the insurance coverage, including:

26 a. The identity of the insurer.

27 b. The identity of the supervising entity.

28 c. The amount of any applicable deductible and how it is to be paid.

29 d. Benefits of the coverage.

30 e. Key terms and conditions of coverage, such as whether portable
31 electronics may be repaired or replaced with similar make and model
32 reconditioned or nonoriginal manufacturer parts or equipment.

33 (4) Summarize the process for filing a claim, including a description of how to
34 return portable electronics and the maximum fee applicable in the event the
35 enrolled customer fails to comply with any equipment return requirements.

36 (5) State that the enrolled customer may cancel enrollment for coverage under a
37 portable electronics insurance policy at any time and the person paying the
38 premium shall receive a refund of any applicable unearned premium.

39 (b) Portable electronics insurance may be offered on a month-to-month or other
40 periodic basis as a group or master commercial inland marine policy issued to a vendor of
41 portable electronics for its enrolled customers.

42 (c) Eligibility and underwriting standards for customers electing to enroll in coverage
43 shall be established for each portable electronics insurance program.

44 (d) The terms of the termination or modification of coverage under a policy of portable
45 electronic insurance offered in compliance with this section shall be as set forth in the policy.

46 **"§ 58-44A-15. Authority of vendors of portable electronics.**

47 (a) The employees and authorized representatives of vendors may sell or offer portable
48 electronics insurance to customers and shall not be subject to licensure as an insurance
49 producer under this Chapter provided that the following are true:

1 (1) The vendor obtains a limited lines license to authorize its employees or
2 authorized representatives to sell or offer portable electronics insurance
3 pursuant to this section.

4 (2) The insurer issuing the portable electronics insurance either directly
5 supervises or appoints a supervising entity to supervise the administration of
6 the program, including development of a training program for employees
7 and authorized representatives of the vendors. The training required by this
8 subdivision shall comply with the following:

9 a. The training shall be delivered to employees and authorized
10 representatives of a vendor who are directly engaged in the activity
11 of selling or offering portable electronics insurance.

12 b. The training may be provided in electronic form. If conducted in an
13 electronic form, the supervising entity shall implement a
14 supplemental education program regarding portable electronics
15 insurance that is conducted and overseen by licensed employees of
16 the supervising entity.

17 c. Each employee and authorized representative shall receive basic
18 instruction about the portable electronics insurance offered to
19 customers and the disclosures required under G.S. 58-44A-10.

20 (3) No employee or authorized representative of a vendor of portable electronics
21 shall advertise, represent, or otherwise hold himself or herself out as a
22 non-limited lines licensed insurance producer.

23 (b) The charges for portable electronics insurance coverage may be billed and collected
24 by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is
25 not included in the cost associated with the purchase or lease of portable electronics or related
26 services shall be separately itemized on the enrolled customer's bill. If the portable electronics
27 insurance coverage is included with the purchase or lease of portable electronics or related
28 services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the
29 portable electronics insurance coverage is included with the portable electronics or related
30 services. Vendors billing and collecting such charges shall not be required to maintain such
31 funds in a segregated account, provided that the vendor is authorized by the insurer to hold
32 such funds in an alternative manner and remits such amounts to the supervising entity within 60
33 days of receipt. All funds received by a vendor from an enrolled customer for the sale of
34 portable electronics insurance shall be considered funds held in trust by the vendor in a
35 fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing
36 and collection services in accordance with G.S. 58-33-85.

37 "**§ 58-44A-20. Suspension or revocation of license.**

38 If a vendor of portable electronics or its employee or authorized representative violates any
39 provision of this section, the Commissioner may do any of the following:

40 (1) Revoke or suspend a limited lines license issued under this Part in
41 accordance with the provisions of G.S. 58-33-46.

42 (2) After notice and hearing, impose other penalties, including suspending the
43 transaction of insurance at specific locations where violations of this Article
44 have occurred, as the Commissioner deems necessary and reasonable to
45 carry out the purpose of this Article.

46 "**§ 58-44A-25. Application for license.**

47 The prerequisites for issuance of a limited lines license under this Article are the filing with
48 the Commissioner of the following:

49 (1) A license application, signed by an officer of the applicant, for the limited
50 lines license in such form or forms, and supplements thereto, and containing
51 such information, as the Commissioner may prescribe.

1 (2) A certificate by the insurer that is to be named in such limited lines license,
2 stating that it has satisfied itself that the named applicant is trustworthy and
3 competent to act as its insurance agent for this limited purpose and that the
4 insurer will appoint such applicant to act as the agent in reference to the
5 kinds of insurance as are permitted by this section, if the limited lines license
6 applied for is issued by the Commissioner. Such certificate shall be
7 subscribed to by an officer or managing agent of such insurer and affirmed
8 as true under the penalties of perjury."

9 **SECTION 2.** This act becomes effective January 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 617 (Second Edition)

SHORT TITLE: Portable Electronics Insurance Coverage.

SPONSOR(S): Representative Dockham

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES ***\$3,000 to \$4,000 Per Year***

EXPENDITURES ***None Anticipated***

POSITIONS (cumulative): ***None Anticipated***

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Department of Insurance

EFFECTIVE DATE: October 1, 2011.

BILL SUMMARY:

House Bill 617 would expressly authorize insurance for portable electronic devices under a limited lines license. The limited lines license allows any employee or agent of the license holder to sell insurance for portable electronic devices at all the license holder's locations. The Department of Insurance would have the same regulatory authority over portable electronics insurance as it has with all limited lines insurance.

House Bill 617 would impose consumer protection measures on limited lines insurance for portable electronic devices including:

- Written materials available to prospective customer must
 - Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage.
 - State that purchase of insurance is optional.

- Summarize the material terms of the insurance coverage, including the identity of the insurer, the identity of the supervising entity, the amount of any deductible and how it is to be paid, benefits of the coverage, and key terms and conditions of coverage (such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal-manufacturer parts or equipment).
- Summarize the process for filing a claim, including the maximum fee if the customer fails to comply with any equipment return requirements.
- State that the customer may cancel coverage at any time and receive a refund of any applicable unearned premium.
- The insurance policy must contain the terms of the termination or modification of coverage.
- The insurer underwriting the portable electronics insurance must administer a training program for employees of the license holder. The training program must provide basic instruction about the portable electronics insurance offered to customers and the disclosures required in the written materials available to prospective customer.

Source: Research Division (June 2, 2011)

BACKGROUND:

Retailers selling portable electronic devices in NC appear to offer portable electronics insurance through an exception to insurance license requirements for group property and casualty insurance found in G.S. 58-33-26(n)(2).

Source: Research Division (June 2, 2011)

ASSUMPTIONS AND METHODOLOGY:

Revenue

House Bill 617 requires a vendor to hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance. Under this requirement, the Department of Insurance (DOI) would collect a license application fee of \$100 and an annual renewal fee of \$100. DOI anticipates it would issue approximately 30 to 40 of these licenses. Fiscal Research estimates that \$3,000 to 4,000 (30 to 40 licenses multiplied by \$100 fee) of revenue would be generated per year as a result of this bill.

Expenditures

DOI anticipates that House Bill 617 would have no significant fiscal impact on its current operations or on the State. DOI currently issues business entity licenses, and DOI—namely the Agent Services Division—would be able to absorb the additional workload required to administer this bill. Fiscal Research concurs with DOI's assessment.

SOURCES OF DATA: Department of Insurance

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Tazra Mitchell

APPROVED BY

:

**Lynn Muchmore, Director
Fiscal Research Division**

DATE: June 3, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 617: Portable Electronics Insurance Coverage

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Dockham
Analysis of: Second Edition

Date: June 3, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *House Bill 617 would require companies offering insurance against loss, theft, or mechanical failure for portable electronic devices and accessories hold a limited lines license issued by the NC Department of Insurance.*

CURRENT LAW: Retailers selling portable electronic devices in NC appear to offer portable electronics insurance through an exception to insurance license requirements for group property and casualty insurance found in G.S. 58-33-26(n)(2).

BILL ANALYSIS: House Bill 617 would expressly authorize insurance for portable electronic devices under a limited lines license. The limited lines license allows any employee or agent of the license holder to sell insurance for portable electronic devices at all the license holder's locations. The NC Department of Insurance would have the same regulatory authority over portable electronics insurance as it has with all limited lines insurance.

House Bill 617 would impose consumer protection measures on limited lines insurance for portable electronic devices including:

- Written materials available to prospective customer must
 - Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage.
 - State that purchase of insurance is optional.
 - Summarize the material terms of the insurance coverage, including the identity of the insurer, the identity of the supervising entity, the amount of any deductible and how it is to be paid, benefits of the coverage, and key terms and conditions of coverage (such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal-manufacturer parts or equipment).
 - Summarize the process for filing a claim, including the maximum fee if the customer fails to comply with any equipment return requirements.
 - State that the customer may cancel coverage at any time and receive a refund of any applicable unearned premium.
- The insurance policy must contain the terms of the termination or modification of coverage.
- The insurer underwriting the portable electronics insurance must administer a training program for employees of the license holder. The training program must provide basic instruction about the portable electronics insurance offered to customers and the disclosures required in the written materials available to prospective customer.

EFFECTIVE DATE: House Bill 617 would be effective January 1, 2012.

Tim Hovis, counsel to House Insurance, substantially contributed to this summary.

H617-SMTM-31(e2) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 96
PROPOSED COMMITTEE SUBSTITUTE H96-CSSVx-13 [v.2]

6/2/2011 3:52:56 PM

Short Title: Addl. Alleghany/Jackson OT.

(Local)

Sponsors:

Referred to:

February 16, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE ALLEGHANY AND JACKSON COUNTIES TO LEVY AN
3 ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM
4 DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

5 The General Assembly of North Carolina enacts:

6 PART I: ALLEGHANY COUNTY OCCUPANCY TAX

7 SECTION 1. Chapter 162 of the 1991 Session Laws, as amended by S.L.
8 2004-106, reads as rewritten:

9 "Section 1. Occupancy tax. (a) Authorization and ~~scope~~-Scope. - The Alleghany
10 County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the
11 gross receipts derived from the rental of any room, lodging, or accommodation furnished by a
12 hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax
13 imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local
14 sales tax. This tax does not apply to accommodations furnished by a summer camp for minors,
15 or by a nonprofit charitable, educational, or religious organization.

16 (a) Authorization of Additional Tax. - In addition to the tax authorized by subsection
17 (a) of this section, the Alleghany County Board of Commissioners may levy an additional room
18 occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of
19 accommodations taxable under subsection (a) of this section. The levy, collection,
20 administration, and repeal of the tax authorized by this subsection shall be in accordance with
21 the provisions of this section. Alleghany County may not levy a tax under this subsection
22 unless it also levies the tax authorized under subsection (a) of this section.

23 (b) Repealed.

24 (c) Administration. - A tax levied under this section shall be levied, administered,
25 collected, and repealed as provided in G.S. 153A-155. The penalties provided in
26 G.S. 153A-155 apply to a tax levied under this section.

27 (d) Repealed.

28 (e) ~~Distribution and use of tax revenue.~~ Use of Tax Revenue. - Except as otherwise
29 provided in this act, Alleghany County shall, on a quarterly basis, remit one hundred percent
30 (100%) of the net proceeds of the occupancy tax to the Alleghany County Chamber of
31 Commerce. The chamber of commerce shall use at least two-thirds of the funds remitted to it
32 under this subsection to promote travel and tourism in Alleghany County and shall use the
33 remainder for tourism-related expenditures. The chamber of commerce shall report quarterly
34 and at the close of the fiscal year to the Alleghany County Board of Commissioners on its



1 receipts and expenditures for the preceding quarter and for the year in such detail as the board
2 may require.

3 When the Alleghany Board of Commissioners adopts a resolution levying a room
4 occupancy tax under subsection (a1) of this act, the resolution shall require that the county
5 remit, on a quarterly basis, one hundred percent (100%) of the net proceeds of the occupancy
6 tax levied under this act to the Alleghany Tourism Development Authority. The Authority shall
7 use at least two-thirds of the funds remitted to it under this subsection to promote travel and
8 tourism in Alleghany County and shall use the remainder for tourism-related expenditures.

9 The following definitions apply in this subsection:

- 10 (1) Net proceeds. – Gross proceeds less the cost to the county of administering
11 and collecting the tax, as determined by the finance officer, not to exceed
12 three percent (3%) of the first five hundred thousand dollars (\$500,000) of
13 gross proceeds collected each year and one percent (1%) of the remaining
14 gross receipts collected each year.
- 15 (2) Promote travel and tourism. – To advertise or market an area or activity,
16 publish and distribute pamphlets and other materials, conduct market
17 research, or engage in similar promotional activities that attract tourists or
18 business travelers to the area. The term includes administrative expenses
19 incurred in engaging in the listed activities.
- 20 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
21 entity responsible for expending the net proceeds of the tax, are designed to
22 increase the use of lodging facilities, meeting facilities, or convention
23 facilities in a county or to attract tourists or business travelers to the county.
24 The term includes tourism-related capital expenditures.

25 (f) Repealed.

26 (g) Repealed.

27 Sec. 1.1. Alleghany Tourism Development Authority. – (a) Appointment and
28 Membership. – ~~When the annual net proceeds of the occupancy tax exceed one hundred~~
29 ~~thousand dollars (\$100,000), the Alleghany Board of Commissioners adopts a resolution~~
30 levying a room occupancy tax under subsection (a1) of section 1 of this act, it shall adopt a
31 resolution creating a county Tourism Development Authority, which shall be a public authority
32 under the Local Government Budget and Fiscal Control Act. The resolution shall provide for
33 the membership of the Authority, including the members' terms of office, and for the filing of
34 vacancies on the Authority. At least ~~one-third~~ one-third of the members must be individuals
35 who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~
36 ~~one-half~~ of the members must be individuals who are currently active in the promotion of travel
37 and tourism in the county. The board of commissioners shall designate one member of the
38 Authority as chair and shall determine the compensation, if any, to be paid to the members of
39 the Authority.

40 The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern
41 its meetings. The Finance Officer for Alleghany County shall be the ex officio finance officer
42 of the Authority.

43 Sec. 1.2. Duties. – If the board of commissioners establishes a Tourism Development
44 Authority as provided in Section 1.1 of this act, then the Authority shall expend the net
45 proceeds of the tax levied under this Act for the purposes provided in this Act. The Authority
46 shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and
47 activities in the county, and finance tourist-related capital projects in the county.

48 Sec. 1.3. Reports. – If the board of commissioners establishes a Tourism Development
49 Authority as provided in Section 1.1 of this act, then the Authority shall report quarterly and at
50 the close of the fiscal year to the Alleghany County Board of Commissioners on its receipts and
51 expenditures for the preceding quarter and for the year in such detail as the board may require.

1 **Sec. 2.** This act is effective upon ratification."

2 **PART II: JACKSON COUNTY OCCUPANCY TAX**

3 **SECTION 2.1.** Chapter 969 of the 1985 Session Laws, as amended by Chapters
4 118 and 195 of the 1987 Session Laws and Section 21(k) of S.L. 2007-527, and only as it
5 applies to Jackson County, is rewritten and recodified as Part II of this act. Part II of this act
6 does not affect the rights or liabilities of the county, a taxpayer, or another person arising under
7 the law rewritten and recodified by this Part before the effective date of this Part, nor does it
8 affect the right to any refund or credit of a tax that accrued under the law rewritten and
9 recodified by this Part before the effective date of this Part.

10 **SECTION 2.2** Occupancy tax. – (a) Authorization and Scope. – The Jackson
11 County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the
12 gross receipts derived from the rental of any room, lodging, or accommodation furnished by a
13 hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax
14 imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local
15 sales tax. This tax does not apply to accommodations furnished by nonprofit charitable,
16 educational, or religious organizations when furnished in furtherance of their nonprofit
17 purpose.

18 (a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection
19 (a) of this section, the Jackson County Board of Commissioners may levy an additional room
20 occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of
21 accommodations taxable under subsection (a) of this section. The levy, collection,
22 administration, and repeal of the tax authorized by this subsection shall be in accordance with
23 the provisions of this section. Jackson County may not levy a tax under this subsection unless it
24 also levies the tax authorized under subsection (a) of this section.

25 **SECTION 2.2(b)** Administration. – A tax levied under this Part shall be levied,
26 administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in
27 G.S. 153A-155 apply to a tax levied under this Part.

28 **SECTION 2.2(c)** Definitions. – The following definitions apply in this Part:

- 29 (1) Net proceeds. – Gross proceeds less the cost to the county of administering
30 and collecting the tax, as determined by the finance officer, not to exceed
31 three percent (3%) of the first five hundred thousand dollars (\$500,000) of
32 gross proceeds collected each year and one percent (1%) of the remaining
33 gross proceeds collected each year.
- 34 (2) Promote travel and tourism. – To advertise or market an area or activity,
35 publish and distribute pamphlets and other materials, conduct market
36 research, or engage in similar promotional activities that attract tourists or
37 business travelers to the area. The term includes administrative expenses
38 incurred in engaging in the listed activities.
- 39 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
40 Jackson County Tourism Development Authority, are designed to increase
41 the use of lodging facilities, meeting facilities, or convention facilities in the
42 county or to attract tourists or business travelers to the county. The term
43 includes tourism-related capital expenditures.

44 **SECTION 2.2(d)** Distribution and Use of Tax Revenue. – Jackson County shall,
45 on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the
46 Jackson County Tourism Development Authority. The Authority shall use at least two-thirds
47 of the funds remitted to it under this subsection to promote travel and tourism in Jackson
48 County and shall use the remainder for tourism-related expenditures.

49 **SECTION 2.3.** Tourism Development Authority. – (a) Appointment and
50 Membership. – When the Board of Commissioners adopts a resolution levying a room
51 occupancy tax under this Part, it shall also adopt a resolution creating the Jackson County

1 Tourism Development Authority, which shall be a public authority under the Local
2 Government Budget and Fiscal Control Act. The resolution adopted by the Board of
3 Commissioners shall provide for the membership of the Authority, including the members'
4 terms of office, and for the filling of vacancies on the Authority. At least one-third of the
5 members shall be individuals who are affiliated with businesses that collect the tax in the
6 county, and at least one-half of the members shall be individuals who are currently active in the
7 promotion of travel and tourism in the county. The Board of Commissioners shall designate
8 one member of the Authority as chair and shall determine the compensation, if any, to be paid
9 to members of the Authority.

10 The Authority shall meet at the call of the chair and shall adopt rules of procedure to
11 govern its meetings. The Finance Officer for Jackson County shall be the ex officio finance
12 officer of the Authority.

13 **SECTION 2.3.(b) Duties.** – The Authority shall expend the net proceeds of the tax
14 levied under this Part for the purposes provided in Section 2.2 of this Part. The Authority shall
15 promote travel, tourism, and conventions in the county, sponsor tourist-related events and
16 activities in the county, and finance tourist-related capital projects in the county.

17 **SECTION 2.3.(c) Reports.** – The Authority shall report quarterly and at the close
18 of the fiscal year to the Jackson County Board of Commissioners on its receipts and
19 expenditures for the preceding quarter and for the year in such detail as the Board of
20 Commissioners may require.

21 **SECTION 2.4.** Section 3 of Chapter 969 of the 1985 Session Laws reads as
22 rewritten:

23 "Sec. 3. This act applies only to the following counties: Graham, Clay, ~~Jackson,~~
24 Durham, Macon, Polk, and Transylvania."

25 **SECTION 2.5.** Section 3 of Chapter 118 of the 1987 Session Laws reads as
26 rewritten:

27 "Sec. 3. This act applies only to the following counties: Clay, Graham, ~~Jackson,~~ and
28 Macon."

29 **SECTION 2.6.** Section 2 of Chapter 195 of the 1987 Session Laws reads as
30 rewritten:

31 "Sec. 2. This act applies only to the following counties: Clay, Graham, ~~Jackson,~~ and
32 Macon."

33 **PART III: ADMINISTRATION AND EFFECTIVE DATE**

34 **SECTION 3.** G.S. 153A-155(g) reads as rewritten:

35 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
36 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
37 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
38 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
39 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
40 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Jackson, Madison, Martin,
41 McDowell, Montgomery, Nash, New Hanover, New Hanover County District U, Northampton,
42 Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham, Rowan,
43 Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance, Washington, and Wilson
44 Counties, to Surry County District S, to Watauga County District U, to Wilkes County District
45 K, to Yadkin County District Y, and to the Township of Averagesboro in Harnett County and the
46 Ocracoke Township Taxing District."

47 **SECTION 4.** This act is effective when it becomes law.
48



HOUSE BILL 96: Additional Alleghany & Jackson Occupancy Tax

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Stevens
Analysis of: PCS to First Edition
H96-CSSVx-13

Date: June 3, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 96 would authorize Alleghany County to levy an additional occupancy tax of up to 3%.*

The Proposed Committee Substitute does two things:

- **It would require Alleghany County to establish a Tourism Development Authority upon adopting a resolution levying the additional 3% occupancy tax. Under current law, Alleghany County is only required to establish a TDA once the annual net proceeds of the occupancy tax reach \$100,000. This modification was a recommendation of the Occupancy Tax Subcommittee.**
- **It adds a provision authorizing Jackson County to levy an additional 3% occupancy tax.**

CURRENT LAW & BILL ANALYSIS:

PART I: ALLEGHANY COUNTY

In 1991, the General Assembly authorized Alleghany County to levy an occupancy tax of 3%.¹ In 2004, the legislation was amended to more closely conform to the Occupancy Tax Guidelines adopted by the House Finance Committee. At least two-thirds of the proceeds must be used to promote travel and tourism in Alleghany County, and remainder must be used for tourism-related purposes. The proceeds are remitted quarterly to the Chamber of Commerce until the annual net proceeds exceed \$100,000, at which point, the county must establish a Tourism Development Authority for the purpose of administering the proceeds. The current 3% occupancy tax generates less than \$40,000 annually.

House Bill 96 would authorize the Alleghany County Board of Commissioners to levy an additional occupancy tax of up to 3%.

The PCS adds a provision requiring Alleghany County to establish a Tourism Development Authority upon adopting a resolution levying the additional 3% occupancy tax, as recommended by the Occupancy Tax Subcommittee. Once the additional tax is levied and the TDA is created, all net proceeds of the occupancy tax, including both the original 3% and the additional 3%, must be remitted to the TDA. The TDA must use at least two-thirds of the total funds remitted to it for tourism promotion and the remainder for tourism-related expenditures.

PART II: JACKSON COUNTY

In 1985, the General Assembly authorized several western counties, including Jackson, to levy an occupancy tax of 3%. The net proceeds of the tax are placed in a special Travel and Tourism Fund and be used only to promote travel and tourism in the county. The county has discretionary authority to establish a tourism development authority to administer the funds.

¹ S.L. 1991-162, as amended by S.L. 2004-106.

House PCS 96

Page 2

The PCS for HB House Bill 96 rewrites and recodifies the existing law authorizing the 3% room occupancy tax in Jackson County to conform the content to the uniform format currently used for occupancy taxes. Consistent with uniform occupancy tax provisions, the bill contains definitions for the following terms: "net proceeds," "promote travel and tourism" and "tourism-related expenditures." The bill also makes the Jackson County occupancy tax subject to the uniform provisions for room occupancy taxes in G.S. 153A-155. By conforming to the House Finance occupancy tax guidelines, Jackson County would be able to use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it cannot do under current law.

The PCS also authorizes Jackson County to levy an additional 3% occupancy tax with the same conditions and requirements that apply to the first 3%.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,² which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H96-SMSV-59(CSSVxf-13) v2

² G.S. 153A-155 and G.S. 160A-215.
Research Division

#8

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 344
PROPOSED COMMITTEE SUBSTITUTE H344-CSRQ-17 [v.8]

5/27/2011 2:37:27 PM

Short Title: Tax Credits for Children with Disabilities.

(Public)

Sponsors:

Referred to:

March 15, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW AN INDIVIDUAL INCOME TAX CREDIT FOR CHILDREN WITH
3 DISABILITIES WHO REQUIRE SPECIAL EDUCATION AND TO CREATE A FUND
4 FOR SPECIAL EDUCATION AND RELATED SERVICES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended
7 by adding a new section to read:

8 "§ 105-151.33. Education expenses credit.

9 (a) Credit. – A taxpayer is allowed a credit against the tax imposed by this Part for each
10 of the taxpayer's eligible dependent children who is a resident of this State and who for one or
11 two semesters during the taxable year, is enrolled in grades kindergarten through 12 in a
12 nonpublic school or in a public school at which tuition is charged in accordance with G.S.
13 115C-366.1. As used in this section, the term 'eligible dependent child' means a child who
14 meets all of the following criteria:

- 15 (1) Is a child with a disability as defined by G.S. 115C-106.3(1).
- 16 (2) Was determined to require an individualized education program as defined
17 by G.S. 115C-106.3(8).
- 18 (3) Receives special education or related services on a daily basis.
- 19 (4) Is a child for whom the taxpayer is entitled to deduct a personal exemption
20 under section 151(c) of the Code for the taxable year.

21 For the initial eligibility for the tax credit, for at least the preceding two semesters, the
22 eligible dependent child shall have been either: (i) enrolled in a public school, or (ii) receiving
23 special education or related services through the public schools as a preschool child with a
24 disability as defined by G.S. 115C-106.3(17). An eligible dependent child shall be reevaluated
25 every three years by the local educational agency in order to verify that the child continues to
26 be a child with a disability as defined by G.S. 115C-106.3(1).

27 (b) Amount. – The credit is equal to the amount the taxpayer paid for tuition and special
28 education and related services expenses, not to exceed three thousand dollars (\$3,000) per
29 semester. For home schools, as defined in G.S. 115C-563(a), the credit is equal to the amount
30 the taxpayer paid for special education and related services expenses, not to exceed three
31 thousand dollars (\$3,000) per semester.

32 (c) Semesters. – For the purposes of this section, there are two semesters during each
33 taxable year. The spring semester is the first six months of the taxable year, and the fall
34 semester is the second six months of the taxable year. An eligible dependent child is enrolled in



1 a school for a semester if the eligible dependent child is enrolled in that school for more than 70
2 days during that semester.

3 (d) Disqualification. – A taxpayer may not qualify for a credit for any semester during
4 which the taxpayer's eligible dependent child for whom the credit would otherwise be claimed
5 met any of the following conditions:

6 (1) Was placed in a nonpublic school or facility by a public agency at public
7 expense.

8 (2) Spent any time enrolled as a full-time student taking at least 12 hours of
9 academic credit in a postsecondary educational institution.

10 (3) Was 19 years or older during the entire semester.

11 (4) Graduated from high school prior to the end of the semester.

12 (e) Reduction of Credit. – The amount of the credit is reduced for any semester in
13 which the eligible dependent child spent any time enrolled in a public school. The amount of
14 the reduction is a percentage equal to the percentage of the semester that the eligible dependent
15 child spent enrolled in a public school.

16 (f) Information. – In order to claim the credit allowed by this section, the taxpayer shall
17 provide, when requested, the following to the Secretary:

18 (1) The name, address, and social security number of each eligible dependent
19 child for whom the credit is claimed and the name and address of the school
20 or schools in which the eligible dependent child was enrolled in for more
21 than 70 days each semester.

22 (2) The taxpayer's certification that the eligible dependent child did not meet
23 any of the disqualifying conditions set out in this section.

24 (3) The name of the local school administrative unit in which the eligible
25 dependent child resides.

26 (4) The amount of tuition paid to a public school at which tuition is charged in
27 accordance with G.S. 115C-366.1 for each semester the eligible dependent
28 child for whom the credit is claimed was enrolled in the school.

29 (5) The eligibility determination that the eligible dependent child is a child with
30 a disability who requires special education and related services.

31 (6) A listing of the tuition and special education and related services expenses
32 on which the amount of the credit is based.

33 (7) For home schools as defined in G.S. 115C-563(a), a listing of the special
34 education and related services expenses on which the amount of the credit is
35 based.

36 (g) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax
37 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the
38 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the
39 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this
40 Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable
41 credits are subtracted before refundable credits.

42 (h) Transfer. – At the end of each fiscal year, the Secretary shall transfer to the Fund for
43 Special Education and Related Services established under G.S. 115C-472.15 from the net
44 individual income tax collections under G.S. 105-134.2 an amount equal to two thousand
45 dollars (\$2,000) multiplied by the number of credits taken under this section during the fiscal
46 year.

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

48 (1) "Special education" means specially designed instruction to meet the unique
49 needs of a child with a disability. The term includes instruction in physical
50 education and instruction conducted in a classroom, the home, a hospital, or
51 institution, and other settings.

1 (2) "Related services" is as defined in The Individuals with Disabilities
2 Education Improvement Act, 20 U.S.C. § 1400, et. seq., (2004), as amended
3 and federal regulations adopted under this act."

4 SECTION 2. G.S. 105-151.33(a), as enacted by Section 1 of this act, reads as
5 rewritten:

6 (a) Credit. – A taxpayer is allowed a credit against the tax imposed by this Part for each
7 of the taxpayer's eligible dependent children who is a resident of this State and who for one or
8 two semesters during the taxable year, is enrolled in grades kindergarten through 12 in a
9 nonpublic school or in a public school at which tuition is charged in accordance with G.S.
10 115C-366.1. As used in this section, the term 'eligible dependent child' means a child who
11 meets all of the following criteria:

- 12 (1) Is a child with a disability as defined by G.S. 115C-106.3(1).
- 13 (2) Was determined to require an individualized education program as defined
14 by G.S. 115C-106.3(8).
- 15 (3) Receives special education or related services on a daily basis.
- 16 (4) Is a child for whom the taxpayer is entitled to deduct a personal exemption
17 under section 151(c) of the Code for the taxable year.

18 For the initial eligibility for the tax credit, for at least the preceding ~~two semesters,~~
19 ~~semester,~~ the eligible dependent child shall have been either: (i) enrolled in a public school, or
20 (ii) receiving special education or related services through the public schools as a preschool
21 child with a disability as defined by G.S. 115C-106.3(17). An eligible dependent child shall be
22 reevaluated every three years by the local educational agency in order to verify that the child
23 continues to be a child with a disability as defined by G.S. 115C-106.3(1)."

24 SECTION 3. Chapter 115C of the General Statutes is amended by adding a new
25 Article to read:

26 "Article 32D.

27 "Fund for Special Education and Related Services.

28 "§ 115C-472.15. Fund for Special Education and Related Services.

29 (a) The Fund for Special Education and Related Services is established as a special
30 revenue fund under the control and direction of the State Board of Education. Interest and other
31 investment income earned by the Fund accrue to it, and revenue in the Fund does not revert.
32 The Fund consists of money credited to it under G.S. 105-151.33.

33 (b) The State Board of Education shall use the revenue in the Fund only for special
34 educational and related services for children with disabilities. In addition, the State Board of
35 Education shall use revenues in the Fund to reimburse local educational agencies for
36 conducting reevaluations for continued eligibility and developing revised individualized
37 education programs pursuant to G.S. 105-151.33(a)(1)."

38 SECTION 4. The Department of Revenue shall report to the Revenue Laws Study
39 Committee and the Joint Legislative Education Oversight Committee on the administration of
40 G.S. 105-151.33, as enacted by Section 1 of this act. The report is due by October 1, 2013, and
41 shall include the following:

- 42 (1) The number and amount of credits taken under G.S. 105-151.33.
- 43 (2) Any concerns relating to the administration of G.S. 105-151.33 or taxpayer
44 compliance with the requirements of that section.
- 45 (3) Any other matter with respect to G.S. 105-151.33 the Department wishes to
46 address.

47 SECTION 5. Sections 1, 3, and 4 of this act are effective for taxable years
48 beginning on or after January 1, 2011, and apply to semesters for which the credit is claimed
49 beginning on or after July 1, 2011, except that transfers under G.S. 105-151.33(h) shall not be
50 made before the 2012-2013 fiscal year. Section 2 of this act is effective for taxable years

- 1 beginning on or after January 1, 2016, and applies to semesters for which the credit is claimed
- 2 beginning on or after July 1, 2016. The remainder of this act is effective when it becomes law.

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Legislative Fiscal Note

BILL NUMBER: House Bill 344-CSRQ-17 [v.6]

SHORT TITLE: Tax Credits for Children with Disabilities.

SPONSOR(S): Stam, Randleman, Jordan, Jones

FISCAL IMPACT (\$ in millions)					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
<u>STATE IMPACT</u>					
Revenue (tax credits):	(\$12.3)	(\$24.9)	(\$25.3)	(\$25.6)	(\$26.0)
Operational Savings:	\$0	\$33.5	\$33.9	\$34.3	\$34.9
Trnsf. Out Gen Fund:	N/A	(\$8.3)	(\$8.4)	(\$8.5)	(\$8.7)
Trnsf. In Spec. Ed. Fund:	N/A	\$8.3	\$8.4	\$8.5	\$8.7
<u>Trnsf. To LEAs:</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$3.8)</u>	<u>(\$0.6)</u>	<u>(\$0.6)</u>
Net State Impact:	(\$12.3)	\$8.5	\$4.9	\$8.1	\$8.2
<u>LEA IMPACT</u>					
Revenue:	N/A	N/A	N/A	N/A	N/A
<u>Operational Savings:</u>	<u>N/A</u>	<u>\$7.9</u>	<u>\$8.0</u>	<u>\$8.1</u>	<u>\$8.2</u>
Net LEA Impact:	N/A	\$7.9	\$8.0	\$8.1	\$8.2
<u>POSITIONS</u>					
(cumulative):	N/A	N/A	N/A	N/A	N/A
NOTE: This fiscal note relies on numerous assumptions that could result in the actual fiscal impact differing significantly from the numbers in the table above. Please see Assumptions & Methodology for likely ranges of fiscal impact.					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, North Carolina Department of Public Instruction (DPI), Local Public Schools					
EFFECTIVE DATE: This bill is effective for taxable years beginning January 1, 2011, and applies to semesters beginning on or after July 1, 2011. Certain changes to tax credit eligibility become effective January 1, 2016, and apply to semesters beginning on or after July 1, 2016.					

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BILL SUMMARY: The legislation creates a new tax credit for parents of children with special needs who choose to educate those children in a nonpublic school or in a public school at which tuition is charged per G.S. 155C-366.1. The credit amount is set at \$3,000 per semester, up to two semesters a year (a maximum of \$6,000 for a full academic or taxable year). The credit is refundable, and is capped at the associated tuition cost.

To qualify for the tax credit, the taxpayer must be able to deduct a personal exemption for an "eligible dependent child." An "eligible dependent child" – as amended by this PCS – is one who:

1. Is a child with a disability as defined by G.S. 115C-06.3(1);
2. Was determined to require an individualized education program (IEP) as defined by G.S. 115C-06.3(8);
3. Receives special education or related services on a daily basis;
4. Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year; and
5. Was enrolled in and attended a public school or receiving special education or related services through the public schools as a preschool child with a disability for at least the two preceding academic semesters prior to first receiving the tax credit.

In order to maintain eligibility, the PCS would require all eligible dependent children to be reevaluated every three years by the local education agency (LEA) in order to verify that the child continues to be a child with a disability as defined by G.S. 115C-106.3(1). LEAs would be reimbursed for these evaluations from the Fund for Special Education and Related Services.

A student would no longer be eligible if he or she:

1. Was placed in a nonpublic school or facility by a public agency at public expense;
2. Spent time enrolled as a full-time student in a postsecondary educational institution;
3. Was 19 years or older during the entire semester; or
4. Graduated from high school prior to the end of the semester.

It is important to note that the initial eligibility requirement ("was enrolled in and attended a public school for at least the two preceding academic semesters prior to first receiving the tax credit") is changed from two academic semesters to one academic semester beginning with semesters beginning on or after July 1, 2016.

The legislation also amends G.S. 115-C to create the Fund for Special Education and Related Services ("the Fund"). The Fund will be a special revenue fund under the control of the State Board of Education. Revenue of the Fund will be used only for special

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educational and related services for children with disabilities. Revenue for the Fund will come from a transfer at the end of each fiscal year, beginning in fiscal year 2012-13, from income tax revenue, equal to the number of credits taken under this act multiplied by \$2,000.

ASSUMPTIONS AND METHODOLOGY:

Overview

The impact of the bill is dependent entirely on choices made by parents of children who have special educational needs meeting the criteria specified in the bill. As there is no data available regarding elasticity of demand for the specific educational circumstances for which the tax credit is granted, this analysis must make an effort to estimate, using available data, potential public behavior in the presence of the new law.

Eligible Students Transferring out of Public Schools

This analysis assumes that 1% to 5% of eligible children will take advantage of the tax credit proposed by this bill. The only data from which some inferences might be drawn comes from Florida's McKay Scholarship Program for Students with Disabilities. This program, begun in 2000, gives parents a scholarship for any special needs student in the Florida public schools to shift out of the public system to a private school, or to transfer to a different public school. The McKay Program is marketed to students and provides awards ranging from \$4,746 to \$19,133. During the 2009-10 school year scholarship amounts averaged \$7,144. Program data suggests that approximately 5% of eligible students participate in the program in 2009-10. Of course, there are differences between the Florida program and the program proposed by this bill (level of support, application process, marketing, etc.) that would lead one to anticipate a higher participation in the Florida program than in the program proposed by this bill. Therefore, this analysis presents a range for participation of eligible students of 1% to 5%.

DPI estimates that somewhere between 120,000 and 140,000 students could potentially meet the definition of "eligible dependent child" under this bill. DPI does not track which students receive special education or related services on a daily basis. Therefore, this analysis presents a range of possibly eligible students, rather than a point estimate.

While each transfer would decrease State revenue (in the form of the tax credit), it would also reduce State and local expenditures, as State and local school systems would no longer be financially responsible for educating the child for which the credit was granted.

The estimated reduction in State expenditure per child using the tax credit is \$8,160, and the estimated reduction in local expenditures per child using the tax credit is \$1,931. The

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FY 2010-11 State average transfer of appropriation to charter schools of \$4,562 per child serves as a reasonable proxy for the total avoided annual State operational expenditure for a student who transfers out of a typical public school. The per child supplemental appropriation of \$3,599 for each child with special needs (for up to 12.5% of a school system's population) serves as a reasonable proxy for the additional State average expenditure for a child with special needs. A total of \$8,160 is therefore used as a proxy for the average operational savings to the State that results from a student with an IEP transferring (i.e., withdrawing) from the public schools to a nonpublic school. The average local expenditure per child for operational expenses is \$1,931.

Applying all of the above figures related to potential transfers from public schools produces the following estimate of potential annualized savings to State and local governments. Note that timing issues affect the first-year fiscal impact in two ways:

1. The maximum tax credit granted in April 2012 is \$3,000, reflecting those students moving out of public schools during the Fall 2011 semester.¹ In future years, the full tax credit of \$6,000 per year is used.
2. State and local governments do not realize savings from reduced expenditures until the 2012-13 fiscal year. This delay is because allotted average daily membership (ADM) is based off of the higher of projected ADM or prior year actual ADM. Therefore, the reduced enrollment experienced in the 2011-12 school year will impact allotted ADM – and therefore State and local budgeting decisions – in the 2012-13 school year.

Fund for Special Education and Related Services

There is no net fiscal impact associated with the *creation of* the Fund, as this bill simply transfers monies into the Fund that would have otherwise ended up in the General Fund.

However, monies from the Fund are used to reimburse LEAs for reevaluations. The reimbursement of LEAs for reevaluation services represents a fiscal cost to the State, as reevaluations deplete the Fund and reduce amounts that would have otherwise been made available for services for children with disabilities

This analysis assumes an annual turnover rate of “eligible dependent children” of 15%. That is, given an initial cohort of 1,200 “eligible dependent children,” one would anticipate needing 737 reevaluations three years later ($1,200 * 0.85^3$). Future cohorts of required evaluations are smaller than the initial cohort. New entrants in any given year are assumed to be the amount required to replace the 15% turnover, plus enough to account for overall program growth of 1.37% per year.

¹ For simplicity's sake, this analysis assumes that all taxes are filed, and credits granted, in April.

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Estimated Fiscal Impact on State and LEAs

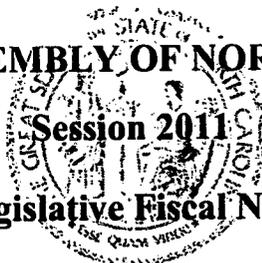
	2011-12***		2012-13		2013-14		2014-15		2015-16	
Eligible Student Pool*	120,000	140,000	121,644	141,918	123,311	143,862	125,000	145,833	126,713	147,831
Usage Percent	1%	5%	1%	5%	1%	5%	1%	5%	1%	5%
Tax Credits Granted	1,200	7,000	1,216	7,096	1,233	7,193	1,250	7,292	1,267	7,392
Cost of Tax Credits (lost State Rev.)	(\$3,600,000)	(\$21,000,000)	(\$7,296,000)	(\$42,576,000)	(\$7,398,000)	(\$43,158,000)	(\$7,500,000)	(\$43,752,000)	(\$7,602,000)	(\$44,352,000)
State Exp. Per Eligible Student	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160
Reduced Public School Expenditures**	N/A	N/A	\$9,792,000	\$57,120,000	\$9,922,560	\$57,903,360	\$10,061,280	\$58,694,880	\$10,200,000	\$59,502,720
Transfer OUT of General Fund	N/A	N/A	(\$2,432,000)	(\$14,192,000)	(\$2,466,000)	(\$14,386,000)	(\$2,500,000)	(\$14,584,000)	(\$2,534,000)	(\$14,784,000)
Transfer IN to Special Education Fund	N/A	N/A	\$2,432,000	\$14,192,000	\$2,466,000	\$14,386,000	\$2,500,000	\$14,584,000	\$2,534,000	\$14,784,000
Transfer out to LEAs for Reevaluations	\$0	\$0	\$0	\$0	(\$1,105,500)	(\$6,448,500)	(\$181,500)	(\$1,056,000)	(\$183,000)	(\$1,069,500)
Net Fiscal Impact on State***	(\$3,600,000)	(\$21,000,000)	\$2,496,000	\$14,544,000	\$1,419,060	\$8,296,860	\$2,379,780	\$13,886,880	\$2,415,000	\$14,081,220
LEA Exp. Per Eligible Student	\$1,931	\$1,931	\$1,931	\$1,931	\$1,931	\$1,931	\$1,931	\$1,931	\$1,931	\$1,931
Reduced LEA Expenditures**	N/A	N/A	\$2,317,200	\$13,517,000	\$2,348,096	\$13,702,376	\$2,380,923	\$13,889,683	\$2,413,750	\$14,080,852
Cost of Reevaluations	\$0	\$0	\$0	\$0	(\$1,105,500)	(\$6,448,500)	(\$181,500)	(\$1,056,000)	(\$183,000)	(\$1,069,500)
Reimbursement from Special Ed Fund	\$0	\$0	\$0	\$0	\$1,105,500	\$6,448,500	\$181,500	\$1,056,000	\$183,000	\$1,069,500
Net Fiscal Impact on LEAs***	\$0	\$0	\$2,317,200	\$13,517,000	\$2,348,096	\$13,702,376	\$2,380,923	\$13,889,683	\$2,413,750	\$14,080,852

*Grows by 1.37% per year to reflect the 10-year average growth in allotted ADM

**Because allotted ADM is based off of the higher of projected ADM or prior year actual ADM, savings from reduced expenditures are not realized until the 2012-13 school year.

***Maximum tax credit in FY11-12 is \$3,000. Maximum tax credit in all future years is \$6,000.

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Estimated Fiscal Impact on State and LEAs -- MIDPOINT ESTIMATE

	2011-12***	2012-13	2013-14	2014-15	2015-16
Eligible Student Pool*	130,000	131,781	133,587	135,417	137,272
Usage Percent	3.0%	3.0%	3.0%	3.0%	3.0%
Tax Credits Granted	4,100	4,156	4,213	4,271	4,330
Cost of Tax Credits (lost State Rev.)	(\$12,300,000)	(\$24,936,000)	(\$25,278,000)	(\$25,626,000)	(\$25,977,000)
State Exp. Per Eligible Student	\$8,160	\$8,160	\$8,160	\$8,160	\$8,160
Reduced Public School Expenditures**	N/A	\$33,456,000	\$33,912,960	\$34,378,080	\$34,851,360
Transfer OUT of General Fund	N/A	(\$8,312,000)	(\$8,426,000)	(\$8,542,000)	(\$8,659,000)
Transfer IN to Special Education Fund	N/A	\$8,312,000	\$8,426,000	\$8,542,000	\$8,659,000
Transfer out to LEAs for Reevaluations	\$0	\$0	(\$3,777,000)	(\$618,750)	(\$626,250)
Net Fiscal Impact on State	(\$12,300,000)	\$8,520,000	\$4,857,960	\$8,133,330	\$8,248,110
LEA Exp. Per Eligible Student	\$1,931	\$1,931	\$1,931	\$1,931	\$1,931
Reduced LEA Expenditures**	N/A	\$7,917,100	\$8,025,236	\$8,135,303	\$8,247,301
Cost of Reevaluations	\$0	\$0	(\$3,777,000)	(\$618,750)	(\$626,250)
Reimbursement from Special Ed Fund	\$0	\$0	\$3,777,000	\$618,750	\$626,250
Net Fiscal Impact on LEAs	\$0	\$7,917,100	\$8,025,236	\$8,135,303	\$8,247,301

*Grows by 1.37% per year to reflect the 10-year average growth in allotted ADM

**Because allotted ADM is based off of the higher of projected ADM or prior year actual ADM, savings from reduced expenditures are not realized until the 2012-13 school year.

***Maximum tax credit in FY11-12 is \$3,000. Maximum tax credit in all future years is \$6,000.

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TECHNICAL CONSIDERATIONS:

There are many technical considerations that should be considered as this fiscal note is based on a number of assumptions. The fiscal impact presented here is an estimate, and any number of factors could move the fiscal impact up or down in a significant way.

Tuition Costs

Not all private school tuitions are greater than \$6,000 per year. It is possible that there would be a number of tax credit recipients for whom the tuition and other educational and therapeutic expenses would be less than \$6,000 per year. If a substantial number of children will not receive the full tax credit, then this analysis understates the net savings created by this bill.

Gaming the System

It is possible, but unlikely, that some parents of potentially eligible children who have never attended public schools would enroll their children in public schools for the required two semesters in order to then be able to avail themselves of the credit in a subsequent year. It seems unlikely, however, that a significant number of parents who have already made a decision not to send their children to public schools would make this choice, even in the face of potential financial gain. The analysis therefore assumes that any costs associated with this group of children will be negligible. To the extent that this assumption is incorrect, the analysis will understate total cost and overstate total savings created by the bill.

SOURCES OF DATA: North Carolina Department of Public Instruction (DPI), Florida's McKay Scholarship Program.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:

Handwritten signature of Kristopher Nordstrom in black ink.

Kristopher Nordstrom

APPROVED BY:

Handwritten signature of Lynn Muchmore in black ink.

Lynn Muchmore, Director
Fiscal Research Division

DATE: May 17, 2011



HOUSE BILL 344: Tax Credits for Children with Disabilities

2011-2012 General Assembly

Committee:	House Finance	Date:	May 26, 2011
Introduced by:	Reps. Stam, Randleman, Jordan, Jones	Prepared by:	Trina Griffin and Drupti Chauhan
Analysis of:	PCS to First Edition H344-CSRQ-17		

SUMMARY: *House Bill 344 would allow an individual income tax credit for up to \$3,000 per semester for tuition and special education and related services expenses for a taxpayer's eligible dependent child with a disability who is enrolled in a nonpublic school or a public school where tuition is charged for the eligible dependent child's enrollment. The bill would create a Fund for Special Education and Related Services with the monies to be used for special educational and related services for children with disabilities. The bill would also require the Department of Revenue to report to the Revenue Laws Study Committee and the Joint Legislative Education Oversight Committee on the administration of the education expenses credit and on the number and amount of education expenses credits taken.*

The Proposed Committee Substitute (PCS) makes the following changes:

- *Requires that the child with a disability receive special education or related services on a daily basis.*
- *Provides an additional option for initial eligibility for the tax credit if the child with a disability received special education or related services through the public schools for the preceding two semesters as a preschool child with a disability.*
- *Requires reevaluations every three years to verify that the child continues to have a disability.*
- *Clarifies that the taxpayer is disqualified from receiving the tax credit if the child with a disability was placed in a nonpublic school by a public agency, was 19 or older during the entire semester, or graduated from high school prior to the end of the semester.*
- *Provides that monies in the Fund for Special Education and Related Services also be used to reimburse local education agencies for reevaluations for continued eligibility and developing revised individualized education programs.*

BILL ANALYSIS:

Sections 1 and 2 would create the education expenses tax credit.

Qualifications for the Tax Credit

- A taxpayer would be entitled to an education expenses tax credit of up to \$3,000 per semester for tuition and special education and related services expenses for each "eligible dependent child" who is a resident of this State and who enrolled for one or two semesters during the taxable year in grades Kindergarten-12 at either:
 - A non-public school or
 - A public school where tuition is charged for the child's enrollment.
- For home schools, the credit is equal to the amount the taxpayer paid for special education and related services expenses not to exceed \$3,000.
- An eligible dependent child must meet all of the following criteria:
 - Is a child with a disability who requires an individualized education program (IEP) under Article 9 of Chapter 115C of the General Statutes (Education of Students with Disabilities and the federal Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq.(2004), as amended. The child must be reevaluated every 3 years by a local educational agency to verify that the child continues to be a child with a disability.

House PCS 344

Page 2

- Receives special education or related services on a daily basis.
- Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year.

For the initial eligibility for the tax credit during the first five years that the credit is available, the eligible dependent child must have been enrolled for at least the preceding two semesters in a public school or receiving special education or related services through the public schools as a preschool child with a disability. This initial eligibility requirement is reduced to one semester beginning for taxable years on or after January 1, 2016.

The bill would provide that there are two semesters during each taxable year with the spring semester being the first 6 months of the taxable year and the fall semester being the second six months of the taxable year. An eligible dependent child is considered to have been enrolled in a school for a semester if the eligible dependent child is enrolled in that school for more than 70 days during that semester.

Disqualifications for the Tax Credit

A taxpayer would not qualify for the education expenses tax credit for any semester when the taxpayer's otherwise eligible dependent child was:

- Placed in a nonpublic school or facility by a public agency at public expense;
- Enrolled for any time as a full-time student taking at least 12 hours of academic credit at a postsecondary educational institution;
- 19 years of age or older during the entire semester; or
- Graduated from high school prior to the end of the semester.

Reduction of the Tax Credit

The amount of the education expenses tax credit would be reduced for any semester in which the eligible dependent child spent any time enrolled in a public school. The amount of the reduction would be equal to the percentage of the semester that the eligible dependent child was enrolled in a public school.

Information Required to be Submitted to the Department of Revenue to Claim Education Expenses Tax Credit

To substantiate the credit, a taxpayer would have to provide all of the following information, if requested by the Secretary of Revenue:

- The name, address and social security number of each eligible dependent child for whom the credit is claimed and the name and address of the school or schools in which the eligible dependent child was enrolled in and attended for more than 70 days of each semester.
- A certification that there were no disqualifying factors.
- The name of the local school administrative unit in which the eligible dependent child resides.
- The amount of the tuition paid to a public school for each semester the eligible dependent child was enrolled in and attended that public school.
- The eligibility determination that the eligible dependent child is a child with a disability who requires special education and related services.
- A listing of the tuition and special education and related services expenses on which the education expenses tax credit is based.
- For home schools, a listing of the special education and related services expenses on which the education expenses tax credit is based.

House PCS 344

Page 3

Credit Refundable

The amount of the credit may exceed the amount of tax owed by the taxpayer. If the credit allowed exceeds the amount of tax imposed, the excess is refundable to the taxpayer.

Transfer into Fund for Special Education and Related Services

At the end of each fiscal year, the Secretary of Revenue must transfer an amount equal to \$2,000 multiplied by the number of education expenses tax credits taken during the fiscal year to the Fund for Special Education and Related Services (created in Section 3 of the bill) from the net individual income tax collections under G.S. 105-134.2 (Individual Income Tax Imposed).

Section 3 of the bill would create the Fund for Special Education and Related Services (Fund) with the money credited to the Fund through the transfer required in Section 1 of the bill from the Secretary of Revenue. The Fund would be established as a special revenue fund under the control and direction of the State Board of Education. Interest and other investment income earned by the Fund accrue to it and monies in the Fund do not revert. The revenue in the Fund may only be used for special educational and related services for children with disabilities. In addition, the monies in the fund must be used to reimburse local educational agencies for conducting reevaluations for continued eligibility and developing revised individualized education programs for children with disabilities.

Section 4 of the bill would require that the Department of Revenue report to the Revenue Laws Study Committee and the Joint Legislative Education Oversight Committee on the administration of the education expenses tax credit provided by this bill by October 1, 2013. The report must include the following:

- The number and amount of education expenses tax credits taken;
- Concerns relating to the administration of the education expenses tax credits or taxpayer compliance; and
- Any other matter the Department wishes to address with respect to the education expenses tax credit.

EFFECTIVE DATE: Sections 1, 3, and 4 of the act would become effective for taxable years beginning on or after January 1, 2011, and would apply to semesters for which the credit is claimed beginning on or after July 1, 2011. Section 2 of this act would be effective for taxable years beginning on or after January 1, 2016, and would apply to semesters beginning on or after July 1, 2016. The initial eligibility requirement may be met during semesters prior to July 1, 2011 and July 1, 2016, respectively. Transfers to the Fund would not be made before the 2012-2013 fiscal year. The remainder of the act is effective when it becomes law.

BACKGROUND: Approximately five states provide programs for students with disabilities to attend private schools: Florida, Utah, Ohio, Oklahoma and Georgia.

The John M. McKay Scholarships Program for Students with Disabilities in Florida gives parents a voucher to send their child to a private school or another public school of their choice.

The Carson Smith Special Needs Scholarship Program in Utah awards scholarships to students with disabilities who attend a private school, both secular and non-secular.

The Special Education Pilot Project (also known as the Autism Scholarship Program) in Ohio is a scholarship awarded to parents of autistic children for services at a public or nonpublic special education program, which includes tuition at a private school.

Oklahoma enacted the Lindsey Nicole Henry Scholarship for Children with Disabilities in 2010. The amount of the scholarship would be either the private school's tuition or the amount of state and local money that would be given to the school system where the student is enrolled, whichever is less.

Georgia enacted the Special Needs Scholarship Act in 2007, creating a program which allows children with special needs to attend the public or private school that best meets their educational needs.

H344-SMRQ-33(CSRQ-17) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 469
PROPOSED COMMITTEE SUBSTITUTE H469-CSSVx-9 [v.1]

4/26/2011 9:24:50 PM

Short Title: Addl. Lumberton & St. Pauls Occup. Tax.

(Local)

Sponsors:

Referred to:

March 28, 2011

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A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AUTHORIZATION TO LEVY AN OCCUPANCY TAX IN THE CITY OF LUMBERTON AND THE TOWN OF ST. PAULS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 1997-361, as amended by S.L. 2007-332, is amended by adding a new subsection to read:

"(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Lumberton City Council may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The City of Lumberton may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section."

SECTION 2. Section 1 of S.L. 1998-112, as amended by S.L. 2006-34, is amended by adding a new subsection to read:

"(a2) Authorization of Second Additional Tax. – In addition to the tax authorized by subsections (a) and (a1) of this section, the board of commissioners of the Town of St. Pauls may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under this section. The levy, collection, administration, use, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. St. Pauls may not levy a tax under this subsection unless it also levies the tax authorized under subsections (a) and (a1) of this section."

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





PCS FOR HOUSE BILL 469: Add'l. Lumberton & St. Pauls Occupancy Tax

2011-2012 General Assembly

Committee: House Finance	Date: April 28, 2011
Introduced by: Reps. Graham, Pierce, Pridgen	Prepared by: Trina Griffin
Analysis of: PCS to First Edition H469-CSSVx-9	Committee Counsel

SUMMARY: *House Bill 469 authorizes the City of Lumberton to levy an additional 3% occupancy tax. The Proposed Committee Substitute adds a provision that would authorize the Town of St. Pauls to levy an additional 3% occupancy tax. The provisions of both existing local acts conform to the guidelines adopted by the House Finance Committee.*

CURRENT LAW: The City of Lumberton, which is located in Robeson County, is currently authorized to levy a room occupancy tax of up to 3%. Robeson County does not have authority to levy a room occupancy tax. In 1997, the City obtained temporary authorization to levy an additional 3%, which expired on August 1, 2000. The proceeds of the existing tax must be remitted to a Tourism Development Authority, which must use at least two-thirds of the proceeds for tourism promotion and the remainder for tourism-related expenditures. The current local act conforms to the occupancy tax guidelines.

In 1998 and 2006, the General Assembly authorized the Town of St. Pauls to levy a 1% room occupancy tax and a 2% room occupancy tax, respectively. The town is located in Robeson County, which does not have authority to levy a room occupancy tax. Therefore, the current total occupancy tax rate in the town is 3%. The proceeds are remitted to the St. Pauls Tourism Development Authority, which is required to spend at least two-thirds of the proceeds on tourism promotion and the remainder on tourism-related expenditures.

BILL ANALYSIS: Section 1 of the PCS would authorize the City of Lumberton to levy an additional 3% occupancy tax to be used in the same manner as the existing 3% occupancy tax.

Section 2 of the PCS would authorize the Town of St. Pauls to levy an additional 3% occupancy tax to be used in the same manner as the existing 3% occupancy tax.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,¹ which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the

¹ G.S. 153A-155 and G.S. 160A-215.
Research Division

House PCS 469

Page 2

legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term “net proceeds”, “promote travel and tourism”, and “tourism related expenditures” are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H469-SMSV-32(CSSVx-9) v2

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 469 (First Edition)

SHORT TITLE: Additional Lumberton Occupancy Tax.

SPONSOR(S): Representatives Pierce, Graham, and Pridgen

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	\$479,896	\$ 511,344	\$ 540,352	\$ 563,104	\$ 582,252
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	City of Lumberton				
EFFECTIVE DATE:	This act is effective when it becomes law.				

BILL SUMMARY:

House Bill 469 amends Section 2 of Part IX of SL 1983-908, as amended, to authorize the Lumberton City Council to levy an additional room occupancy tax of up to (3%) three percent, as specified. The city may not levy the tax under subsection (a1) unless it also levies the (3%) three percent occupancy tax authorized under subsection (a) of this section.

ASSUMPTIONS AND METHODOLOGY:

The City of Lumberton currently levies a (3%) three percent room occupancy tax. House Bill 469 would allow the city to levy an additional (3%) three percent room occupancy tax. According to the North Carolina Department of State Treasurer, the City of Lumberton collected \$441,368 in occupancy tax revenues for Tax Year 2010. Assuming that doubling the tax rate would double the amount of occupancy tax collected, and growing by the leisure and hospitality portion of North Carolina's Gross State Product, it's estimated that an additional (3%) three percent occupancy tax would yield \$479,896 for FY11-12.

SOURCES OF DATA: North Carolina Department of State Treasurer; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: April 26, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



North Carolina General Assembly
House Committee on Finance

Minutes

June 8, 2011

The House Committee on Finance met on Wednesday, June 8, 2011 at 8:01 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Folwell and Setzer; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Bob Rossi and Champ Claris. Staff persons present included Cindy Avrette, Rodney Bizzell, Barry Boardman, Gerry Cohen, Judy Collier, Dan Ettefagh, Trina Griffin, Karen Hammonds-Blanks, Sandra Johnson, Giles Perry, Andrea Poole, Greg Roney, and Brian Slivka, Jonathan Tart. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Starnes called the meeting to order at 8:00 am and recognized the six (6) pages present (1) Jake Ward of Rowan County sponsored by Representative Steen; (2) Ryan Buchanan of Avery County sponsored by Representative Frye; (3) Thomas Whitman of New Hanover County sponsored by Representative Justice; (4) Johnathan Rhyne of Gaston County sponsored by Representative Rhyne; (5) Daniel Burnette of Vance County sponsored by Representative Crawford; and (6) Casey Patillo of Cumberland County sponsored by Representative Lucas.

The first bill to be heard by the Committee was **HB 315 Taxpayer Information Act** (see **attachment 3**). This bill was carried over from the June 3, 2011 meeting due to time. Chairman Starnes recognized Representative Collins who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Representative Folwell was recognized to explain the proposed committee substitute. Representative Folwell moved that HB 315 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. Chairman Starnes set aside the motion for further discussion. The Chair recognized Wally McBride, Bond Counsel with Hunton and Williams Law Firm who provided an overview of the bond process and case law and also answered questions from members. Mr. McBride stated that he is opposed to the legislation. The Chair then invited the following members of the audience that spoke in favor of the bill: Kathy Hartkopf, FreedomWorks; Justice Bob Orr, NC Institute for Constitutional Law; Jeff Mixon, NC Americans for Prosperity and Frances Deluca, Civitas Institute. Chairman Starnes recognized Representative Folwell who re-stated his motion and requested a roll call vote. Being no further discussion, the Chair requested the clerk to call roll on the motion. The vote being 13 affirmative and 17 against (see **attachment 4**). The motion failed.

The next bill considered by the Committee was **HB 494 Continuous Alcohol Monitoring Law Changes** (see **attachment 5**). The Chair recognized Representative McGuirt who moved to adopt the proposed committee substitute for the purpose of discussion. Chairman Starnes then recognized Representative Martha Alexander to explain the proposed committee substitute. The Chair then recognized Representative Howard who moved that HB 494 be given a favorable report to the proposed committee substitute, unfavorable report to the committee substitute and be re-referred to the Appropriations subcommittee on Justice and Public Safety . The motion carried.

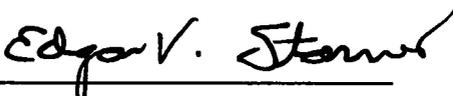
The next bill before the Committee was **HB 841 Global TransPark Gov. Reform & Loan Repayment** (see **attachment 6**). Chairman Starnes recognized Representative Rhyne who moved to adopt the proposed committee substitute for the purpose of discussion. The Chair recognized Representative Howard to explain the proposed committee substitute. Staff members Rodney Bizzell, Andrea Poole and Karen Hammond-Blanks with Fiscal Research assisted in answering questions from members. The Chair recognized Kelly Chambers, Treasurer's Office, Unclaimed Property/Escheats Division who spoke against the bill. Chairman Starnes recognized Representative Carney who moved that HB 841 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

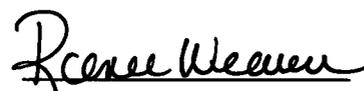
The final bill heard by the Committee was **HB 376 Retirement Technical Corrections.-AB** (see **attachment 7**). The Chair recognized Representative Jordan who moved to adopt the proposed committee substitute for the purpose of discussion. Chairman Starnes then recognized Representative McGee to explain the bill. Chairman Starnes recognized Representative Ross who moved that HB 376 be given a favorable report on the proposed committee substitute, unfavorable report to the original bill. The motion carried.

Due to time, the remaining bills on the calendar were unable to be heard and were scheduled to be re-calendared on Thursday, June 9, 2011.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 9:48 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 376 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE STATUTES GOVERNING THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 494 A BILL TO BE ENTITLED AN ACT TO ALLOW THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS AS A CONDITION OF PROBATION, TO MEET REQUIREMENTS FOR THE RESTORATION OF A REVOKED DRIVERS LICENSE; TO MITIGATE PUNISHMENTS FOR IMPAIRED DRIVING OFFENSES; AND TO ENSURE COMPLIANCE WITH CHILD CUSTODY AND VISITATION ORDERS.

With a favorable report as to Committee Substitute Bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1, and recommendation that Committee Substitute Bill 2 be re-referred to the Committee on APPROPRIATIONS SUBCOMMITTEE ON JUSTICE AND PUBLIC SAFETY.

(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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 841 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE PROGRAM EVALUATION DIVISION OF THE NORTH CAROLINA GENERAL ASSEMBLY SHALL CONDUCT A COMPREHENSIVE PROGRAM AND FINANCIAL REVIEW OF THE NORTH CAROLINA GLOBAL TRANSPARK AUTHORITY.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

AGENDA
House Finance Committee

Wednesday, June 8, 2011
8:00 am
Room 544 LOB
Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 93 Modify Refundability of EITC > PCS entitled Sales & Use Tax Overcollection

Representatives Howard, Brubaker, Starnes

HB 122 Rev Laws Tech, Clarify., & Admin. Chngs.

Representatives Howard, Luebke

HB 315 Taxpayer Information Act

Representatives Pridgen, Folwell, Collins, Stone

HB 376 Retirement Technical Corrections.-AB

Representative McGee

HB 494 Continuous Alcohol Monitoring Law Changes

Representatives M. Alexander, Guice, T. Moore, Stam

HB 508 Modify Mecklenburg County Local Taxes

Representatives Earle, R. Moore, Samuelson

HB 512 Rendering Act Amendments

Representative Torbett

HB 841 Global TransPark PED Study

Representative Howard

HB 887 Zoning/Temp. Family Health Care Structures

Representatives Moffitt, Howard, Setzer

HB 911 Increase Criminal Court Costs/Victim's Comp.

Representative LaRoque

SB 537 Increase In Rem Foreclosure Fee

Senator Hartsell

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: JUNE 8, 2011 Room: 544

*Name: <u>Jake Ward</u>	<u>6 Casey Pafillo</u>
County: <u>Rowan</u>	<u>Cumberland</u>
Sponsor: <u>Fred Steen</u>	<u>Marvin Lucas</u>
*Name: <u>Ryan Buchanan</u>	
County: <u>Avery</u>	
Sponsor: <u>Phillip Frye</u>	
*Name: <u>Thomas Whitman</u>	
County: <u>New Hanover</u>	
Sponsor: <u>Representative Justice</u>	
*Name: <u>Jonathan Rhyme</u>	
County: <u>Gaston</u>	
Sponsor: <u>J-Rhyme</u>	
*Name: <u>Daniel Bucnette</u>	
County: <u>Vance</u>	
Sponsor: <u>Jim Crawford</u>	

House Sgt-At Arms:

- 1. Name: FRED HINES
- 2. Name: BOB ROSSI
- 3. Name: JOHN BRINDON

- 4. Name: CHAMP CLARIS
- 5. Name: _____
- 6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

June 8, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

DORA FAZZINI	DST
Bella and Everett	Q&A Services
Will Culpepper	MYA
Bill Liang	Verizon
Amy McConkey	NC Dev Assn
Joy Hicks	NCDATCS
TIM ROMOCKI	STATE TREASURER'S OFFICE
ANDREW HOLTON	DST
Allison Walter	Nelson Mullins
Erin Robinson	NORMA
MICHAEL HARRIS	SMITH AND ASSN

VISITOR REGISTRATION SHEET

House Finance

June 8, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	K.M.A.
Chris Farr	Chris M Farr ^{amateurs} for Property
Lesley Gates	LNG
MIKE MANN	NCPAA
Don Hixon	WM
Andrew Cagle	NC Sheriffs' Assn
Vance Leonard	NCAAC
Jack Hony	NCHHA
John Cashion	NC Chamber
Thomas C. Cover, Jr.	NC Dept. of Crime Control & Public Safety

VISITOR REGISTRATION SHEET

House Finance

June 8, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mitch Leonard	SEANC
Karen Ray	NCMA
Paul Mayer	NCLM
Francis DeLuca	CIVITAS
PMA	GLF
Canaan Huie	NCDOR
Mary Nash Risher	Hunter; Williams
William H. McBride	Hunter; Williams
Jol Ai	DST
Vance Holloman	NCDST
Paul Billow	Wamble Carlyle

VISITOR REGISTRATION SHEET

House Finance

June 8, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kathy Hartkopf	Freedom Works
Eric Wynne	NC DOR
Jan Durand	Henderson Co. Assessor & Tax Collector
Bruce Roberts	RSS
Nash Roberts	RSS
Rich Adams	Union Advertis.
Erin McBrayer	JLF
Debra Bryan	DST - RSD
David Starling	DST - RSD
LEE KILG	HENDERSON COUNTY DELINQUENT TAX COLLECTOR
John Miller #1	MWCLLC
Lennie Collias	NC DOR

VISITOR REGISTRATION SHEET

House Finance

June 8, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JOHN PETERSON	NCEOR
Melissa Tompkins	NCACC
Rev. MARK CREECH	CAL
BOB ORR	NCICL
Jane Carmichael	MS-COPS
Michael Hauer	NCOR
David Baker	NCOR
Bradford Sneed	Gov. Office
Anne Bender	DOA
Jimmy Braxton	Wanda Carlisle
Tom Egan	MWC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 315

Short Title: Taxpayer Information Act. (Public)

Sponsors: Representatives Pridgen, Folwell, Collins, and Stone (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Finance.

March 14, 2011

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A BILL TO BE ENTITLED
AN ACT TO REQUIRE DISCLOSURE ON THE BALLOT OF THE ESTIMATED
AMOUNT OF INTEREST THAT WOULD BE INCURRED ON INDEBTEDNESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-52(b) reads as rewritten:

"(b) The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

- (1) That the proposed bond issue is necessary or expedient.
- (2) That the amount proposed is adequate and not excessive for the proposed purpose of the issue.
- (3) That the unit's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
- (4) That the increase in taxes, if any, necessary to service the proposed debt will not be excessive.
- (5) That the proposed bonds can be marketed at reasonable rates of interest.

If the Commission approves the application, the Commission shall use the current interest rates to estimate the total amount of interest resulting from the proposed bond and shall include that estimation in the order approving the application. If the Commission tentatively decides to deny the application because it is of the opinion that any one or more of these conclusions cannot be supported from the information presented to it, it shall so notify the unit filing the application. If the unit so requests, the Commission shall hold a public hearing on the application at which time any interested persons shall be heard. The Commission may appoint a hearing officer to conduct the hearing, and to present a summary of the testimony and his recommendations for the Commission's consideration."

SECTION 2. G.S. 159-61(d) reads as rewritten:

"(d) The form of the question as stated on the ballot shall be in substantially ~~the following words:~~ the words set forth in this subsection. The question shall include the estimated total amount of principal and interest resulting from the proposed bond, as calculated by the Commission and included in the order approving the application pursuant to G.S. 159-52.

"Shall the order ~~authorizing~~ authorizing, but not requiring, \$ _____ bonds and resulting in an estimated total amount of interest of \$ _____ and an estimated total cost of debt of \$ _____ for (briefly stating the purpose) be approved?"

- YES
- NO"



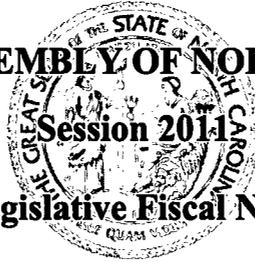
1 **SECTION 3.** Article 1 of Chapter 142 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 142-15.4. General obligation ballot question.**

4 In any general obligation bond issued by the General Assembly, the State Treasurer shall
5 use the current interest rates to estimate the total amount of interest resulting from the proposed
6 bond, and the form of the question as stated on the ballot shall include (i) the amount of
7 principal and the estimated total amount of interest and cost of debt resulting from the proposed
8 bond, as calculated by the State Treasurer, and (ii) a statement indicating that approval of the
9 general obligation bond does not require the issuance of the general obligation bond."

10 **SECTION 4.** This act is effective when it becomes law and applies to bonds
11 proposed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 315 (First Edition)

SHORT TITLE: Taxpayer Information Act.

SPONSOR(S): Representatives Folwell, Collins, Pridgen, and Stone

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES

EXPENDITURES

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of the State Treasurer, Local Governments

EFFECTIVE DATE: Applies to bonds proposed on and after the date on which the act becomes law.

BILL SUMMARY:

H315 enacts GS 142-15.4 and requires the State Treasurer to use current interest rates to estimate the total amount of interest resulting from any proposed general obligation bond issued by the General Assembly. The ballot presented to the qualified voters is to include the following information in the form of a question: (1) the amount of principal and the estimated total amount of interest and cost of debt resulting from the proposed bond and (2) a statement that approval of the general obligation bond does not require issuance of the general obligation bond.

H315 further amends G.S 159-52(b) (concerning proposed bond application approval) to direct the Local Government Commission to use current interest rates to estimate the total amount of interest resulting from the proposed bond and include that estimation in the order approving the bond application. A conforming change to GS 159-61(d) (form of question on the ballot) to include the new language on the ballot is also made.

Applies to bonds proposed on and after the date on which the act becomes law.

ASSUMPTIONS AND METHODOLOGY:

There is no fiscal impact as the General Assembly currently has authorized no general obligation debt that would be required to meet the new requirement.

Local governments may have general obligation debt that would be subject to the new requirements. However, it is not believed that providing an estimation of interest would increase any costs related to the debt.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Bondo

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 7, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 315: Taxpayer Information Act

2011-2012 General Assembly

Committee:	House Finance	Date:	June 3, 2011
Introduced by:	Reps. Pridgen, Folwell, Collins, Stone	Prepared by:	Trina Griffin
Analysis of:	PCS to First Edition H315-CSSV-22		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 315 requires disclosure of the estimated interest rate and the estimated total amount of interest and costs associated with the issuance of general obligation debt on the following: for local bond issuance, the notice of intent to apply for the issuance of bonds, the application for approval of the issuance of bonds, the bond order, and the ballot; for State general obligation bonds, the ballot.*

CURRENT LAW: Article 4 of Chapter 159 of the General Statutes (Local Government Bond Act) governs the ability of units of local government to borrow money secured by a pledge of the taxing power. When a local government proposes to issue bonds that must be approved by a vote of the people,¹ it must publish a notice of intent to apply to the Local Government Commission (LGC) for approval. After considering an application, the Commission enters an order either approving or denying the application. The local government must hold a public hearing, followed by a bond referendum. Bonds may be issued under a bond order at any time within seven years after the order takes effect and up to 10 years with LGC approval. Any action contesting the validity of a bond referendum must be begun within 30 days after the publication of the results. After this time period, no right of action may be brought. Chapter 142 governs the issuance of State debt.

BILL ANALYSIS: Sections 1 through 5 of the bill apply to the issuance of voted debt by a local government. Section 6 of the bill applies to the issuance of State debt.

Notice of Intent. – Under current law, a local government seeking approval for voted bond issuance must publish a notice of its intent. The notice of intent must include the following information:

- A statement that the board intends to file an application with the Local Government Commission for approval of a bond issue.
- The purpose of the proposed issue.
- The maximum amount of bonds to be issued.
- A statement that any citizen or taxpayer of the issuing unit may, within 7 days after the publication, file a statement of any objections to the proposed issue.

Section 1 of the bill would require a local government to also include in the notice of intent, the estimated interest rate, the estimated total amount of interest that will be paid over the lifetime of the bonds, and an estimate of any other costs associated with the issuance of the bonds.

¹ Bonds issued for the following purposes do not require voter approval: (1) to suppress riots, insurrections, or any extraordinary breach of law and order; (2) to supply an unforeseen deficiency in the revenue when taxes actually received or collected during the fiscal year fall below collection estimates made in the annual budget ordinance; (3) to meet emergencies threatening the public health or safety, as conclusively determined in writing by the Governor; (4) to refund outstanding general obligation bonds or general obligation bond anticipation notes; (5) bonds as described in G.S. 159-49(2). There are also certain other purposes for which no vote is required to the extent of two-thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metro water district, or city was reduced in the preceding fiscal year.

House PCS 315

Page 2

Application. – Under current law, a local government must file an application for approval by the Local Government Commission for bond issuance. The application must state the relevant facts, including the financial condition of the issuing unit. **Section 2** of the bill would require that the application also include the estimated interest rate, the estimated amount of interest and other costs that will be paid over the lifetime of the bonds, and a summary of the assumptions upon which the estimates are based. This section further provides that the validity of bonds is not subject to challenge on the grounds that the actual interest rate at the time of issuance differs from the estimates.

Bond Order. – After or at the same time the application is filed, a bond order must be introduced before the governing board of the local government. Once introduced, the board must schedule a public hearing. **Section 3** of the bill would require that the bond order include the estimated interest rate and the total amount of interest and other costs associated with the issuance of the bonds.

Publication of Bond Order. – The bond order must be published and include a statement describing the amount of the proposed bonds, indicating that a tax may be levied to pay the principal and interest on the bonds, and announcing when the public hearing will be held. **Section 4** of the bill would require that the statement also include the estimated interest rate, the estimated total amount of interest and costs, and a summary of the assumptions upon which the estimates are based. The statement may also include a disclaimer that the estimates do not provide a basis for challenging the validity of the bonds if the actual interest or costs exceed the estimates.

Ballot Question. – Under current law, the form of the question on the ballot for a local bond order must be as follows:

"Shall the order authorizing \$ _____ bonds for (briefly stating the purpose) be approved?
[] YES
[] NO"

Section 5 of the bill would require that the ballot question also include the estimated interest rate, the estimated total amount of interest and costs, and the estimated total cost of debt along with a statement that the actual rate of interest may vary from the estimate based on the time of issuance.

State Debt. – **Section 6** of the bill enacts new G.S. 142-15.4, requiring the State Treasurer to use current interest rates to estimate the total amount of interest resulting from any proposed general obligation bond issued by the General Assembly. It would require the ballot to include the following information:

- Amount of principal.
- Estimated interest rate.
- Estimated total amount of interest and cost of debt.
- Statement that actual interest may vary based on time of issuance.
- Statement that approval of the general obligation bond does not require issuance of the bond.

EFFECTIVE DATE: This act is effective when it becomes law and applies to bonds proposed on or after that date.

House PCS 315

Page 3

BACKGROUND: The following chart lists the states with statewide or local/special laws requiring disclosure of interest rates on bond ballots, along with descriptions of the provisions.

STATE	State or Local/special applicability	Description
Alabama	Local	Constitutional requirement for certain local gov'ts, certain kinds of bonds. Disclosure of maximum rate or rates of interest on ballot.
California	Local/special	School districts and water districts bond elections. Maximum rate of interest on ballots.
Colorado	State and local/special	Constitutional requirement for revenue bonds - disclosure of maximum rate of interest not specified but ballot must ask "SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost)?"
Delaware	Local/special	Bond election for formation of "suburban park community" by any county. Ballot must state maximum rate of interest.
Florida	State and local/special	Any bond referendum ballot must include interest rate.
Idaho	State and local/special	Applies to any taxing district election for any bonded indebtedness. Ballot must include "interest rate which is anticipated on the proposed bond issue, the range of anticipated rates, and the maximum rate if a maximum is specified in the submission of the question."
Louisiana	Local/special	Refunding bonds ballot must disclose interest rate.
Maine	State	State Treasurer prepares "estimate of costs involved, including explanation of . . . the interest cost contemplated to be paid on the amount to be issued [and] the total cost of principal and interest that will be paid at maturity." Statement may be printed on the ballot or as a separate document posted in each voting booth on election day (disclosure also provided for in absentee voting).
Nebraska	Local/special	Irrigation district bond ballot for electric light and power system must show rate of interest.
Nevada	State	In state elections for issuance of bonds, "sample ballot" requires disclosure of maximum rate of interest. (Statutes are unclear whether this is exact replica of actual ballot on election day)
Tennessee	Local/special	Tennessee River Four-County Port Authority bond referendum - rate or maximum rate of interest must be printed on ballot.
Vermont	Local/special	Municipal indebtedness for improvement bonds. Ballot set out in statute does not require the disclosure of interest but statute provides "In the discretion of the legislative branch, the form of the ballot may also state the maximum rate of interest to be paid on the bonds."
Wyoming	Local/special	The "Political Subdivision Bond Election Law" requires disclosure of maximum rate of interest on ballot. Additional specific statutes require this disclosure on the ballot in certain municipal and county bond elections. Statewide bond election law has no such requirement.

H315-SMSV-60(CSSV-22) v1

ROLL CALL VOTE

13 17 = 30 (TOTAL)
YES NO

HB# 315
SB#

HOUSE STANDING COMMITTEE ON FINANCE

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Howard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moore
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Folwell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rhyne
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Starnes ← 1 st	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Samuelson
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lewis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stam
<input type="checkbox"/>	<input checked="" type="checkbox"/>	McComas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Stone
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Wainwright	<input type="checkbox"/>	<input type="checkbox"/>	Warren
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<input type="checkbox"/>	<input type="checkbox"/>	Brandon	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Womble
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Carney	<input type="checkbox"/>	<input type="checkbox"/>	
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hackney	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hall	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hill	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jordan	<input type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	Moffitt	<input type="checkbox"/>	<input type="checkbox"/>	

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

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HOUSE BILL 494
Committee Substitute Favorable 5/25/11
PROPOSED COMMITTEE SUBSTITUTE H494-CSSA-55 [v.2]

6/2/2011 5:49:14 PM

Short Title: Continuous Alcohol Monitoring Law Changes.

(Public)

Sponsors:

Referred to:

March 29, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS
3 AS A CONDITION OF PRETRIAL RELEASE, AS A CONDITION OF PROBATION,
4 TO MITIGATE PUNISHMENTS FOR IMPAIRED DRIVING OFFENSES; AND TO
5 ENSURE COMPLIANCE WITH CHILD CUSTODY AND VISITATION ORDERS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 15A-534(a) reads as rewritten:

8 "(a) In determining conditions of pretrial release a judicial official must impose at least
9 one of the following conditions:

- 10 (1) Release the defendant on his written promise to appear.
- 11 (2) Release the defendant upon his execution of an unsecured appearance bond
12 in an amount specified by the judicial official.
- 13 (3) Place the defendant in the custody of a designated person or organization
14 agreeing to supervise him.
- 15 (4) Require the execution of an appearance bond in a specified amount secured
16 by a cash deposit of the full amount of the bond, by a mortgage pursuant to
17 G.S. 58-74-5, or by at least one solvent surety.
- 18 (5) House arrest with electronic monitoring.

19 If condition (5) is imposed, the defendant must execute a secured appearance bond under
20 subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may
21 elect to execute an appearance bond under subdivision (4). If the defendant is required to
22 provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S.
23 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been
24 taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial
25 official shall make the collection of the fingerprints or DNA sample a condition of pretrial
26 release. The judicial official may also place restrictions on the travel, associations, conduct, or
27 place of abode of the defendant as conditions of pretrial release. The judicial official may
28 include as a condition of pretrial release that the defendant abstain from alcohol consumption,
29 as verified by the use of an approved continuous alcohol monitoring system, and that any
30 violation of this condition be reported by the monitoring provider to the district attorney.

31
32 SECTION 2. G.S. 15A-534.1(a)(2) reads as rewritten:



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- "(2) A judge may impose the following conditions on pretrial release:
- a. That the defendant stay away from the home, school, business or place of employment of the alleged ~~victim~~; victim.
 - b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged ~~victim~~; victim.
 - c. That the defendant refrain from removing, damaging or injuring specifically identified ~~property~~; property.
 - d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.
 - e. That the defendant abstain from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system, and that any violation of this condition be reported by the monitoring provider to the district attorney.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond."

SECTION 3. G.S. 15A-1340.11(6) reads as rewritten:

- "(6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:
- a. Special probation as defined in G.S. 15A-1351(a).
 - b. Assignment to a residential program.
 - c. House arrest with electronic monitoring.
 - d. Intensive probation.
 - e. Assignment to a day-reporting center.
 - f. Assignment to a drug treatment court program.
 - g. Abstinence from alcohol consumption and compliance with recommended treatment, as verified by a continuous alcohol monitoring system approved by the Department of Correction when alcohol dependency or chronic abuse has been identified by a substance abuse assessment."

SECTION 4. G.S. 15A-1343(b), as amended by S.L. 2011-62, reads as rewritten:

- "(b) Regular Conditions. – As regular conditions of probation, a defendant must:
- (1) Commit no criminal offense in any jurisdiction.
 - (2) Remain accessible to the probation officer by making the defendant's whereabouts known to the officer and not leave the county of residence or the State of North Carolina unless granted written permission to leave by the court or his probation officer.
 - (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
 - (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).
 - (5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
 - (6) Pay a supervision fee as specified in subsection (c1).

- 1 (7) Remain gainfully and suitably employed or faithfully pursue a course of
2 study or of vocational training that will equip him for suitable employment.
3 A defendant pursuing a course of study or of vocational training shall abide
4 by all of the rules of the institution providing the education or training, and
5 the probation officer shall forward a copy of the probation judgment to that
6 institution and request to be notified of any violations of institutional rules
7 by the defendant.
- 8 (8) Notify the probation officer if he fails to obtain or retain satisfactory
9 employment.
- 10 (9) Pay the costs of court, any fine ordered by the court, and make restitution or
11 reparation as provided in subsection (d).
- 12 (10) Pay the State of North Carolina for the costs of appointed counsel, public
13 defender, or appellate defender to represent him in the case(s) for which he
14 was placed on probation.
- 15 (11) Repealed by Session Law 2011-62.
- 16 (12) Attend and complete an abuser treatment program if (i) the court finds the
17 defendant is responsible for acts of domestic violence and (ii) there is a
18 program, approved by the Domestic Violence Commission, reasonably
19 available to the defendant, unless the court finds that such would not be in
20 the best interests of justice.
- 21 (13) Submit at reasonable times to warrantless searches by a probation officer of
22 the probationer's person and of the probationer's vehicle and premises while
23 the probationer is present, for purposes directly related to the probation
24 supervision, but the probationer may not be required to submit to any other
25 search that would otherwise be unlawful.
- 26 (14) Submit to warrantless searches by a law enforcement officer of the
27 probationer's person and of the probationer's vehicle, upon a reasonable
28 suspicion that the probationer is engaged in criminal activity or is in
29 possession of a firearm, explosive device, or other deadly weapon listed in
30 G.S. 14-269 without written permission of the court.
- 31 (15) Not use, possess, or control any illegal drug or controlled substance unless it
32 has been prescribed for him or her by a licensed physician and is in the
33 original container with the prescription number affixed on it; not knowingly
34 associate with any known or previously convicted users, possessors, or
35 sellers of any such illegal drugs or controlled substances; and not knowingly
36 be present at or frequent any place where such illegal drugs or controlled
37 substances are sold, kept, or used.
- 38 (16) Supply a breath, urine, or blood specimen for analysis of the possible
39 presence of prohibited drugs or alcohol when instructed by the defendant's
40 probation officer for purposes directly related to the probation supervision. If
41 the results of the analysis are positive, the probationer may be required to
42 reimburse the Department of Correction for the actual costs of drug or
43 alcohol screening and testing.

44 ~~A defendant shall not pay costs associated with a substance abuse monitoring program or~~
45 ~~any other special condition of probation in lieu of, or prior to, the payments required by this~~
46 ~~subsection.~~

47 In addition to these regular conditions of probation, a defendant required to serve an active
48 term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or
49 G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and
50 regulations of the Department of Correction governing the conduct of inmates while

1 imprisoned and report to a probation officer in the State of North Carolina within 72 hours of
2 his discharge from the active term of imprisonment.

3 Regular conditions of probation apply to each defendant placed on supervised probation
4 unless the presiding judge specifically exempts the defendant from one or more of the
5 conditions in open court and in the judgment of the court. It is not necessary for the presiding
6 judge to state each regular condition of probation in open court, but the conditions must be set
7 forth in the judgment of the court.

8 Defendants placed on unsupervised probation are subject to the provisions of this
9 subsection, except that defendants placed on unsupervised probation are not subject to the
10 regular conditions contained in subdivisions (2), (3), (6), (8), (13), (14), (15), and (16) of this
11 subsection."

12 **SECTION 5.** G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

13 "(b1) Special Conditions. – In addition to the regular conditions of probation specified in
14 subsection (b), the court may, as a condition of probation, require that during the probation the
15 defendant comply with one or more of the following special conditions:

16 ...
17 (2c) Abstain from alcohol consumption and submit to continuous alcohol
18 monitoring when alcohol dependency or chronic abuse has been identified
19 by a substance abuse assessment.

20"

21 **SECTION 6.** G.S. 15A-1343.2(f) reads as rewritten:

22 "(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding
23 judge specifically finds in the judgment of the court that delegation is not appropriate, the
24 Division of Community Corrections in the Department of Correction may require an offender
25 sentenced to intermediate punishment to:

- 26 (1) Perform up to 50 hours of community service, and pay the fee prescribed by
27 law for this ~~supervision;~~supervision.
- 28 (2) Submit to a curfew which requires the offender to remain in a specified
29 place for a specified period each day and wear a device that permits the
30 offender's compliance with the condition to be monitored
31 ~~electronically;~~electronically.
- 32 (3) Submit to substance abuse assessment, monitoring or ~~treatment;~~ treatment,
33 including continuous alcohol monitoring when abstinence from alcohol
34 consumption has been specified as a term of probation.
- 35 (4) Participate in an educational or vocational skills development program.
- 36 (5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of
37 Chapter 14 of the General Statutes, if the defendant is described by
38 G.S. 14-208.40(a)(2).

39 If the Division imposes any of the above requirements, then it may subsequently reduce or
40 remove those same requirements.

41 If the probation officer exercises authority delegated to him or her by the court pursuant to
42 this subsection, the offender may file a motion with the court to review the action taken by the
43 probation officer. The offender shall be given notice of the right to seek such a court review.
44 The Division may exercise any authority delegated to it under this subsection only if it first
45 determines that the offender has failed to comply with one or more of the conditions of
46 probation imposed by the court."

47 **SECTION 7.** G.S. 15A-1343.3 reads as rewritten:

48 "**§ 15A-1343.3. Department of Corrections to establish regulations for continuous alcohol**
49 **monitoring systems; ~~systems;~~ payment of fees; authority to terminate**
50 **monitoring.**

1 (a) The Department of Correction shall establish regulations for continuous alcohol
2 monitoring systems that are authorized for use by the courts as evidence that an offender on
3 probation has abstained from the use of alcohol for a specified period of time. A "continuous
4 alcohol monitoring system" is a device that is worn by a person that can detect, monitor, record,
5 and report the amount of alcohol within the wearer's system over a continuous 24-hour daily
6 basis. The regulations shall include the procedures for supervision of the offender, collection
7 and monitoring of the results, and the transmission of the data to the court for consideration by
8 the court. All courts, including those using continuous alcohol monitoring systems prior to July
9 4, 2007, shall comply with the regulations established by the Department pursuant to this
10 section.

11 The Secretary, or the Secretary's designee, shall approve continuous alcohol monitoring
12 systems for use by the courts prior to their use by a court as evidence of alcohol abstinence, or
13 their use as a condition of probation. The Secretary shall not unreasonably withhold approval of
14 a continuous alcohol monitoring system and shall consult with the Division of Purchase and
15 Contract in the Department of Administration to ensure that potential vendors are not
16 discriminated against.

17 (b) Any fees or costs paid by an offender on probation in order to comply with continuous
18 alcohol monitoring shall be paid directly to the monitoring provider. A monitoring provider
19 shall not terminate the provision of continuous alcohol monitoring for non-payment of fees
20 unless authorized by the court."

21 SECTION 8. Article 82 of Chapter 15A of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 15A-1343.4. Discretionary use of continuous alcohol monitoring systems in DWI and**
24 **drug courts.**

25 Discretionary use of continuous alcohol monitoring systems for offenders who are not
26 required by law as a condition of pretrial release or probation to abstain from the use of alcohol
27 for a specified period of time shall be permitted and may be imposed in a matter before a Drug
28 Treatment Program Court in the sole discretion of the judge presiding."

29 SECTION 9. G.S. 20-28(a) reads as rewritten:

30 "(a) Driving While License Revoked. – Except as provided in subsection (a1) of this
31 section, any person whose drivers license has been revoked who drives any motor vehicle upon
32 the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon
33 conviction, the person's license shall be revoked for an additional period of one year for the
34 first offense, two years for the second offense, and permanently for a third or subsequent
35 offense.

36 If the person's license was originally revoked for an impaired driving revocation, the court
37 may order as a condition of probation that the offender to abstain from alcohol consumption
38 and verify compliance by use of a continuous alcohol monitoring for a minimum period of 90
39 days.

40 The restoree of a revoked drivers license who operates a motor vehicle upon the highways
41 of the State without maintaining financial responsibility as provided by law shall be punished
42 as for driving without a license."

43 SECTION 10. G.S. 20-179 reads as rewritten:

44 **"§ 20-179. Sentencing hearing after conviction for impaired driving; determination of**
45 **grossly aggravating and aggravating and mitigating factors; punishments.**

46 ...

47 (g) Level One Punishment. – A defendant subject to Level One punishment may be
48 fined up to four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment
49 that includes a minimum term of not less than 30 days and a maximum term of not more than
50 24 months. The term of imprisonment may be suspended only if a condition of special

1 probation is imposed to require the defendant to serve a term of imprisonment of at least 30
2 days. A judge may reduce the minimum term of imprisonment required to a term of not less
3 than 10 days if a condition of special probation is imposed to require that a defendant abstain
4 from alcohol consumption and be monitored by a continuous alcohol monitoring system
5 approved by the Department of Correction for a period of not less than 120 days. If the
6 defendant is monitored on an approved continuous alcohol monitoring system during the
7 pretrial period, up to 60 days of pretrial monitoring may be credited against the 120-day
8 monitoring requirement for probation. If the defendant is placed on probation, the judge shall
9 impose a requirement that the defendant obtain a substance abuse assessment and the education
10 or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition
11 of probation. The judge may impose any other lawful condition of probation.

12 (h) Level Two Punishment. – A defendant subject to Level Two punishment may be
13 fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that
14 includes a minimum term of not less than seven days and a maximum term of not more than 12
15 months. The term of imprisonment may be suspended only if a condition of special probation is
16 imposed to require the defendant to serve a term of imprisonment of at least seven ~~days~~, days or
17 to abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous
18 alcohol monitoring system approved by the Department of Correction. If the defendant is
19 monitored on an approved continuous alcohol monitoring system during the pretrial period, up
20 to 60 days of pretrial monitoring may be credited against the 90-day monitoring requirement
21 for probation. If the defendant is placed on probation, the judge shall impose a requirement that
22 the defendant obtain a substance abuse assessment and the education or treatment required by
23 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge
24 may impose any other lawful condition of probation.

25 ~~(h1) The judge may impose, as a condition of probation for defendants subject to Level~~
26 ~~One or Level Two punishments, that the defendant abstain from alcohol consumption for a~~
27 ~~minimum of 30 days, to a maximum of 60 days, as verified by a continuous alcohol monitoring~~
28 ~~system. The total cost to the defendant for the continuous alcohol monitoring system may not~~
29 ~~exceed one thousand dollars (\$1,000). The defendant's abstinence from alcohol shall be verified~~
30 ~~by a continuous alcohol monitoring system of a type approved by the Department of~~
31 ~~Correction.~~

32 ~~(h2) Notwithstanding the provisions of subsection (h1), if the court finds, upon good~~
33 ~~cause shown, that the defendant should not be required to pay the costs of the continuous~~
34 ~~alcohol monitoring system, the court shall not impose the use of a continuous alcohol~~
35 ~~monitoring system unless the local governmental entity responsible for the incarceration of the~~
36 ~~defendant in the local confinement facility agrees to pay the costs of the system.~~

37 ~~(h3) Any fees or costs paid pursuant to subsections (h1) or (h2) of this section shall be~~
38 ~~paid to the clerk of court for the county in which the judgment was entered or the deferred~~
39 ~~prosecution agreement was filed. Fees or costs collected under this subsection shall be~~
40 ~~transmitted to the entity providing the continuous alcohol monitoring system.~~

41 ...

42 (k2) Probationary Requirement for Abstinence and Use of Continuous Alcohol
43 Monitoring. – The judge may order that as a condition of special probation for any level of
44 offense under G.S. 20-179 the defendant abstain from alcohol consumption, as verified by a
45 continuous alcohol monitoring system of a type approved by the Department of Correction.

46 (k3) The court, in the sentencing order, may authorize probation officers to require
47 defendants to submit to continuous alcohol monitoring for assessment purposes if the defendant
48 has been required to abstain from alcohol consumption during the term of probation, and the
49 probation officer believes the defendant is consuming alcohol. The defendant shall bear the

1 costs of the continuous alcohol monitoring system if the use of the system has been authorized
2 by a judge in accordance with this subsection.

3 (k4) Notwithstanding the provisions of subsections (g), (h), (k2), and (k3) of this section,
4 if the court finds, upon good cause shown, that the defendant should not be required to pay the
5 costs of the continuous alcohol monitoring system, the court shall not impose the use of a
6 continuous alcohol monitoring system unless the local governmental entity responsible for the
7 incarceration of the defendant in the local confinement facility agrees to pay the costs of the
8 system.

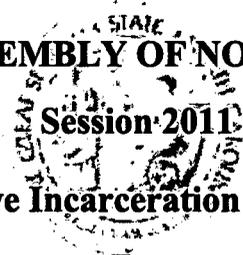
9"

10 SECTION 11. G.S. 50-13.2 is amended by adding a new subsection to read:

11 "(b2) Any order for custody, including visitation, may, as a condition of such custody or
12 visitation, require either or both parents, or any other person seeking custody or visitation, to
13 abstain from consuming alcohol and may require submission to an approved continuous alcohol
14 monitoring system to verify compliance with this condition of custody or visitation. Any order
15 pursuant to this subsection shall include an order to the monitoring provider to report any
16 violation of the order to the court and each party to the action. Failure to comply with this
17 condition shall be grounds for civil or criminal contempt."

18 SECTION 12. This act becomes effective December 1, 2011, and applies to
19 offenses committed or any custody and visitation orders issued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 494 (Second Edition)

SHORT TITLE: Continuous Alcohol Monitoring Law Changes.

SPONSOR(S): Representatives M. Alexander, Guice, T. Moore, and Stam

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUE:	<i>*See Assumptions and Methodology*</i>				
EXPENDITURES:					
Correction	<i>*See Assumptions and Methodology*</i>				
Probation	<i>*See Assumptions and Methodology*</i>				
Judicial	<i>*See Assumptions and Methodology*</i>				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

FISCAL SUMMARY:

According to the Sentencing and Policy Advisory Commission, the proposed legislation would have an impact on the prison population if revocation of probation is due to violation of the new condition only (abstinence from alcohol consumption and compliance with recommended treatment, as verified by a continuous alcohol monitoring (CAM) system). The impact of revocations on the prison population is likely to be minimal, because DWI is a misdemeanor. As such, revocation would not often lead to incarceration in prison. Revocations would primarily have an impact on the local jail population.

In addition, the Department of Correction Office of Research and Planning (DOC) reported that the Department does not anticipate a significant fiscal impact as a result of the proposed legislation, provided the offender pays the cost of CAM.

According to the Administrative Office of the Courts (AOC), the proposed legislation could result in the potential reduction in State and local government revenue. Also, the act would increase workload impact on court personnel. While many sections of the bill would impact court personnel, only the workload impact from Section 9 can be estimated. AOC stated Section 9 is anticipated to require ten positions and cost \$992,000 in the first full year of implementation (FY 2012-13).

BILL SUMMARY:

House Bill 494 would allow the use of continuous alcohol monitoring (CAM) systems as a condition of probation, to meet requirements for the restoration of a revoked drivers' license, to mitigate punishments for impaired driving offenses, and to ensure compliance with child custody and visitation orders.

The act becomes effective December 1, 2011, and applies to offenses committed or any custody or visitation orders issued on or after that date.

Adopted from Committee Counsel's bill summary dated May 24, 2011.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

However, the Sentencing and Policy Advisory Commission does not maintain statistical information on impaired driving offenses, as they are not punished under the Structured Sentencing Act. The Sentencing Commission did provide some general assessments about the proposed legislation. Additionally, the Department of Correction Office of Research and Planning (DOC) was asked to estimate the fiscal impact of the proposed legislation.

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 1:

This section amends G.S. 15A-534.1(a)(2), Crimes of domestic violence; bail and pretrial release. The act expands the judge's authority in all cases in which the defendant is charged with assault on a female, stalking, communicating threats, or committing a felony provided in Articles 7A, 8, 10 or 15 of Chapter 14 of the General Statutes or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, to allow a judge to require a defendant to abstain from alcohol consumption and be subject to a continuous alcohol monitoring (CAM) system as a condition of pretrial release.

Judicial Branch Impact: Section 1 adds an additional condition for pretrial release, which increases the potential for violations of the conditions of pretrial release. Such violations would increase the number of bond hearings, which are estimated to take ten minutes of court time (excluding out of court preparation time). Each bond hearing for a case pending in superior court would impact the workload of a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each bond hearing for a case pending in district court would impact the workload of a district court judge, deputy clerk, and assistant district attorney. The Office of Indigent Defense Services would be impacted as well for indigent defendants. The number of impacted cases and the number of violations cannot be projected. As an example of one part of the potential pool, in 2010 there were nearly 28,000 defendants charged with Assault on a female, an offense which is frequently charged in domestic violation cases. In addition, there is the potential for more contempt hearings in Chapter 50B cases for those who violate the abstinence condition of pretrial release.

Section 2:

Section 2 amends G.S. 15A-1340.11(6) to add to the list of conditions that constitute intermediate punishment. The act states that an offender in a criminal case must abstain from alcohol consumption and be subject to a CAM system as a regular condition of probation, if alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

DOC Impact: According to the Sentencing Commission, the proposed amendment to G.S. 15A-1340.11(6) would not be expected to increase or decrease the number of convictions that receive an intermediate punishment. Rather, the proposed bill provides judges with an additional intermediate punishment option. Because the bill applies to intermediate punishments, it would have an impact on the prison population if revocation of probation is due to violation of this condition only (i.e., not in combination with violation of another condition that is currently allowed). The impact would also vary based on the offense class for which the offender received the suspended sentence.

For felony probationers, the proposed bill would primarily have an impact on the prison population. For misdemeanor probationers, the proposed bill would primarily have an impact on local jails. The Sentencing Commission has no data on which to base an estimate of the number of convictions in which judges may impose this proposed option, nor the number of revocations that may occur because of violation of this condition only.

Judicial Branch Impact: Since the alcohol recovery process may include relapse, it is likely that the use of CAM would lead to an increase in probation violations, and thus an increase in

probation violation hearings. Each probation violation hearing for a case in superior court would require, on average 45 minutes of time each for a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

Section 3:

This section deletes the provision in G.S. 15A-1343(b) that prohibits a defendant from paying the costs associated with a substance abuse monitoring program or any other special condition of probation in lieu of, or prior to, the payments required as regular conditions of probation.

Judicial Branch Impact: AOC states that removing the language in G.S. 15A-1343 has the potential to impact State and local government revenues. Under the proposed legislation, costs associated with substance abuse monitoring or other special conditions of probation could be made first. Therefore, payments for restitution, fines, facilities fees, jail fees, court costs, and other fees could be delayed or may be ultimately waived and remitted by a judge.

Level	Category	Examples	Authority for Priority Ranking
1 (paid first)	Victim restitution	VRA and non-VRA restitution for victims	G.S. 7A-304(d)(1)
2	Costs due a county	Process fee; facilities fee; pretrial release fee; local lab fee; jail fees	G.S. 7A-304(d)(1)
3	Costs due a municipality	Process fee; facilities fee; local lab fee; jail fees	G.S. 7A-304(d)(1)
4	Fines due a county	Fines	G.S. 7A-304(d)(1)
5	Non-victim restitution	Restitution to entities other than a victim	G.S. 7A-304(d)(1)
6	Costs due the State	Telephone fee; law enforcement retirement fees; law enforcement training fee; GCOJ fee; Chapter 20 offense processing fee; FTA fee; FTC fee; SBI lab fee; witness fees; installment fee; probation supervision fee	G.S. 7A-304(d)(1)
7	Attorney fees and the attorney appointment fee	Attorney fees (and other expenses of indigent representation) and the attorney appointment fee	G.S. 7A-304(d)(1)
8 (paid last)	Costs associated with a substance abuse monitoring program or any other special condition of probation	CAM fee; EHA fee; community service fee; SBM fee	G.S. 15A-1343(b)

In the table above, Section 3 would delete the priority order for items in Level 8. This would shift the EHA fee, community service fee, and SBM fee to Level 6 (costs due the State), and remove any reference to priority order for the CAM fee, which is paid to a private vendor.

Section 4:

This section amends G.S. 15A-1343(b1) to allow a court to require as a special condition of probation that a defendant abstain from alcohol consumption and submit to CAM when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

Judicial Branch Impact: Since the alcohol recovery process may include relapse, it is likely that the use of CAM would lead to an increase in probation violations, and thus an increase in probation violation hearings. Each probation violation hearing for a case in superior court would require, on average 45 minutes of time each for a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

Section 5:

This section amends G.S. 15A-1343.2(f) to allow the Division of Community Corrections in the Department of Correction to require an offender sentenced to intermediate punishment to submit to substance abuse treatment through a CAM program when abstinence from alcohol consumption has been specified as a term of probation.

Judicial Branch Impact: Since the alcohol recovery process may include relapse, it is likely that the use of CAM would lead to an increase in probation violations, and thus an increase in probation violation hearings. Each probation violation hearing for a case in superior court would require, on average 45 minutes of time each for a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

Section 6:

This section adds new G.S. 15A-1343.4 to allow judges, in their discretion, to require offenders to abstain from the use of alcohol and to submit to CAM systems as a condition of pretrial release or probation in a matter before a Drug Treatment Program Court.

Judicial Branch Impact: In the event that an order for the use of CAM leads to an increase in violations, there could be an increase in hearings and impact workload for court personnel.

Section 7:

This section amends G.S. 20-28(a) to allow a judge to order an offender who is subject to a license revocation due to an impaired driving offense to abstain from alcohol consumption and submit to CAM for a minimum period of 90 days instead of incarceration.

DOC Impact: DOC looked at the FY 2009-2010 revoked offenders whose most serious offense was DWLR to see the number revoked for criminal reasons who had a conviction for DWI recorded in OPUS with an offense date or conviction date within 60 days of their revocation date.

Most Serious DWI Offenses for DWLR Revocation in FY 2009-2010

NEW OFFENSE	OFFENDERS	PERCENT
DWI LEVEL 1	15	41.67
DWI LEVEL 2	5	13.89
DWI LEVEL 3	4	11.11
DWI LEVEL 4	2	5.56
DWI LEVEL 5	3	8.33
DWI DRIVING WHILE IMPAIRED	1	2.78
HABITUAL IMPAIRED DRIVING	6	16.67
TOTAL	36	100

Because the number of offenders who might be affected by Section 7 is estimated to be very low, the Department would not need additional resources to handle this provision.

Judicial Branch Impact: Since the alcohol recovery process may include relapse, it is likely that the use of CAM would lead to an increase in probation violations, and thus an increase in probation violation hearings. Each probation violation hearing for a case in superior court would require, on average 45 minutes of time each for a superior court judge, court reporter, deputy clerk, and assistant district attorney. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

Section 8:

Level One sentencing – A judge could require as a condition of special probation after the 30-day term of imprisonment that the defendant use CAM for not less than 120 days, and can reduce the minimum term of imprisonment to ten days if this condition is imposed. Up to 60 days of pretrial continuous alcohol monitoring may be credited against the 120 days.

Level Two sentencing – A judge could suspend the active sentence, including the seven day minimum if the defendant has abstained from consuming alcohol for at least 90 days, as verified by a CAM system. Up to 60 days of pretrial CAM may be credited against the 90 days.

The act deletes provisions in the current DWI sentencing law that restrict the use of CAM to 60 days and limit the maximum amount a defendant can be required to pay for monitoring to \$1,000. Also, the act deletes provisions requiring fees for monitoring to be paid through the clerk of court.

The proposed legislation authorizes the judge to order abstinence from alcohol and the use of a CAM system for any level of DWI.

In addition, the act authorizes probation officers, with a judge's authorization, to require defendants to submit to CAM for assessment purposes if the defendant has been required to abstain from alcohol consumption and the probation officer believes the defendant is consuming alcohol.

DOC Impact: According to the Sentencing Commission, the impact of revocations on the prison population is likely to be minimal because DWI is a misdemeanor. As such, revocation would not often lead to incarceration in prison. Revocations would primarily have an impact on the local jail population.

Judicial Branch Impact: New subsection (k2) permits a judge to order as a condition of special probation for any Level of DWI offender to abstain from alcohol consumption, as verified by a continuous alcohol monitoring system. This would expand the pool of eligible DWI offenders from 10,154 offenders to 41,682 offenders. Since the alcohol recovery process may include relapse, it is likely that the use of continuous alcohol monitoring would lead to an increase in probation violations, and thus an increase in probation violation hearings. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

Section 8 also removes the cap of \$1,000 as the maximum costs a DWI offender must pay for CAM. This change, in conjunction with the change in Section 3, has the potential to reduce State and local government revenue. In addition, there is the potential for increased probation violation hearings for failure to pay all monies owed. Each probation violation hearing for a case in district court would require, on average 45 minutes of time each for a district court judge, deputy clerk, and assistant district attorney.

This section also removes the requirement that payments by the defendant for CAM be paid to the Clerk of Court for transmission to the entity providing the CAM system. Thus, it appears that the defendant would pay the entity directly, and may pay the CAM entity prior to making payments on amounts due on the criminal judgment, such as restitution, fines, and court fees.

Section 9:

This section amends G.S. 50-13.2 to allow a court to impose as a condition of an order for custody, including visitation that either or both parents, or other persons seeking custody or visitation, abstain from consuming alcohol and submit to CAM. Failure to comply with this condition shall be grounds for civil or criminal contempt.

Judicial Branch Impact: Section 9 is anticipated to significantly impact the time required for child custody and visitation hearings. In 2010, AOC data show 18,003 civil cases with a custody issue and 4,834 cases with a visitation issue. Because there may be some overlap between the two groups, for the purposes of this analysis AOC has used only the 18,003 custody cases as a starting point. It is estimated that in approximately 60 percent of those cases, a request for CAM will be made during the hearing for permanent custody, adding an estimated 30 minutes to those hearings. In addition, it is estimated that roughly half of those cases, or 30 percent of the overall custody cases, will first have the issue raised at a temporary custody hearing, adding another 15 minutes to those hearings. With a December 1 effective date, costs would be as follows:

Position Type	Positions	Position Cost				FY2011-12 (Eff. Dec 1)			FY2012-13	FY2013-14	FY2014-15	FY2015-16
		Salary	Soc Sec	Retirement	Health	R	NR	Total	Total	Total	Total	Total
Inflation*								0.00%	8.87%	8.68%	6.64%	5.24%
District Court Judge	5	\$546,860	\$41,045	\$109,430	\$24,645	\$421,155	\$48,265	\$469,420	\$786,020	\$854,246	\$910,968	\$958,703
Deputy Clerk*	5	\$139,440	\$10,670	\$14,660	\$24,645	\$110,492	\$13,100	\$123,592	\$206,216	\$224,116	\$238,997	\$251,520
Subtotal Court Personnel	10							\$593,012	\$992,236	\$1,078,362	\$1,149,965	\$1,210,223
Inflation**								0.00%	3.05%	2.99%	2.47%	2.49%
Operating								\$72,301	\$127,725	\$131,544	\$134,793	\$138,150
Grand Total								\$665,313	\$1,119,961	\$1,209,906	\$1,284,758	\$1,348,373

* Positions were inflated based on the Moody's economy.com inflation rate estimates for salaries and wages (Jan. 2011).

**Operating expense inflation estimates based on consumer price index projections provided by Moody's economy.com (Jan. 2011)

Under Section 9 there is also the potential for an increase in civil or criminal contempt proceedings, which would also require court personnel time.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Stone

APPROVED BY:
Lynn Muchmore, Director
Fiscal Research Division

DATE: May 27, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 494: Continuous Alcohol Monitoring Law Changes

2011-2012 General Assembly

Committee:	House Finance	Date:	June 3, 2011
Introduced by:	Reps. M. Alexander, Guice, T. Moore, Stam	Prepared by:	Susan Sitze and Trina Griffin
Analysis of:	PCS to Second Edition H494-CSSA-55		Staff Attorneys

SUMMARY: *The Proposed Committee Substitute (PCS) for House Bill 494 would allow the use of continuous alcohol monitoring systems as a condition of pretrial release, as a condition of probation, to mitigate punishments for impaired driving offenses, and to ensure compliance with child custody and visitation orders.*

BILL ANALYSIS:

Sections 1 and 2 of the PCS would allow the judge to impose as a condition of pretrial release that the defendant abstains from alcohol consumption, as verified by a continuous alcohol monitoring system, and that any violation of this condition be reported by the provider to the district attorney.¹ Section 2 is specific to pretrial release for domestic violence offenders.

Section 3 of the PCS would add to the list of potential conditions for an intermediate punishment that the defendant abstain from alcohol consumption and comply with recommended treatment, as verified by a continuous alcohol monitoring system, when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

Under current law, a defendant is not permitted to pay costs associated with a substance abuse monitoring system or any other special condition of probation instead of or prior to making payments required as a regular condition of probation, such as child support, supervision fees, courts costs, fines, and court-appointed counsel costs. Section 4 of the PCS would delete this requirement.

Section 5 of the PCS would authorize as a special condition of probation that the defendant abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

Section 6 of the PCS would authorize a probation officer for someone sentenced to intermediate punishment to require continuous alcohol monitoring when abstinence from alcohol consumption has been specified as a term of probation.

Section 7 of the PCS provides that an offender on continuous alcohol monitoring as a condition of probation must pay fees for the monitoring directly to the provider. The provider must get authorization from the court before it may terminate the monitoring for nonpayment.

Section 8 of the PCS would grant the judge in a Drug Treatment Program Court the discretion to require a defendant to submit to continuous alcohol monitoring.

Section 9 of the PCS would authorize the judge to require as a condition of probation abstinence from alcohol and the use of continuous alcohol monitoring for a minimum of 90 days, for a defendant convicted of driving while license revoked where the revocation is for a DWI under G.S. 20-138.1.

Section 10 would make changes to DWI sentencing relating to the use of continuous alcohol monitoring as follows:

¹ In counties with pretrial release services, the district attorney can direct the provider to report to pretrial release services.

House PCS 494

Page 2

- Level One sentencing – A judge may reduce the minimum term of imprisonment to not less than 10 days if a condition of special probation is imposed to require abstinence from alcohol and continuous alcohol monitoring for a period of at least 120 days. Up to 60 days of pretrial continuous alcohol monitoring may be credited against the 120 days.
- Level Two sentencing – A judge could impose as a condition of special probation a 7-day sentence or at least 90 days of continuous alcohol monitoring. Up to 60 days of pretrial continuous alcohol monitoring may be credited against the 90 days.
- Deletes provisions in the current DWI sentencing law that restrict the use of continuous alcohol monitoring to 60 days and limit the maximum amount a defendant can be required to pay for monitoring to \$1000. Also deletes provisions requiring fees for monitoring to be paid through the clerk of court.
- Authorizes the judge to order abstinence from alcohol and the use of a continuous alcohol monitoring system for any level of DWI.
- Authorizes probation officers, with a judge's authorization in the sentencing order, to require defendants to submit to continuous alcohol monitoring for assessment purposes if the defendant has been required to abstain from alcohol consumption and the probation officer believes the defendant is consuming alcohol.

Section 11 of the PCS would authorize a court to include as a condition of a custody or visitation order that either or both parents, or any other person seeking custody or visitation, abstain from consuming alcohol and may require submission to continuous alcohol monitoring. Failure to comply with this condition shall be grounds for civil or criminal contempt. The provider would be required to notify the court and each party to the action of noncompliance.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed or any custody or visitation orders issued on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 841*
PROPOSED COMMITTEE SUBSTITUTE H841-CSTM-16 [v.1]

Short Title: Global TransPark Gov. Reform & Loan Repayment. (Public)

Sponsors:

Referred to:

April 7, 2011

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A BILL TO BE ENTITLED

AN ACT TO REFORM THE GOVERNANCE OF THE NORTH CAROLINA GLOBAL
TRANSPARK AND TO REPAY THE LOAN FROM THE ESCHEATS FUND TO THE
GLOBAL TRANSPARK.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 63A-3(a) reads as rewritten:

"(a) Creation. The North Carolina Global TransPark Authority is created as a body corporate and politic having the powers and jurisdiction as provided under this Chapter or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority shall be located within the Department of Transportation, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Transportation and, notwithstanding any other provision of law, Transportation and shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting. Secretary."

SECTION 1.(b) G.S. 63A-3(b) reads as rewritten:

"(b) Board of Directors. The Authority shall be governed by a Board of Directors. The Board shall consist of at least the following 20 members:

- (1) Seven Six members appointed by the Governor. One member shall be representative of the economic development industry, two members shall be representative of commercial real estate development industry, two members shall be representative of the banking and finance industry, and one member shall be representative of environmental interests. Of the Governor's six appointments, at least one member shall come from each of the State's three regions: Western, Piedmont, and Eastern.
- (2) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. One member shall be representative of the aerospace and aviation industry, one member shall be representative of advanced manufacturing industries, and one member shall be representative of the logistics and supply chain management industry.
- (3) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. One member shall be representative of the aerospace and



1 aviation industry, one member shall be representative of the emergency
2 response and disaster relief industries, and one member shall be
3 representative of the defense and security industry.

4 (4) The State Treasurer, who shall serve as an ex officio nonvoting member.

5 (5) The President of the North Carolina System of Community Colleges,
6 provided that the President of the North Carolina Community Colleges may
7 instead appoint to the Board of Directors one member of the board of
8 trustees of a community college or one president of a community college. If
9 such an appointment is made, the appointee shall serve at the pleasure of the
10 President.

11 (6) The President of The University of North Carolina, provided that the
12 President of the University of North Carolina may instead appoint to the
13 Board of Directors one member of the board of trustees of a constituent
14 institution of The University of North Carolina, or one chancellor of a
15 constituent institution of The University of North Carolina. If such an
16 appointment is made, the appointee shall serve at the pleasure of the
17 President.

18 (7) The Chairman of the State Ports Authority.

19 (8) One member appointed by the board of county commissioners of any county
20 in which the cargo airport complex site is located.

21 (9) One member appointed by the city council of the city which is a county seat
22 of any county in which the cargo airport complex site is located.

23 (10) The Commissioner of Agriculture.

24 (11) The Secretary of the Department of Commerce.

25 Within 90 days after the Authority acquires land, either by purchase or condemnation, for
26 development as part of a cargo airport complex site, the board of county commissioners in any
27 county in which a portion of the land is located and the city council of the city which is the
28 county seat of the county shall, by resolution, each appoint a person to serve as a member of the
29 Board. If the board of commissioners or the city council appoints one of its own members to
30 the Board, the county commissioner or the member of the city council who is appointed is
31 considered to be serving on the Board as an ex officio voting member as part of the duties of
32 the office of county commissioner or the office of city council member, in accordance with
33 G.S. 128-1.2, and is not considered to be serving in a separate office. Notwithstanding
34 G.S. 116-31(h), a member of the board of trustees of a constituent institution of The University
35 of North Carolina appointed to the Board of Directors under subdivision (6) of this subsection
36 may concurrently serve on the board of trustees and the Board of Directors. Notwithstanding
37 any other provision of law, the Governor may serve on the Board of Directors by his own
38 appointment on or after July 16, 1991, under subdivision (1) of this subsection.

39 As the holder of an office, each member of the Board shall take the oath required by Article
40 VI, § 7 of the North Carolina Constitution before assuming the duties of a Board member."

41 SECTION 1.(c) G.S. 63A-3(c) is repealed.

42 SECTION 1.(d) G.S. 63A-3 is amended by adding a new subsection to read as
43 follows:

44 "(d1) Notwithstanding the terms of board members appointed by the General Assembly as
45 specified in subsection (d) of this section, terms of board members appointed by the General
46 Assembly shall end June 30, 2011. After June 30, 2011, the six members appointed by the
47 General Assembly shall be divided into two classes. The first class shall consist of three
48 persons, two of whom shall be appointed upon recommendation of the Speaker of the House of
49 Representatives and one of whom shall be appointed upon recommendation of the President
50 Pro Tempore of the Senate, to serve an initial term expiring June 30, 2013, with subsequent
51 terms expiring each fourth June 30th thereafter. The second class shall consist of three persons,

1 two of whom shall be appointed upon recommendation of the President Pro Tempore of the
2 Senate and one of whom shall be appointed upon recommendation of the Speaker of the House
3 of Representatives, to serve an initial term expiring June 30, 2015, with subsequent terms
4 expiring each fourth June 30th thereafter."

5 **SECTION 1.(e)** G.S. 63A-24(3) reads as rewritten:

6 "(3) Except for G.S. 146-29.1, 146-79, and 146-80, Chapter 146 of the General
7 Statutes does not apply to the Authority. Notwithstanding this exemption
8 from Chapter 146 of the General Statutes, the Secretary of Transportation
9 may designate employees of the Authority as subject to Chapter 146 of the
10 General Statutes."

11 **SECTION 2.(a)** There is hereby transferred from the General Fund to the Escheats
12 Fund the sum of seventeen million five hundred dollars (\$17,500,000) as a payment on the
13 outstanding loan from the Escheats Fund to the Global TransPark Authority authorized under
14 G.S. 63A-4(a)(22) and G.S. 147-69.2(b)(11).

15 **SECTION 2.(b)** If House Bill 200 of the 2011 Regular Session becomes law, then
16 Section 9.8(a) of that act reads as rewritten:

17 "**SECTION 9.8.(a)** There is appropriated from the Escheat Fund income to the Board of
18 Governors of The University of North Carolina the sum of ~~thirty-two million one hundred~~
19 ~~twenty-two thousand two hundred forty-two dollars (\$32,122,242)~~ forty-nine million six
20 hundred twenty-two thousand two hundred forty-two dollars (\$49,622,242) for the 2011-2012
21 fiscal year and the sum of thirty-two million one hundred twenty-two thousand two hundred
22 forty-two dollars (\$32,122,242) for the 2012-2013 fiscal year to be used for The University of
23 North Carolina Need-Based Financial Aid Program. Notwithstanding the provisions of the N.C.
24 Senate Appropriations Committee Report on the Continuation, Expansion, and Capital Budgets
25 dated May 31, 2011, the appropriation from the General Fund for the UNC Need-Based
26 Financial Aid Program shall be reduced by the sum of seventeen million five hundred thousand
27 dollars (\$17,500,000), nonrecurring, in fiscal year 2011-2012."

28 **SECTION 3.** Any monies received from a grant made on or after July 1, 2011 by
29 THE GOLDEN L.E.A.F. (LONG-TERM ECONOMIC ADVANCEMENT FOUNDATION),
30 INC. to the Global TransPark Authority shall be first applied to the payment of any outstanding
31 loan from the Escheat Fund to the Global TransPark Authority authorized under
32 G.S. 63A-4(a)(22) and G.S. 147-69.2(b)(11).

33 **SECTION 4.(a)** If House Bill 200 of the 2011 Regular Session becomes law, then
34 Section 6.10 of that act is repealed.

35 **SECTION 4.(b)** G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144,
36 Section 2 of S.L. 2005-201, Section 28.17 of S.L. 2005-276, Section 27.7 of S.L. 2007-323,
37 and Section 25.2 of S.L. 2009-451, reads as rewritten:

38 "(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated
39 in subsection (a) of this section in excess of the amount required to meet the current needs and
40 demands on such funds, selecting from among the following:

41 ...

42 (11) With respect to assets of the Escheat Fund, obligations of the North Carolina
43 Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed
44 twenty-five million dollars (\$25,000,000), that have a final maturity not later
45 than October 1, ~~2011~~ 2012. The obligations shall bear interest at the rate set
46 by the State Treasurer. No commitment to purchase obligations may be
47 made pursuant to this subdivision after September 1, 1993, and no
48 obligations may be purchased after September 1, 1994. In the event of a loss
49 to the Escheat Fund by reason of an investment made pursuant to this
50 subdivision, it is the intention of the General Assembly to hold the Escheat

1 Fund harmless from the loss by appropriating to the Escheat Fund funds
2 equivalent to the loss.

3 If any part of the property owned by the North Carolina Global
4 TransPark Authority now or in the future is divested, proceeds of the
5 divestment shall be used to fulfill any unmet obligations on an investment
6 made pursuant to this subdivision."

7 **SECTION 5.** This act becomes effective July 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 376
PROPOSED COMMITTEE SUBSTITUTE H376-PCS80251-LL-19

Short Title: Retirement Technical Corrections.-AB (Public)

Sponsors:

Referred to:

March 17, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE STATUTES GOVERNING
THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE
LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-45.2(f) reads as rewritten:

"(f) Former employees who are receiving disability retirement benefits or disability income benefits pursuant to Article 6 of Chapter 135 of the General Statutes or who are approved for those benefits but not in receipt of the benefits due to lump-sum payouts of ~~vacation and bonus~~ vacation, bonus, and sick leave, provided the former employee has at least five years of contributory retirement service with an employing unit of a State-supported retirement system, shall be eligible for the benefit provisions of this Plan, as set forth in this Part, on a noncontributory basis. Such coverage shall terminate as of the end of the month in which such former employee is no longer eligible for disability retirement benefits or disability income benefits pursuant to Article 6 of this Chapter."

SECTION 2.(a) G.S. 135-3(8)c1. reads as rewritten:

"c1. Within 90 days of the end of each month in which a beneficiary is reemployed under the provisions of sub-subdivision c. of this subdivision, each employer shall provide a report for that month on each reemployed beneficiary, including the terms of the reemployment, the date of the reemployment, and the amount of the monthly compensation. If such a report is not received within the required 90 days, the Board shall assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars (\$25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported reemployed beneficiaries during the months for which the

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1 employer failed to report, with a minimum penalty of twenty-five
2 dollars (\$25.00). Upon receipt by the employer of notice that a
3 penalty has been assessed under this sub-subdivision, the employer
4 shall remit the payment of the penalty to the Retirement System, in
5 one lump sum, no later than 90 days from the date of the notice."

6 **SECTION 2.(b)** G.S. 128-24(5)c1. reads as rewritten:

7 "1. Within 90 days of the end of each month in which a beneficiary is
8 reemployed under the provisions of sub-subdivision c. of this
9 subdivision, each employer shall provide a report for that month on
10 each reemployed beneficiary, including the terms of the
11 reemployment, the date of the reemployment, and the amount of the
12 monthly compensation. If such a report is not received within the
13 required 90 days, the Board shall assess the employer with a penalty
14 of ten percent (10%) of the compensation of the unreported
15 reemployed beneficiaries during the months for which the employer
16 did not report the reemployed beneficiaries, with a minimum penalty
17 of twenty-five dollars (\$25.00). If after being assessed a penalty, an
18 employer provides clear and convincing evidence that the failure to
19 report resulted from a lack of oversight or some other event beyond
20 the employer's control and was not a deliberate attempt to omit the
21 reporting of reemployed beneficiaries, the Board may reduce the
22 penalty to not less than two percent (2%) of the compensation of the
23 unreported reemployed beneficiaries during the months for which the
24 employer failed to report, with a minimum penalty of twenty-five
25 dollars (\$25.00). Upon receipt by the employer of notice that a
26 penalty has been assessed under this sub-subdivision, the employer
27 shall remit the payment of the penalty to the Retirement System, in
28 one lump sum, no later than 90 days from the date of the notice."

29 **SECTION 3.(a)** G.S. 135-5(c) reads as rewritten:

30 "(c) Disability Retirement Benefits of Members Leaving Service Prior to January 1,
31 1988. – The provisions of this subsection shall not be applicable to members in service on or
32 after January 1, 1988. Upon the application of a member or of his employer, any member who
33 has had five or more years of creditable service may be retired by the Board of Trustees, on the
34 first day of any calendar month, not less than one day nor more than 120 days next following
35 the date of filing such application, on a disability retirement allowance: Provided, that the
36 medical board, after a medical examination of such member, shall certify that such member is
37 mentally or physically incapacitated for the further performance of duty, that such incapacity
38 was incurred at the time of active employment and has been continuous thereafter, that such
39 incapacity is likely to be permanent, and that such member should be retired; Provided further
40 the medical board shall determine if the member is able to engage in gainful employment and,
41 if so, the member may still be retired and the disability retirement allowance as a result thereof
42 shall be reduced as in subsection (e) below. Provided further, that the medical board shall not
43 certify any member as disabled who:

- 44 (1) Applies for disability retirement based upon a mental or physical incapacity
45 which existed when the member first established membership in the system;
46 or
47 (2) Is in receipt of any payments on account of the same disability which existed
48 when the member first established membership in the system.

49 The Board of Trustees shall require each employee upon enrolling in the retirement system
50 to provide information on the membership application concerning any mental or physical
51 incapacities existing at the time the member enrolls.

1 Supplemental disability benefits heretofore provided are hereby made a permanent part of
2 disability benefits after age 65, and shall not be discontinued at age 65.

3 Notwithstanding the requirement of five or more years of creditable service to the contrary,
4 a member who is a law-enforcement officer and who has had one year or more of creditable
5 service and becomes incapacitated for duty as the natural and proximate result of an accident
6 occurring while in the actual performance of duty, and meets all other requirements for
7 disability retirement benefits, may be retired by the Board of Trustees on a disability retirement
8 allowance.

9 Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement
10 with an early or service retirement benefit has the right, within three years of his retirement, to
11 convert to an allowance with disability retirement benefits without modification of any election
12 of optional allowance previously made; provided, the beneficiary presents clear and convincing
13 evidence that the beneficiary would have met all applicable requirements for disability
14 retirement benefits while still in service as a member. The allowance on account of disability
15 retirement benefits to the beneficiary shall be retroactive to the effective date of early or service
16 retirement.

17 Notwithstanding the foregoing, the surviving designated beneficiary of a deceased member
18 who met all other requirements for disability retirement benefits, except whose death occurred
19 before the first day of the calendar month in which the member's disability retirement
20 allowance was to be due and payable, may elect to receive the reduced retirement allowance
21 provided by a one hundred percent (100%) joint and survivor payment option in lieu of a return
22 of accumulated contributions, provided the following conditions apply:

- 23 (1) ~~The member had designated as the principal beneficiary, At the time of the~~
24 member's death, one and only one beneficiary is eligible to receive a return
25 of accumulated contributions at the time of his death, one and only one
26 person, contributions, and
27 (2) The member had not instructed the Board of Trustees in writing that he did
28 not wish the provision of this subsection to apply."

29 **SECTION 3.(b)** G.S. 128-27(c) reads as rewritten:

30 "(c) Disability Retirement Benefits. – Upon the application of a member or of his
31 employer, any member who has had five or more years of creditable service may be retired by
32 the Board of Trustees, on the first day of any calendar month, not less than one day nor more
33 than 120 days next following the date of filing such application, on a disability retirement
34 allowance: Provided, that the medical board, after a medical examination of such member, shall
35 certify that such member is mentally or physically incapacitated for the further performance of
36 duty, that such incapacity was incurred at the time of active employment and has been
37 continuous thereafter, that such incapacity is likely to be permanent, and that such member
38 should be retired; Provided further the medical board shall determine if the member is able to
39 engage in gainful employment and, if so, the member may still be retired and the disability
40 retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided
41 further, that the Medical Board shall not certify any member as disabled who:

- 42 (1) Applies for disability retirement based upon a mental or physical incapacity
43 which existed when the member first established membership in the system;
44 or
45 (2) Is in receipt of any payments on account of the same disability which existed
46 when the member first established membership in the system.

47 The Board of Trustees shall require each employee upon enrolling in the retirement system
48 to provide information on the membership application concerning any mental or physical
49 incapacities existing at the time the member enrolls.

50 Notwithstanding the requirement of five or more years of creditable service to the contrary,
51 a member who is a law enforcement officer or a fireman as defined in G.S. 58-86-25 or rescue

1 squad worker as defined in G.S. 58-86-30 and who has had one year or more of creditable
2 service and becomes incapacitated for duty as the natural and proximate result of an accident
3 occurring while in the actual performance of duty, and meets all other requirements for
4 disability retirement benefits, may be retired by the Board of Trustees on a disability retirement
5 allowance.

6 Notwithstanding the foregoing to the contrary, any beneficiary who commenced retirement
7 with an early or service retirement benefit has the right, within three years of his retirement, to
8 convert to an allowance with disability retirement benefits without modification of any election
9 of optional allowance previously made; provided, the beneficiary would have met all applicable
10 requirements for disability retirement benefits while still in service as a member. The allowance
11 on account of disability retirement benefits to the beneficiary shall be retroactive to the
12 effective date of early or service retirement.

13 Notwithstanding the foregoing, effective April 1, 1991, the surviving designated
14 beneficiary of a deceased member who met all other requirements for disability retirement
15 benefits, except whose death occurred before the first day of the calendar month in which the
16 member's disability retirement allowance was to be due and payable, may elect to receive the
17 reduced retirement allowance provided by a one hundred percent (100%) joint and survivor
18 payment option in lieu of a return of accumulated contributions, provided the following
19 conditions apply:

- 20 (1) ~~The member had designated as the principal beneficiary, At the time of the~~
21 ~~member's death, one and only one beneficiary is eligible to receive a return~~
22 ~~of accumulated contributions at the time of his death, one and only one~~
23 ~~person, contributions, and~~
24 (2) The member had not instructed the Board of Trustees in writing that he did
25 not wish the provision of this subsection to apply."

26 **SECTION 4.** G.S. 128-21(19) reads as rewritten:

27 "(19) "Retirement" shall mean withdrawal from active service with a retirement
28 allowance granted under the provisions of this Article. A retirement
29 allowance under the provisions of this Chapter may only be granted upon
30 retirement of a member. In order for a member's retirement to become
31 effective in any month, the member must render no ~~service~~ service,
32 including part time, temporary, substitute, or contractor service, at any time
33 during ~~that month.~~ the month immediately following the effective date of
34 retirement."

35 **SECTION 5.(a)** G.S. 135-4(f)(1) reads as rewritten:

36 "(1) Teachers and other State employees who entered the armed services of the
37 United States on or after September 16, 1940, and prior to February 17,
38 1941, and who returned to the service of the State within a period of two
39 years after they were first eligible to be separated or released from such
40 armed services under other than dishonorable conditions shall be entitled to
41 full credit for all prior service. Pursuant to 38 U.S.C. § 4318(b)(1), when a
42 member who has been on military leave returns to work consistent with the
43 provisions of this subdivision, then the member's employer must remit to the
44 System all the employer contributions for the full period of that member's
45 military service."

46 **SECTION 5.(b)** G.S. 128-26(a) reads as rewritten:

47 **"§ 128-26. Allowance for service.**

48 (a) Each person who becomes a member during the first year of his employer's
49 participation, and who was an employee of the same employer at any time during the year
50 immediately preceding the date of participation, shall file a detailed statement of all service
51 rendered by him to that employer prior to the date of participation for which he claims credit.

1 A participating employer may allow prior service credit to any of its employees on account
2 of: their earlier service to the aforesaid employer; or, their earlier service to any other employer
3 as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state,
4 territory, or other governmental subdivision of the United States other than this State.

5 A participating employer may allow prior service credit to any of its employees on account
6 of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such
7 service prior to the establishment of the Teachers' and State Employees' Retirement System on
8 July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum
9 an amount calculated on the basis of compensation the employee earned when he first entered
10 membership and the employee contribution rate at that time together with interest thereon from
11 year of first membership to year of payment shall be one half of the calculated cost.

12 With respect to a member retiring on or after July 1, 1967, the governing board of a
13 participating unit may allow credit for any period of military service in the armed forces of the
14 United States if the person returned to the service of his employer within two years after having
15 been honorably discharged, or becoming entitled to be discharged, released, or separated from
16 such armed services; provided that, notwithstanding the above provisions, any member having
17 credit for not less than 10 years of otherwise creditable service may be allowed credit for such
18 military services which are not creditable in any other governmental retirement system;
19 provided further, that a member will receive credit for military service under the provisions of
20 this paragraph only if he submits satisfactory evidence of the military service claimed and the
21 participating unit of which he is an employee agrees to grant credit for such military service
22 prior to January 1, 1972.

23 A member retiring on or after July 1, 1971, who is not granted credit for military service
24 under the provisions of the preceding paragraph will be allowed credit for any period in the
25 armed services of the United States up to the date he was first eligible to be separated or
26 released therefrom; provided that he was an employee as defined in G.S. 128-21(10) at the time
27 he entered military service, and either of the following conditions is met:

- 28 (1) He returns to service, with the employer by whom he was employed when he
29 entered military service, within a period of two years after he is first eligible
30 to be separated or released from such military service under other than
31 dishonorable conditions.
- 32 (2) He is in service, with the employer by whom he was employed when he
33 entered military service, for a period of not less than 10 years after he is
34 separated or released from such armed services under other than
35 dishonorable conditions.

36 Pursuant to 38 U.S.C. § 4318(b)(1), when a member who has been on military leave returns
37 to work consistent with the provisions of this subsection concerning return to service within
38 two years after the member's earliest eligibility for separation or release from military service,
39 then the member's employer must remit to the System all the employer contributions for the full
40 period of that member's military service."

41 **SECTION 6.** G.S. 135-106(b) reads as rewritten:

42 "(b) After the commencement of benefits under this section, the benefits payable under
43 the terms of this section during the first 36 months of the long-term disability period shall be
44 equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable
45 to the participant or beneficiary prior to the beginning of the short-term disability period as may
46 be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent
47 (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would
48 be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced
49 by any primary Social Security disability benefits and by monthly payments for Workers'
50 Compensation to which the participant or beneficiary may be entitled. When primary Social
51 Security disability benefits are increased by cost-of-living adjustments, the increased reduction

1 shall be applied in the first month following the month in which the member becomes entitled
2 to the increased Social Security benefit. The monthly benefit shall be further reduced by the
3 amount of any monthly payments from the federal Department of Veterans Affairs, any other
4 federal agency or any payments made under the provisions of G.S. 127A-108, to which the
5 participant or beneficiary may be entitled on account of the same disability. Provided, in any
6 event, the benefit payable shall be no less than ten dollars (\$10.00) a month. However, a
7 disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in
8 lieu of long-term disability benefits; provided such election shall not extend the first 36
9 consecutive calendar months of the long-term disability period. An election to receive any
10 salary continuation for any part of any given day shall be in lieu of any long-term benefit
11 payable for that day, provided further, any lump-sum payout for vacation leave shall be treated
12 as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term
13 benefit otherwise payable. Provided that, in any event, a beneficiary's benefit shall be reduced
14 during the first 36 months of the long-term disability period by an amount, as determined by
15 the Board of Trustees, equal to a primary Social Security retirement benefit to which the
16 beneficiary might be entitled.

17 After 36 months of long-term disability, no further benefits are payable under the terms of
18 this section unless the member has been approved and is in receipt of primary Social Security
19 disability benefits. In that case the benefits payable shall be equal to sixty-five percent (65%) of
20 1/12th of the annual base rate of compensation last payable to the participant or beneficiary
21 prior to the beginning of the short-term disability period as may be adjusted for percentage
22 increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual
23 longevity payment to which the participant or beneficiary would be eligible, to a maximum of
24 three thousand nine hundred dollars (\$3,900) per month reduced by the primary Social Security
25 disability benefits and by monthly payments for Workers' Compensation to which the
26 participant or beneficiary may be entitled. When primary Social Security disability benefits are
27 increased by cost-of-living adjustments, the increased reduction shall be applied in the first
28 month following the month in which the member becomes entitled to the increased Social
29 Security benefit. The monthly benefit shall be further reduced by the amount of any monthly
30 payments from the federal Department of Veterans Affairs, for payments from any other
31 federal agency, or for any payments made under the provisions of G.S. 127A-108, to which the
32 participant or beneficiary may be entitled on account of the same disability. Provided, in any
33 event, the benefit payable shall be no less than ten dollars (\$10.00) a month.

34 Notwithstanding the foregoing, the long-term disability benefit is payable so long as the
35 beneficiary is disabled and is in receipt of a primary Social Security disability benefit until the
36 earliest date at which the beneficiary is eligible for an unreduced service retirement allowance
37 from the Retirement System, at which time the beneficiary would receive a retirement
38 allowance calculated on the basis of the beneficiary's average final compensation at the time of
39 disability as adjusted to reflect compensation increases subsequent to the time of disability and
40 the creditable service accumulated by the beneficiary, including creditable service while in
41 receipt of benefits under the Plan. In the event the beneficiary has not been approved and is not
42 in receipt of a primary Social Security disability benefit, the long-term disability benefit shall
43 cease after the first 36 months of the long-term disability period. When such a long-term
44 disability recipient begins receiving this unreduced service retirement allowance from the
45 System, that recipient shall not be subject to the six-month waiting period set forth in
46 G.S. 135-1(20). However, a beneficiary shall be entitled to a restoration of the long-term
47 disability benefit in the event the Social Security Administration grants a retroactive approval
48 for primary Social Security disability benefits with a benefit effective date within the first 36
49 months of the long-term disability period. In such event, the long-term disability benefit shall
50 be restored retroactively to the date of cessation."

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SECTION 7. Section 2 of this act becomes effective July 1, 2009, and applies to penalties assessed on or after that date. The remainder of this act becomes effective July 1, 2011.



North Carolina General Assembly
House Committee on Finance

Minutes

~
June 9, 2011

The House Committee on Finance met on Thursday, June 9, 2011 at 8:01 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chair Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Bob Rossi and Champ Claris. Staff persons present included Cindy Avrette, Rodney Bizzell, Judy Collier, Dan Ettefagh, Trina Griffin, Sandra Johnson, Greg Roney, and Brian Slivka, Jonathan Tart. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Starnes called the meeting to order at 8:00 am and recognized the six (6) pages present (1) Hannah Cowell of Pamlico County sponsored by Representative Sanderson; (2) Carolyn Hawkes of Wake County sponsored by Representative Dollar; (3) Kevin Ortiz of Cabarrus County sponsored by Representative Barnhart; (4) Ryan Buchanan of Avery County sponsored by Representative Frye; (5) Jenna Hutcheson of Durham County sponsored by Representative Luebke; and (6) Savannah Story of Wake County sponsored by Representative Ross.

The first bill to be heard by the Committee was **HB 877 Check Off Donation: Government Funding** (see **attachment 3**). Chairman Starnes recognized Representative McGee, Chair of the subcommittee assigned to review the bill. Representative McGee reported that by unanimous consent, the subcommittee agreed to recommend to the full Committee that the bill be made into a study bill. Representative McGee moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair again recognized Representative McGee moved that HB 877 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill and be re-referred to the Committee on Rules, Calendar and Operations of the House. The motion carried.

The next bill considered by the Committee was **HB 93 Modify Refundability of EITC > PCS entitled Sales & Use Overcollection** (see **attachment 4**). The Chair recognized Representative Samuelson who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Starnes then recognized Representative Howard to explain the proposed committee substitute. The Chair then recognized Representative Samuelson who moved

that HB 93 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill before the Committee was **HB 508 Modify Mecklenburg County Local Taxes** (see **attachment 5**). Chairman Starnes recognized Representative Hackney who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair recognized Representative Earle to explain the proposed committee substitute. Chairman Starnes recognized Representative Howard who moved that HB 508 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill considered by the Committee was **HB 512 Rendering Act Amendments** (see **attachment 6**). The Chair recognized Representative Stone, Chair of the subcommittee assigned to review bill. Representative Stone reported that the bill was amended and a proposed committee substitute was prepared. As a result, HB 512 was reported favorably by the subcommittee. The Chair recognized Representative McGuirt who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Starnes then recognized Representative Torbett to explain the proposed committee substitute. Chairman Starnes recognized Representative McCormick who moved that HB 512 be given a favorable report on the proposed committee substitute, unfavorable report to the committee substitute. The motion carried.

The next bill before the Committee was **HB 581 Amend Lumberton Firemen's Pension Fund** (see **attachment 7**). The Chair recognized Representative Pierce to explain the bill. Chairman Starnes recognized Representative Womble who moved that HB 581 be given a favorable report. The motion carried.

The next bill before the Committee was **HB 887 Zoning/Temp. Family Health Care Structures** (see **attachment 8**). The Chair recognized Representative Moffitt to explain the bill. Chairman Starnes recognized Representative Collins who moved that HB 887 be given a favorable report. The motion carried.

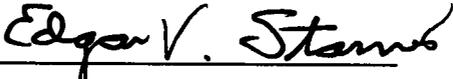
HB 122 Rev Laws Tech, Clarify, & Admin. Chngs. (see **attachment 9**) was the next bill before the Committee. The Chair recognized Representative Carney who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Starnes recognized Representative Howard to explain the proposed committee substitute. Staff member Cindy Averette of Research assisted with answering member's questions. The Chair then recognized Representative Setzer who moved that HB 122 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

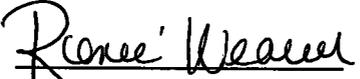
For the purpose of presenting HB 867, Chairman Starnes requested Chairperson Howard take the Chair.

Next before the Committee was **HB 867 Repeal Remote Retailer Click-Through > PCS entitled Remote Retailer Click-through Study** (see attachment 10). Chairperson Howard recognized Representative Carney who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair recognized Representative Starnes to explain the proposed committee substitute. The Chair then recognized Representative Carney who moved that HB 867 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill and be re-referred to the Committee on Rules, Calendar and Operations of the House. The motion carried.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 8:44 am.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair
Finance


Renee Weaver
Clerk, House Committee on

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 93 A BILL TO BE ENTITLED AN ACT TO MODIFY THE REFUNDABILITY
PROVISION OF THE EARNED INCOME TAX CREDIT.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 122 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 508 A BILL TO BE ENTITLED AN ACT TO MODIFY CERTAIN MECKLENBURG COUNTY LOCAL TAXES.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 512 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS GOVERNING RENDERING PLANTS AND OPERATIONS AND TO BRING THE COLLECTION OF WASTE KITCHEN GREASE WITHIN THE PURVIEW OF THE ACT.

With a favorable report as to Committee substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 581 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROVISIONS OF THE CITY OF LUMBERTON FIREMEN'S RELIEF FUND AND SUPPLEMENTARY PENSION FUND.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 867 A BILL TO BE ENTITLED AN ACT TO REPEAL THE CLICK-THROUGH PROVISION AND TO ELIMINATE A REMOTE RETAILER'S OBLIGATION TO COLLECT SALES TAX BASED ON AFFILIATE CONTRACTS WITH NORTH CAROLINA RESIDENTS.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 877 A BILL TO BE ENTITLED AN ACT TO PROVIDE SPACE ON THE INCOME TAX RETURN FOR INDIVIDUALS TO MAKE DONATIONS TO THE STATE OF NORTH CAROLINA FOR GOVERNMENTAL SERVICES.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 887 A BILL TO BE ENTITLED AN ACT RELATING TO ZONING PROVISIONS FOR TEMPORARY HEALTH CARE STRUCTURES.

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 _____.

#1

AGENDA
House Finance Committee

Thursday, June 9, 2011
8:00 am
Room 544 LOB
Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 93 Modify Refundability of EITC > PCS entitled Sales & Use Tax Overcollection
Representatives Howard, Brubaker, Starnes

HB 122 Rev Laws Tech, Clarify., & Admin. Chngs.
Representatives Howard, Luebke

HB 508 Modify Mecklenburg County Local Taxes
Representatives Earle, R. Moore, Samuelson

HB 512 Rendering Act Amendments
Representative Torbett

HB 581 Amend Lumberton Firemen's Pension Fund
Representatives Pierce, Pridgen, Graham

HB 591 LDP/Ignition Interlock Changes
Representatives Ingle, Faircloth, Stevens

HB 865 Eliminate Passenger Rail Fare Subsidy
Representative Steen

HB 867 Repeal Remote Retailer Click-Through > PCS entitled Remote Retailer Click-Through Study
Representative Starnes

HB 877 Check Off Donation: Government Funding
Representatives Stevens, Blust, Folwell, Cleveland

HB 887 Zoning/Temp. Family Health Care Structures
Representatives Moffitt, Howard, Setzer

HB 911 Increase Criminal Court Costs/Victim's Comp.
Representative LaRoque

SB 537 Increase In Rem Foreclosure Fee
Senator Hartsell

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: JUNE 9, 2011 Room: 544

*Name: <u>Hannah Cowell</u>	<u>Savannah Story</u>
County: <u> Pamlico</u>	<u>Wake</u>
Sponsor: <u>Norman Sanderson</u>	<u>Deborah Ross</u>
*Name: <u>Carolyn Hawkes</u>	
County: <u>Wake</u>	
Sponsor: <u>Dollar</u>	
*Name: <u>Kevin Ortiz</u>	
County: <u>Cabarrus</u>	
Sponsor: <u>Rep. Barnhart</u>	
*Name: <u>Ryan Buchanan</u>	
County: <u>Avery</u>	
Sponsor: <u>Phillip Frye</u>	
*Name: <u>Jenna Hutcherson</u>	
County: <u>DURHAM</u>	
Sponsor: <u>PAUL IUBEKE</u>	

House Sgt-At Arms:

- 1. Name: FRED HINES
- 2. Name: JOHN BRANDON
- 3. Name: REGINALD SILLS
- 4. Name: GARLAND SHEPHEARD
- 5. Name: _____
- 6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

June 9, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jamie Carmichael	Victims' Comp/CEPS
Eric Wagon	NCDOR
David Baker	NC DOR
Emily Grimm	MWC
AL MILAK	DOR
Dick DeFame	Victim Advocates
David Herban	NC Center for Nonprofits
Canaan Huie	NC DOR
Johanna Reese	DMV
Dave Jones	SIA
Bo Heath	McGuire Woods

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

June 9, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Michael Houser

NC DOR

JOHN PETERSON

NCEDD

Ivan Holoub

NCBBA

Ken Ington

K.M.A.

Bill Phillips

TWC

Bill King

NC Trustee Center

Kelicia De

NCUM

VISITOR REGISTRATION SHEET

House Finance

June 9, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Sam Scobean	VSS
Dary Muckew	PSG
John P. P... ..	NCAAA
Elizabeth Robinson	NCAAA
Barden Culbreth	NCLLB
Deborah Johnson	Marshall's Locksmith
Wendy Kelly	No 12y Corp
Baldwin Everett	BE + Assoc.
DANIEL BAUM	TROUTMAN SANDERS
Donna F. Hankin	FREN
Amy McConkey	NC BEV ASSN

VISITOR REGISTRATION SHEET

House Finance

June 9, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mitch Leonard	SEANC
BERRY Jenkins	CAROLINAS AGE
Patrick Swinney	NC DOT - Rail
Lennie Collins	NC DOR
CS Hollis	TSS
Frank Hays	NC MHA
Karen Ray	NCMA
Dea Moring	NC DOT
Paul Sherman	NCFB
Man AH	Shirley Anderson
Chad B. Bann	CAPA

VISITOR REGISTRATION SHEET

House Finance

June 9, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Cameron Hurley	Electricity

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

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HOUSE BILL 877
PROPOSED COMMITTEE SUBSTITUTE H877-CSTM-17 [v.2]

6/8/2011 3:16:45 PM

Short Title: Check Off Donation: Government Funding. (Public)

Sponsors:

Referred to:

May 3, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR A STUDY BY THE REVENUE LAWS STUDY COMMITTEE
3 OF ALLOWING INDIVIDUALS TO MAKE DONATIONS TO THE STATE OF NORTH
4 CAROLINA FOR GOVERNMENTAL SERVICES ON THE INCOME TAX RETURN.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. The Revenue Laws Study Committee may study the issue of
7 allowing individuals to make elections to donate all or part of their refund to the State of North
8 Carolina for governmental services on their income tax return. As part of its study, the
9 Committee may consider any governmental services selected by the Committee and
10 governmental services provided by the following: the Department of Cultural Resources, the
11 Department of Health and Human Services, the Department of Public Instruction, the
12 Department of Public Safety, the General Fund of the State of North Carolina, and the
13 University of North Carolina. The Committee may make a report on this issue, including any
14 recommendations or legislative proposals, to the 2012 Regular Session of the 2011 General
15 Assembly upon its convening.
16 SECTION 2. This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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D

HOUSE BILL 93
PROPOSED COMMITTEE SUBSTITUTE H93-CSSV-28 [v.2]

6/7/2011 8:06:33 PM

Short Title: Sales & Use Tax Overcollection.

(Public)

Sponsors:

Referred to:

February 16, 2011

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A BILL TO BE ENTITLED

AN ACT TO ALLOW A SELLER TO APPLY OVERCOLLECTED SALES TAX TO
OFFSET A USE TAX LIABILITY ON A RELATED TRANSACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.11(a) reads as rewritten:

"(a) Remittance of ~~Over Collections~~ Overcollections to Secretary. – When ~~the tax is~~ collected for any period is on a taxable sale in excess of the total amount that should have been
~~collected,~~ collected or is collected on an exempt or nontaxable sale, the total amount collected
must be ~~paid over~~ remitted to the Secretary. ~~When tax is collected for any period on exempt or~~
~~nontaxable sales the tax erroneously collected shall be remitted to the Secretary and no refund~~
~~shall be made to a taxpayer unless the purchaser has received credit for or has been refunded~~
~~the amount of tax erroneously charged.~~ If the Secretary determines that the seller overcollected
the sales tax on a transaction, the Secretary shall take only one of the actions listed in this
subsection. This ~~provision~~ subsection shall be construed with other provisions of this Article
and given effect so as to result in the payment to the Secretary of the total amount collected as
tax if it is in excess of the amount that should have been collected.

(1) If the Secretary determines that the seller overcollected tax on a transaction,
the Secretary may allow a refund of the tax. The Secretary may allow the
refund only if the seller gives the purchaser credit for or a refund of the
overcollected tax. The Secretary shall not refund the overcollected tax to the
seller if the seller has elected to offset a use tax liability on a related
transaction with the overcollected sales tax under subdivision (2) of this
subsection.

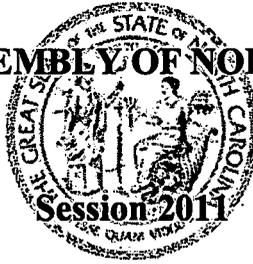
(2) If the Secretary determines that a seller who overcollected sales tax on a
transaction is instead liable for a use tax on a related transaction, the
Secretary may allow the seller to offset the use tax liability with the
over-collected sales tax. The Secretary shall not allow an offset if the seller
has elected to receive a refund of the overcollected tax under subdivision (1)
of this subsection. The decision by a seller to receive an offset of tax liability
rather than a refund of the overcollected tax does not affect the liability of
the seller to the purchaser for the overcollected tax.

(3) If neither subdivision (1) nor (2) of this subsection apply, the Secretary shall
retain the total amount collected on the transaction."



1 **SECTION 2.** This act becomes effective July 1, 2011, and applies to tax liabilities
2 that accrue on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: June 7, 2011
TO: Representatives Howard, Starnes, and Setzer
FROM: Jonathan Tart
Fiscal Research Division
RE: Proposed Committee Substitute to House Bill 93

FISCAL IMPACT					
	Yes ()	No (x)	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue					
EFFECTIVE DATE: July 1, 2011, and applies to tax liabilities that accrue on or after that date					

BILL SUMMARY: The proposed committee substitute establishes procedures concerning the Secretary of Revenue's actions when sales tax is collected in excess of the total amount that should have been collected or that is collected on an exempt or nontaxable sale. The proposal provides that the Secretary may allow a refund to the seller only if the seller gives the purchaser credit for or

a refund of the over-collected tax. If the Secretary of Revenue determines that a seller who over-collected sales tax on a transaction is liable for use tax on the transaction instead of sales tax, the Secretary may allow the seller to elect to apply the over-collected sales tax to the seller's liability for use tax on the transaction. This election does not affect the liability of the seller to the purchaser for the over-collected tax.

ASSUMPTIONS AND METHODOLOGY: There is no fiscal impact because the bill has no effect on the amount of sales and use tax due.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None



HOUSE BILL 93: Sales & Use Tax Overcollection

2011-2012 General Assembly

Committee:	House Finance	Date:	June 8, 2011
Introduced by:	Reps. Howard, Brubaker, Starnes	Prepared by:	Trina Griffin
Analysis of:	PCS to First Edition H93-CSSV-28		Committee Counsel

SUMMARY: *The PCS for House Bill 93 would allow a seller to apply overcollected sales tax to offset a use tax liability on a related transaction.*

CURRENT LAW: The sales tax a retailer collects is considered a debt from the purchaser to the retailer until it is remitted by the retailer to the State. The retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. When a seller collects tax in excess of the amount that should have been collected or when a seller collects tax on an exempt or nontaxable sale, the total amount collected must be paid over to the Secretary of Revenue. A retailer is not entitled to a refund of any amount of overcollected sales tax unless the purchaser has received credit for or has been refunded the amount of tax overcollected. A cause of action against a seller for overcollected sales or use tax does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond.

BILL ANALYSIS: The PCS for House Bill 93 would authorize the Secretary of Revenue to take one of the following three actions when the Secretary determines that a seller has overcollected sales tax on a transaction:

1. Allow a refund of the tax if the seller gives the purchaser credit for or a refund of the overcollected tax. However, no refund would be given if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax.
2. If the seller is liable for use tax on a related transaction, allow the seller to offset the use tax liability with the overcollected sales tax. However, no offset would be permitted if the seller elected to receive a refund of the overcollected sales tax. The fact that a seller is allowed an offset does not affect the liability of the seller to the purchaser for the overcollected tax.
3. If neither (1) or (2) apply, retain the total amount collected on the transaction.

EFFECTIVE DATE: This act becomes effective July 1, 2011, and applies to tax liabilities that accrue on or after that date.

BACKGROUND: A situation occurred where a retailer collected and remitted sales tax on transactions that the Department later determined were not subject to sales tax because the property was *used* by the retailer. In that instance, the retailer owed use tax on the property. Specifically, this company is in the business of selling and servicing office equipment, primarily copiers. The company collected sales tax on the sale of its service agreements rather than collecting use tax on the parts and supplies used to fulfill the service agreements. The company sought a credit in the amount of sales taxes it paid against the use tax it owed. Because the retailer could not or chose not to refund the erroneously collected tax to the people who paid it, a refund of the erroneously collected sales tax was not allowed. In this situation, the State effectively collected both sales tax and use tax on the same transactions. The matter was heard by the Business Court, which issued an order in favor of the taxpayer on January 4, 2010. The State has appealed.

H93-SMSV-63(CSSV-28) v3

Research Division

O. Walker Reagan, Director

(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 508
PROPOSED COMMITTEE SUBSTITUTE H508-CSMC-13 [v.2]

6/7/2011 5:15:44 PM

Short Title: Modify Mecklenburg County Local Taxes. (Local)

Sponsors:

Referred to:

March 30, 2011

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A BILL TO BE ENTITLED

AN ACT TO MODIFY CERTAIN MECKLENBURG COUNTY LOCAL TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 9(a) of Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapters 821 and 922 of the 1989 Session Laws and Section 2 of S.L. 2001-402, is amended by adding the following new sub-subdivision to read:

"Sec. 9. (a) Distribution and Use of Proceeds. – The local administrative authority, acting on its own behalf or as agent for each taxing entity, shall distribute the proceeds of the taxes levied in this Part as provided in this subsection. The distribution shall be made by the 20th day of each month following the month in which the tax is collected.

...
(4) Distribution to Charlotte for Convention and Visitor Promotion and Other Tourism-Related Purposes. –

...
d. The Towns of Cornelius, Davidson, and Huntersville shall distribute at least fifty-one percent (51%) of the portion of prepared food and beverage taxes received from the City of Charlotte to the Lake Norman Convention and Visitors Bureau for the purpose of tourism-marketing promotions.

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



HOUSE BILL 508: Modify Mecklenburg County Local Taxes

2011-2012 General Assembly

Committee: House Finance	Date: June 7, 2011
Introduced by: Reps. Earle, R. Moore, Samuelson	Prepared by: Dan Ettefagh
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 508, as originally introduced, would codify the interlocal agreement between the Lake Norman Convention and Visitors Bureau ("LNCVB") and the Towns of Cornelius, Davidson, and Huntersville ("the Towns"). The PCS for House Bill 508 provides substantially the same amount of revenue to the LNCVB by requiring the towns to distribute at least 51% of the prepared food and beverage taxes received from Charlotte to the LNCVB for tourism-marketing promotions.*

CURRENT LAW: Under current law, there has been authorized and put into place an occupancy tax (at a collective rate of 8%) and a prepared food and beverage tax (at a rate of 1%)¹ for Mecklenburg County, which collects and administers these taxes. By an enactment of the General Assembly, the county, the City of Charlotte, and the Towns of Cornelius, Davidson, Huntersville, Mint Hill, Pineville, and Matthews have provided for the distribution of the proceeds of these county taxes. With respect to the LNCVB, the interlocal agreement with the Towns requires the Towns to remit 28% of the occupancy taxes received from Mecklenburg County and 25% of the prepared food and beverage tax received from the City of Charlotte to the LNCVB.

BILL ANALYSIS: This bill would not affect the distributions between Mecklenburg County, Charlotte, and the Towns. In addition, the bill would require substantially the same amount of money to be distributed by the Towns to the LNCVB; however, it would modify the source of those funds by replacing the interlocal agreement requirement of 28% of the occupancy tax and 25% of the prepared food and beverage tax remitted by the Towns to the LNCVB with a requirement that the Towns distribute to the LNCVB at least 51% of the prepared food and beverage taxes for tourism-marketing promotions.

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

BACKGROUND: The interlocal agreements distributing the county taxes have been modified multiple times as the proceeds have increased, new local taxes with dedicated revenue streams have been authorized, and as the towns located in Mecklenburg County have desired to work on projects and necessary promotions that were regionally or municipality-specific. The Towns entered into an interlocal agreement with the LNCVB, a State-chartered board with representatives appointed by and from the Towns.

H508-SMMC-3(e1) v1

¹ These taxes were authorized at three separate times: a 3% occupancy tax for Mecklenburg County was authorized in 1983 for promoting travel and tourism in Mecklenburg County; a 3% occupancy tax and a 1% prepared food and beverage tax was authorized in 1989 for the Charlotte Convention Center; and a 2% occupancy tax was authorized in 2005 for the NASCAR Hall of Fame.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 512
Committee Substitute Favorable 5/19/11
PROPOSED COMMITTEE SUBSTITUTE H512-CSTM-19 [v.1]

6/8/2011 3:43:46 PM

Short Title: Rendering Act Amendments.

(Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING RENDERING PLANTS AND OPERATIONS AND TO INCREASE THE PENALTY FOR LARCENY OF WASTE KITCHEN GREASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-168.5 reads as rewritten:

"§ 106-168.5. Duties of Commissioner upon receipt of application; inspection committee.

Upon receipt of the application, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture and Consumer Services, one member who shall be designated by the Secretary of Health and Human Services and who shall be an employee of the Department of Health and Human Services, and one member who shall be designated by the ~~director~~ board of directors of the North Carolina ~~Division of the Southeastern~~ Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member."

SECTION 2. G.S. 106-168.8 reads as rewritten:

"§ 106-168.8. Minimum standards for conducting rendering operations.

The following minimum standards shall be required for all rendering operations subject to the provisions of this Article:

(8) Proof of general liability insurance of one million dollars (\$1,000,000) shall be made in a manner satisfactory to the Commissioner.

SECTION 3. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-79.2. Larceny of waste kitchen grease.

(a) If any person shall take and carry away, or shall aid in taking or carrying away, any waste kitchen grease container or the waste kitchen grease contained therein, which container



1 bears a notice that unauthorized removal is prohibited without written consent of the owner of
2 the container, that person shall be guilty of:

3 (1) A Class 1 misdemeanor if the value of the waste kitchen grease container, or
4 the container and the waste kitchen grease contained therein, is one thousand
5 dollars (\$1,000) or less.

6 (2) A Class H felony if the value of the waste kitchen grease container, or the
7 container and the waste kitchen grease contained therein, is more than one
8 thousand dollars (\$1,000).

9 (b) A container in which waste kitchen grease is deposited that bears a name on the
10 container shall be presumed to be owned by that person named on the container.

11 (c) "Waste kitchen grease" means animal fats or vegetable oils that have been used, and
12 will not be reused, for cooking in a food establishment. "Waste kitchen grease" does not
13 include grease septage as defined in G.S. 130A-290."

14 **SECTION 4.** Sections 1, 2, and 4 of this act become effective January 1, 2012.
15 Section 3 of this act becomes effective January 1, 2012, and applies to offenses occurring on or
16 after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: June 8th, 2011
TO: Senate Finance
FROM: Sarah Stone, Lanier McRee
 Fiscal Research Division
RE: PCS H512-CSTM-13 [v.2]

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
EXPENDITURES:					
Correction		*See Assumptions and Methodology*			
Probation		*See Assumptions and Methodology*			
Judicial		*See Assumptions and Methodology*			
TOTAL EXPENDITURES:		*See Assumptions and Methodology*			
REVENUES:					
None Expected					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch					
EFFECTIVE DATE: January 1, 2012					
<p><i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i></p>					

BILL SUMMARY:

The PCS for House Bill 512 amends the laws governing the licensing and regulation of rendering plants. The PCS removes definitions, increased licensing fee, renewal requirements, and other provisions related to collectors of waste kitchen grease included in earlier versions of the bill.

The PCS for HB 512 does the following:

- Amends G.S. 106-168.5, changing the title of the group that furnishes a member of the rendering plant inspection committee from the NC Division of the Southeastern Renderers Association to the North Carolina Renderers Association.
- Alters G.S. 106-168.8 to add proof of general liability insurance in the amount of \$1 million dollars as a requirement for a rendering operation.
- Makes it a Class H felony to take or aid in the taking of a waste kitchen grease container or the waste kitchen grease contained therein, if the container bears a notice that unauthorized removal is prohibited without the written consent of the owner, and the value of the container or the container with the grease, is more than \$1,000. If the value is \$1000 or less, then the offense is a Class 1 misdemeanor.

HB 512 defines "Waste kitchen grease" as animal fats or vegetable oils that have been used and will not be reused for cooking in a food establishment. It does not include grease septage as defined in G.S. 130A-290.

The act becomes effective January 1, 2012, and applies to the collection of waste kitchen grease or the taking of waste kitchen grease containers and the waste contained on or after that date. The portion of the bill creating the larceny offense becomes effective January 1, 2012, and applies to offenses occurring on or after that date.

Adapted from Committee Counsel's Bill Summary for the PCS to the 2nd Edition Dated June 3, 2011.

ASSUMPTIONS AND METHODOLOGY:

Department of Agriculture and Consumer Services (DACS)

The PCS for HB 512 no longer impact DACS. The bill will not increase the responsibilities of the Department, its expenditures, or its revenues.

Impact of Criminal Penalties

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

Section 1

The bill amends G.S. Chapter 106, Article 14A, to establish a licensure requirement for (1) the storing or processing of waste kitchen grease at a waste kitchen grease operation, and (2) acting as a collector of waste kitchen grease. However, the criminal enforcement provision in Article 14A, found in G.S. 106-168.15, is not amended to apply to these new waste kitchen grease licensees. The bill would

maintain the statute in its current form, under which it is a Class 1 misdemeanor to conduct rendering operations or collect raw material (*i.e.*, inedible animal carcasses or portions thereof) in violation of the provisions of the Article. By amending Article 14A, the bill does increase the potential criminal exposure of persons engaged in rendering operations and collectors of raw material under G.S. 106-168.15, by further regulating their conduct.¹

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 106-168.15. The lack of an AOC offense code indicates that this offense is infrequently charged and/or infrequently results in convictions. It is, therefore, unknown how many convictions occurred under G.S. 106-168.15 in FY 2009-10, or how many additional convictions may result from the proposed broadening of the statute. In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Section 2

G.S. 14-79.2. Larceny of waste kitchen grease.

Subsection (1) makes it a Class 1 misdemeanor to take and carry away, or aid in taking and carrying away, any waste kitchen grease within a container bearing the name of the owner and a notice that unauthorized removal is prohibited without the owner's written consent, if the value of the container (or the container and the grease) is \$1,000 or less.

Larceny (and aiding in larceny) of any property valued at or below \$1,000 is already a Class 1 misdemeanor under G.S. 14-72(a) – the same classification as the proposed offense. Therefore, the new offense does not create any new criminal liability or impact.

There were 16,666 Class 1 misdemeanor convictions under G.S. 14-72(a) for larceny and 94 Class 1 misdemeanor convictions under G.S. 14-72(a) for aiding and abetting larceny during FY 2009-10.

Subsection (2) makes it a Class H felony to take and carry away, or aid in taking and carrying away, any waste kitchen grease within a container bearing the name of the owner and a notice that unauthorized removal is prohibited without the owner's written consent, if the value of the container (or the container and the grease) is more than \$1,000.

Larceny (and aiding in larceny) of any property with a value of more than \$1,000 is already a Class H felony under G.S. 14-72(a) – the same classification as the proposed offense. Therefore, the new offense does not create any new criminal liability or impact.

There were 985 Class H felony convictions under G.S. 14-72(a) for larceny and 15 Class H felony convictions under G.S. 14-72(a) for aiding and abetting larceny during FY 2009-10.

¹For example, the bill would prohibit a collector of raw material to do the following: (1) sell or offer for sale to any unlicensed person any waste kitchen grease, knowing such unlicensed person would transport or process the grease in violation of the Article; (2) steal, misappropriate, contaminate, or damage any waste kitchen grease container or grease therein; or (3) take or possess waste kitchen grease from a collector that is not licensed unless otherwise allowed under Article 14A, or knowingly take possession of stolen waste kitchen grease.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.²

General supervision of intermediate and community offenders by a probation officer costs DCC \$3.44 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

Judicial Branch

AOC provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 1

The proposed legislation would expand the licensing requirements for rendering operations under Article 14A of Chapter 106, and thus expand the scope of the current Class 1 misdemeanor for licensing violations in that Article. AOC does not have an offense code for rendering license violations, and therefore cannot determine the number of charges under current law. The legislation has the potential to increase the number of Class 1 misdemeanor charges for licensing violations. New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff. Superior court personnel could be impacted due to appeals. On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 (3 hours at \$75 per hour) per indigent defendant.

Section 2

This legislation would also create a new Class H felony for larceny of waste kitchen grease valued at \$1,000 or more and a new Class 1 misdemeanor for larceny of waste kitchen grease valued at less than \$1,000. Under current statutes, larceny of waste kitchen grease would be charged as larceny (or aiding

² DCC incurs costs of \$0.97 per day for each offender sentenced to the Community Service Work Program.

in larceny) under G.S. 14-72(a) – a Class 1 misdemeanor if the value of the property is \$1,000 or less or a Class H felony if the value of the property exceeds \$1,000. Therefore, no impact is anticipated due to this section.

Overall

In FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Department of Agriculture and Consumer Services; North Carolina Sentencing and Policy Advisory Commission; Judicial Branch.

TECHNICAL CONSIDERATIONS: none



HOUSE BILL 512: Rendering Act Amendments

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Torbett
Analysis of: PCS to Second Edition
H512-CSTM-13

Date: June 3, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 512 would make a technical correction to the membership of the inspection committee for rendering plants; require rendering operations have general liability insurance in the amount of \$1 million; and make larceny of waste kitchen grease a Class H felony.*

BILL ANALYSIS: The PCS for House Bill 512 would amend the title of the group that furnishes a member of the rendering plant inspection committee from the NC Division of the Southeastern Renderers Association to the North Carolina Renderers Association.

The PCS would require general liability insurance in the amount of \$1 million for a rendering operation.

The PCS would add a new G.S. 14-79.2 creating a Class H felony to take or aid in the taking of a waste kitchen grease container or the waste kitchen grease contained therein, if the container bears a notice that unauthorized removal is prohibited without the written consent of the owner, and the value of the container or the container with the grease, is more than \$1,000. If the value is \$1,000 or less, then the offense is a Class 1 misdemeanor. "Waste kitchen grease" means animal fats or vegetable oils that have been used and will not be reused for cooking in a food establishment. It does not include grease septage.

EFFECTIVE DATE: The PCS would become effective January 1, 2012. The portion of the PCS creating the larceny offense becomes effective January 1, 2012, and applies to offenses occurring on or after that date.

Barbara Riley and Hal Pell, both with the Research Division, substantially contributed to this summary.

H512-SMTM-32(CSTM-13) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 581

Short Title: Amend Lumberton Firemen's Pension Fund. (Local)

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

Referred to: Government, if favorable, Finance.

April 4, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE PROVISIONS OF THE CITY OF LUMBERTON FIREMEN'S
3 RELIEF FUND AND SUPPLEMENTARY PENSION FUND.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. Section 4 of Chapter 792 of the 1991 Session Laws, as amended by
6 Chapter 699 of the 1995 Session Laws and by S.L. 2003-324, reads as rewritten:
7 "Sec. 4. Any full time paid member of the fire department who retires or is retired under the
8 provisions of Section 3. of this act shall receive monthly for the remainder of his life from the
9 'Supplementary Pension Fund' an amount ~~equal to~~ to be set by the Board of Trustees at between
10 two dollars (\$2.00) and three dollars and twenty-five cents (\$3.25) for each full year of service
11 with the fire department. Any eligible member of the fire department who becomes
12 permanently disabled while in the furtherance of the member's duties as a fireman and retires or
13 is retired from the North Carolina Local Governmental Employees' Retirement System in
14 accordance with G.S. 128-27(c), shall receive from the Fund the benefit amount equivalent to
15 which a person retired with 30 years of service is entitled. If, for any reason, the Fund created
16 and made available for any purpose covered by this Chapter shall be insufficient to pay in full
17 any pension benefits, or other changes, then all benefits and payments shall be reduced pro rata
18 for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount
19 by which a pension or benefit payment shall have been reduced."
20 SECTION 2. This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 887
Committee Substitute Favorable 6/2/11

Short Title: Zoning/Temp. Family Health Care Structures.

(Public)

Sponsors:

Referred to:

May 4, 2011

A BILL TO BE ENTITLED

AN ACT RELATING TO ZONING PROVISIONS FOR TEMPORARY HEALTH CARE STRUCTURES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 3 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-341.3. Zoning of temporary health care structures.

A county exercising powers under this Article shall comply with G.S. 160A-383.5."

SECTION 2. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-383.5. Zoning of temporary health care structures.

(a) The following definitions apply in this section:

- (1) Activities of daily living. – Bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
- (2) Caregiver. – An individual 18 years of age or older who (i) provides care for a mentally or physically impaired person and (ii) is a first or second degree relative of the mentally or physically impaired person for whom the individual is caring.
- (3) First or second degree relative. – A spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece, and includes half, step, and in-law relationships.
- (4) Mentally or physically impaired person. – A person who is a resident of this State and who requires assistance with two or more activities of daily living as certified in writing by a physician licensed to practice in this State.
- (5) Temporary family health care structure. – A transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and G.S. 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

(b) A city shall consider a temporary family health care structure used by a caregiver in providing care for a mentally or physically impaired person on property owned or occupied by



1 the caregiver as the caregiver's residence as a permitted accessory use in any single-family
2 residential zoning district on lots zoned for single-family detached dwellings.

3 (c) A city shall consider a temporary family health care structure used by an individual
4 who is the named legal guardian of the mentally or physically impaired person a permitted
5 accessory use in any single-family residential zoning district on lots zoned for single-family
6 detached dwellings in accordance with this section if the temporary family health care structure
7 is placed on the property of the residence of the individual and is used to provide care for the
8 mentally or physically impaired person.

9 (d) Only one temporary family health care structure shall be allowed on a lot or parcel
10 of land. The temporary family health care structures under subsections (b) and (c) of this
11 section shall not require a special use permit or be subjected to any other local zoning
12 requirements beyond those imposed upon other authorized accessory use structures, except as
13 otherwise provided in this section. Such temporary family health care structures shall comply
14 with all setback requirements that apply to the primary structure and with any maximum floor
15 area ratio limitations that may apply to the primary structure.

16 (e) Any person proposing to install a temporary family health care structure shall first
17 obtain a permit from the city. The city may charge a fee of up to one hundred dollars (\$100.00)
18 for the initial permit and an annual renewal fee of up to fifty dollars (\$50.00). The city may not
19 withhold a permit if the applicant provides sufficient proof of compliance with this section. The
20 city may require that the applicant provide evidence of compliance with this section on an
21 annual basis as long as the temporary family health care structure remains on the property. The
22 evidence may involve the inspection by the city of the temporary family health care structure at
23 reasonable times convenient to the caregiver, not limited to any annual compliance
24 confirmation, and annual renewal of the doctor's certification.

25 (f) Notwithstanding subsection (i) of this section, any temporary family health care
26 structure installed under this section may be required to connect to any water, sewer, and
27 electric utilities serving the property and shall comply with all applicable State law, local
28 ordinances, and other requirements, including Part 5 of this Article, as if the temporary family
29 health care structure were permanent real property.

30 (g) No signage advertising or otherwise promoting the existence of the temporary
31 health care structure shall be permitted either on the exterior of the temporary family health
32 care structure or elsewhere on the property.

33 (h) Any temporary family health care structure installed pursuant to this section shall be
34 removed within 60 days in which the mentally or physically impaired person is no longer
35 receiving or is no longer in need of the assistance provided for in this section. If the temporary
36 family health care structure is needed for another mentally or physically impaired person, the
37 temporary family health care structure may continue to be used, or may be reinstated on the
38 property within 60 days of its removal, as applicable.

39 (i) The city may revoke the permit granted pursuant to subsection (e) of this section if
40 the permit holder violates any provision of this section or G.S. 160A-202. The city may seek
41 injunctive relief or other appropriate actions or proceedings to ensure compliance with this
42 section or G.S. 160A-202.

43 (j) Temporary family health care structures shall be treated as tangible personal
44 property for purposes of taxation."

45 **SECTION 3.** G.S. 130A-250 is amended by adding a new subdivision to read:

46 "(14) Temporary family health care structures under G.S. 153A-341.1 or
47 G.S. 160A-383.5."

48 **SECTION 4.** G.S. 131D-2.1(10) reads as rewritten:

49 "(10) Multiunit assisted housing with services. – An assisted living residence in
50 which hands-on personal care services and nursing services which are
51 arranged by housing management are provided by a licensed home care or

1 hospice agency through an individualized written care plan. The housing
2 management has a financial interest or financial affiliation or formal written
3 agreement which makes personal care services accessible and available
4 through at least one licensed home care or hospice agency. The resident has
5 a choice of any provider, and the housing management may not combine
6 charges for housing and personal care services. All residents, or their
7 compensatory agents, must be capable, through informed consent, of
8 entering into a contract and must not be in need of 24-hour supervision.
9 Assistance with self-administration of medications may be provided by
10 appropriately trained staff when delegated by a licensed nurse according to
11 the home care agency's established plan of care. Multiunit assisted housing
12 with services programs are required to register annually with the Division of
13 Health Service Regulation. Multiunit assisted housing with services
14 programs are required to provide a disclosure statement to the Division of
15 Health Service Regulation. The disclosure statement is required to be a part
16 of the annual rental contract that includes a description of the following
17 requirements:

- 18 a. Emergency response system;
- 19 b. Charges for services offered;
- 20 c. Limitations of tenancy;
- 21 d. Limitations of services;
- 22 e. Resident responsibilities;
- 23 f. Financial/legal relationship between housing management and home
24 care or hospice agencies;
- 25 g. A listing of all home care or hospice agencies and other community
26 services in the area;
- 27 h. An appeals process; and
- 28 i. Procedures for required initial and annual resident screening and
29 referrals for services.

30 Continuing care retirement communities, subject to regulation by the
31 Department of Insurance under Chapter 58 of the General Statutes, and
32 temporary family health care structures, as defined in G.S. 160A-383.5, are
33 exempt from the regulatory requirements for multiunit assisted housing with
34 services programs."

35 **SECTION 5.** G.S. 160A-442(2) reads as rewritten:

36 "(2) "Dwelling" means any building, structure, manufactured home or mobile
37 home, or part thereof, used and occupied for human habitation or intended to
38 be so used, and includes any outhouses and appurtenances belonging thereto
39 or usually enjoyed therewith, except that it does not include any
40 manufactured home or mobile home, which is used solely for a seasonal
41 vacation purpose. Temporary family health care structures, as defined in
42 G.S. 160A-383.5, shall be considered dwellings for purposes of this Part,
43 provided that any ordinance provision requiring minimum square footage
44 shall not apply to such structures."

45 **SECTION 6.** If any provision of this act or its application is held invalid, the
46 invalidity does not affect other provisions or applications of this act that can be given effect
47 without the invalid provisions or application, and to this end the provisions of this act are
48 severable.

49 **SECTION 7.** This act becomes effective July 1, 2011, and applies as to temporary
50 family health care structures existing on or after that date. No county or city may impose a fee

1 as authorized by Section 1 of this act on any temporary family health care structure existing on
2 that date.

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 887 (Second Edition)

SHORT TITLE: Zoning/Temp. Family Health Care Structures.

SPONSOR(S): Representatives Moffitt, Howard, and Setzer

FISCAL IMPACT

Yes () No (x) No Estimate Available ()

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES

EXPENDITURES

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

None identified.

EFFECTIVE DATE: July 1, 2011

BILL SUMMARY:

House Bill 887 (Second Edition) amends Part 3 of Article 18 of Chapter 153A of the General Statutes to include Temporary Family Health Care Structures. The bill identifies Temporary Family Health Care Structures as a permitted accessory for use in any single family residential zoning district on lots zoned for single-family detached dwellings. The proposed bill adds new provisions regarding accessory structures and adds definitions and limitations regarding Temporary Family Health Care Structures. The bill amends Section 4. G.S. 131D-2.1(10) by exempting Temporary Family Health Care structures from regulatory requirements for multiunit assisted housing with services programs.

ASSUMPTIONS AND METHODOLOGY:

This bill requires an individual to obtain a permit from a city government in order to erect a health care structure in certain areas and allows city governments to charge up to \$100 for the permit and \$50 for a renewal fee. The city governments will be issuing permits and collecting fees and none of these funds will go to the State. Additionally, this bill does not require any additional resources or expenses to be incurred by the Department of Health and Human Services. There is no additional cost to the State for enactment of this bill into law.

SOURCES OF DATA:

Division of Health Service Regulation, Department of Health and Human Services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lisa Hollowell and Donnie Charleston, Jr.

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 8, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 887: Zoning/Temp. Family Health Care Structures

2011-2012 General Assembly

Committee: House Finance	Date: June 8, 2011
Introduced by: Reps. Moffitt, Howard, Setzer	Prepared by: Trina Griffin
Analysis of: Second Edition	Committee Counsel

SUMMARY: *House Bill 887 would exempt temporary family health care structures from zoning requirements applicable to single family residential zoning by counties and cities and would require issuance of a permit for installation.*

CURRENT LAW: Counties and cities have the authority to zone as part the jurisdiction's land use planning authority. Zoning ordinances often limit a property to residential, agricultural, industrial, or commercial uses, and places constraints on those uses. Application can be made to the county or city with jurisdiction for an exemption to the zoning ordinance for a specific use.

BILL ANALYSIS: House Bill 887 would exempt from the zoning authority of cities and counties "temporary family health care structures," when those structures are within an area zoned single-family residential.

A temporary family health care structure is a transportable residential structure, providing an environment facilitating a caregiver's provision of care that meets all of the following requirements:

1. Is primarily assembled at a location other than the site of installation.
2. Is limited to 1 occupant who is mentally or physically impaired (an individual who requires assistance with 2 of more personal functions essential for health and well-being).
3. Has no more than 300 gross square feet.
4. Complies with the State Building Code.

Limitations. –

- Only one temporary family health care structure could be placed on a property.
- No signage advertising or otherwise promoting the existence of the structure permitted.

Requirements. –

- A person must obtain a permit in order to install a structure on the person's property. A city or county could charge up to \$100 for the initial permit, and up to \$50 for an annual renewal.
- A county or city may require that the structure be connected to water, sewer or electric utilities serving the property.
- The structure must comply with building inspections and State Building Code.
- The structure must comply with all setback requirements of the primary residence.
- The structure must be removed within 60 days of it no longer being needed. It could be returned to the property for re-installation within 60 days of removal if it becomes needed for a subsequent mentally or physically impaired person.

Exemptions. – The structures are exempt from:

- The regulation of food and lodging provisions in Part 6 of Article 8 of Chapter 130A.
- Licensure of adult care homes.

EFFECTIVE DATE: The bill would become effective July 1, 2011 and apply to temporary family health care structures existing at that time, except that the permit fee may not be charged for existing structures.

Erika Churchill, counsel to House Government, substantially contributed to this summary.

H887-SMSV-69(e2) v1

Research Division

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 122*
PROPOSED COMMITTEE SUBSTITUTE H122-PCS30383-RBx-59

Short Title: Rev Laws Tech, Clarify., & Admin. Chngs. (Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES
TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

BUSINESS AND EXCISE TAXES

SECTION 1. Section 31.7(e) of S.L. 2010-31 reads as rewritten:

"**SECTION 31.7.(e)** G.S. 105-37.1(a)(1), as amended by subsection (a) of this section, becomes effective ~~August 1, 2010~~, February 1, 2009, and applies retroactively to charges for admission received before that date or on or after that date. G.S. 105-37.1(a)(2), as amended by subsection (a) of this section, becomes effective January 1, 2011, and applies to admission tickets sold on or after that date. The remainder of this section is effective when it becomes law."

SECTION 2.(a) G.S. 105-113.4 reads as rewritten:

"§ 105-113.4. Definitions.

The following definitions apply in this Article:

(1) Affiliate. – A person who directly or indirectly controls, is controlled by, or is under common control with another person.

(1a) Affiliated manufacturer. – A manufacturer licensed under G.S. 105-113.12 who is an affiliate of a manufacturer licensed under G.S. 105-113.12.

(+)(1b) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

(+a)(1c) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

...

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, and is not a retail



1 dealer. ~~An "affiliate" is a person who directly or indirectly controls, is~~
2 ~~controlled by, or is under common control with another person.~~

3"

4 SECTION 2.(b) G.S. 105-113.10 reads as rewritten:

5 "**§ 105-113.10. Manufacturers ~~shipping to distributors exempt~~ exempt from paying tax.**

6 (a) Shipping to Other Distributors. – Any manufacturer shipping cigarettes to other
7 distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and
8 upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes
9 levied in this Part. No manufacturer may be relieved of the requirement to be licensed as a
10 distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate
11 user.

12 (b) Shipping for Affiliated Manufacturer. – A manufacturer may, upon application to
13 the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved
14 of paying the taxes levied in this Part on cigarettes that are manufactured by an affiliated
15 manufacturer and temporarily stored at and shipped from its facilities."

16 SECTION 2.(c) G.S. 105-113.21(b) reads as rewritten:

17 "(b) Refund. – A distributor in possession of packages of stale or otherwise unsalable
18 cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer as
19 provided in this subsection and apply to the Secretary for refund of the tax. The application
20 shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from
21 the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant.
22 The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes.
23 The distributor must return the cigarettes to the manufacturer of the cigarettes or to the
24 affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve as the
25 manufacturer's agent for the purposes of validating quantities and disposing of unsalable
26 cigarettes."

27 SECTION 3. G.S. 105-120.2(f) is repealed.

28 SECTION 4. G.S. 105-129.50 is amended by adding a new subdivision to read:

29 "**§ 105-129.50. Definitions.**

30 The definitions in section 41 of the Code apply in this Article. In addition, the following
31 definitions apply in this Article:

32 (1) Development tier one area. – Defined in G.S. 143B-437.08.

33"

34 SECTION 5. G.S. 105-130.4(t2) and G.S. 105-122(c1)(3) are repealed.

35 SECTION 6. G.S. 105-41(a)(8) and (a)(9) read as rewritten:

36 "(a) Every individual in this State who practices a profession or engages in a business
37 and is included in the list below must obtain from the Secretary a statewide license for the
38 privilege of practicing the profession or engaging in the business. A license required by this
39 section is not transferable to another person. The tax for each license is fifty dollars (\$50.00).

40 ...

41 (8) A real estate ~~broker or a real estate salesman,~~ broker as defined in
42 G.S. 93A-2. A real estate broker ~~or a real estate salesman~~ who is also a real
43 estate appraiser is required to obtain only one license under this section to
44 cover both activities.

45 (9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser
46 who is also a real estate broker ~~or a real estate salesman~~ is required to obtain
47 only one license under this section to cover both activities."

48 SECTION 7. G.S. 105-113.82(a) reads as rewritten:

49 "(a) Amount. – The Secretary must distribute annually a percentage of the net amount of
50 excise taxes collected on the sale of malt beverages and wine during the preceding 12-month
51 period ending March 31 to the counties or cities in which the retail sale of these beverages is

1 authorized in the entire county or city. ~~For purposes of this subsection, the term "net amount"~~
 2 ~~means gross collections less refunds and amounts credited to the Department of Commerce~~
 3 ~~under G.S. 105-113.81A.~~ The percentages to be distributed are as follows:

- 4 (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty and
 5 forty-seven hundredths percent (20.47%).
- 6 (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), forty-nine
 7 and forty-four hundredths percent (49.44%).
- 8 (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), eighteen
 9 percent (18%)."

10 **SECTION 8.** G.S. 105-125(b) reads as rewritten:

11 "(b) Certain Investment Companies. – A corporation doing business in North Carolina
 12 that meets one or more of the following conditions may, in determining its ~~basis capital stock,~~
 13 ~~surplus, and undivided profits base~~ for franchise tax, deduct the aggregate market value of its
 14 investments in the stocks, bonds, debentures, or other securities or evidences of debt of other
 15 corporations, partnerships, individuals, municipalities, governmental agencies, or governments:

- 16 (1) A regulated investment company. – A regulated investment company is an
 17 entity that qualifies as a regulated investment company under section 851 of
 18 the Code.
- 19 (2) A REIT, unless the REIT is a captive REIT. – The terms "REIT" and
 20 "captive REIT" have the same meanings as defined in G.S. 105-130.12."

21 **SECTION 9.** G.S. 105-127(f) reads as rewritten:

22 "(f) After the end of the income year in which a domestic corporation is dissolved
 23 pursuant to Part 1 of Article 14 of Chapter 55 of the General Statutes, the corporation is no
 24 longer subject to the tax levied in this Article unless the Secretary of Revenue finds that the
 25 corporation has engaged in business activities in this State not appropriate to winding up and
 26 liquidating its business and affairs."

27 **SECTION 10.** G.S. 105-228.8(e) reads as rewritten:

28 "(e) This section shall not apply to special purpose obligations or assessments based on
 29 premiums imposed in connection with particular kinds of insurance, to the special purpose
 30 regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on
 31 premiums. ~~For purposes of this section, seventy five percent (75%) of the one and thirty three~~
 32 ~~hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to~~
 33 ~~fire and lightning coverage shall not be a special purpose obligation or assessment or a~~
 34 ~~dedicated special purpose tax within the meaning of this subsection."~~

35 36 PERSONAL TAXES

37 **SECTION 11.** Section 4 of S.L. 2011-5 reads as rewritten:

38 "**SECTION 4.** This act is effective when it becomes law ~~law and applies to the estates of~~
 39 ~~decedents dying on or after January 1, 2011.~~ Notwithstanding Section 1 of this act, any
 40 amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North
 41 Carolina taxable income for the 2010 taxable year become effective for taxable years beginning
 42 on or after January 1, 2011."

43 **SECTION 12.(a)** If House Bill 200, 2011 Regular Session, becomes law, then
 44 G.S. 105-134.1(19), as repealed in that act, is reenacted.

45 **SECTION 12.(b)** If House Bill 200, 2011 Regular Session, becomes law, then
 46 G.S. 105-134.6(a1) and (a2), as enacted in that act, read as rewritten:

47 "(a1) Personal Exemption. – In calculating North Carolina taxable income, a taxpayer
 48 may deduct an exemption amount equal to the amount listed in the table below based on the
 49 taxpayer's filing status and adjusted gross income. The taxpayer is allowed the same ~~number~~
 50 ~~of personal exemptions claimed~~ allowed under section 151 of the Code for the taxable year.

51 **Personal**

Filing Status	Adjusted Gross Income	Exemption
Married, filing jointly	Up to \$100,000	\$2,500
	Over \$100,000	\$2,000
Head of Household	Up to \$80,000	\$2,500
	Over \$80,000	\$2,000
Single	Up to \$60,000	\$2,500
	Over \$60,000	\$2,000
Married, filing separately	Up to \$50,000	\$2,500
	Over \$50,000	\$2,000

(a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct either the standard deduction amount listed in the table below for that taxpayer's filing status or the itemized deductions amount ~~elected~~ claimed under ~~section 63~~ of the Code. ~~A taxpayer may not deduct both the standard deduction amount and the itemized deductions amount.~~ In the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer's spouse claims itemized deductions for State purposes.

A taxpayer that deducts the standard deduction amount under this subsection and is entitled to an additional deduction amount under section 63(f) of the Code for the aged or blind may deduct an additional amount under this subsection. The additional amount the taxpayer may deduct is six hundred dollars (\$600.00) in the case of an individual who is married and seven hundred fifty dollars (\$750.00) in the case of an individual who is not married and is not a surviving spouse. The taxpayer is allowed the same number of additional amounts that the taxpayer claimed under the Code for the taxable year.

Filing Status	Standard Deduction
Married, filing jointly	\$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000."

SECTION 12.(c) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(b)(22), as enacted in that act, reads as rewritten:

"(22) ~~The first~~ An amount not to exceed fifty thousand dollars (\$50,000) of net business income the taxpayer receives during the taxable year. In the case of a married couple filing a joint return where both spouses receive or incur net business income, the maximum dollar amounts apply separately to each spouse's net business income, not to exceed a total of one hundred thousand dollars (\$100,000). For purposes of this subdivision, the term "business income" does not include income that is considered passive income under the Code."

SECTION 12.(d) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(c)(3) reads as rewritten:

"(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income ~~tax or tax~~, as state or local general sales ~~tax~~ tax, or as qualified motor vehicle tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under ~~the Code reduced by the amount the taxpayer is required to add to taxable income under subdivision (4) of this subsection.~~ subsection (a2) of this section."

SECTION 12.(e) If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(c)(12) is repealed.

1 **SECTION 12.(f)** This section is effective for taxable years beginning on or after
2 January 1, 2012.

3 **SECTION 13.** G.S. 105-134.6(d)(8) reads as rewritten:

4 "(d) Other Adjustments. – The following adjustments to taxable income shall be made in
5 calculating North Carolina taxable income:

- 6 ...
- 7 (8) For taxable years 2011 through 2013, a taxpayer who made an addition
8 under subdivision (7) of this subsection may deduct one-third ~~of the~~
9 ~~taxpayer's net operating loss absorbed on the taxpayer's 2003, 2004, 2005,~~
10 ~~and 2006 federal returns under section 172(b)(1)(H) or section 810(b)(4) of~~
11 ~~the Code of the amount added under that subdivision."~~

12 **SECTION 14.** Reserved.

13

14 **SALES AND USE TAX AND ARTICLE 5F TAXES**

15 **SECTION 15.(a)** G.S. 105-164.3(25) and (30a) reads as rewritten:

16 **"§ 105-164.3. Definitions.**

17 The following definitions apply in this Article:

- 18 ...
- 19 (25a) Over-the-counter drug. – A drug that can be dispensed under federal law
20 without a prescription and is required by 21 C.F.R. § ~~210.66-201.66~~ to have
21 a label containing a "Drug Facts" panel and a statement of its active
22 ingredients.

- 23 ...
- 24 (30a) Professional motorsports racing team. – A racing team that satisfies all of the
25 following conditions:

- 26 a. The team is operated for profit.
- 27 b. ~~A majority of the revenues of the team is derived from sponsorship~~
28 ~~of the racing team and prize money. The team does not claim a~~
29 ~~deduction under section 183 of the Code.~~
- 30 c. The team competes in at least sixty-six percent (66%) of the races
31 sponsored in a race series in a single season by a motorsports
32 sanctioning body."

33 **SECTION 15.(b)** G.S. 105-164.3 is amended by adding a new subdivision to read:

34 **"(33b) Related member. – Defined in G.S. 105-130.7A."**

35 **SECTION 15.(c)** G.S. 105-164.14A(a)(4) and (a)(5) read as rewritten:

36 **"§ 105-164.14A. Economic incentive refunds.**

37 (a) Refund. – The following taxpayers are allowed an annual refund of sales and use
38 taxes paid under this Article:

- 39 ...
- 40 (4) Motorsports team or sanctioning body. – A professional motorsports racing
41 ~~team or a team, a motorsports sanctioning body-body, or a related member of~~
42 such a team or body is allowed a refund of the sales and use tax paid by it in
43 this State on aviation fuel that is used to travel to or from a motorsports
44 event in this State, to travel to a motorsports event in another state from a
45 location in this State, or to travel to this State from a motorsports event in
46 another state. For purposes of this subdivision, a "motorsports event"
47 includes a motorsports race, a motorsports sponsor event, and motorsports
48 testing. This subdivision is repealed for purchases made on or after January
49 1, 2011.
- 50 (5) Professional motorsports team. – A professional motorsports racing team or
51 a related member of a team is allowed a refund of fifty percent (50%) of the

1 sales and use tax paid by it in this State on tangible personal property, other
2 than tires or accessories, that comprises any part of a professional
3 motorsports vehicle. For purposes of this subdivision, "motorsports
4 accessories" includes instrumentation, telemetry, consumables, and paint.
5 This subdivision is repealed for purchases made on or after January 1, 2014."

6 **SECTION 15.(d)** Subsection (b) this section and G.S. 105-164.14A(a)(4), as
7 amended by subsection (c) of this section, apply retroactively to purchases made on or after
8 January 1, 2005. G.S. 105-164.14A(a)(5), as amended by subsection (c) of this section, applies
9 retroactively to purchases made on or after July 1, 2007.

10 **SECTION 16.** G.S. 105-164.4(a)(3) reads as rewritten:

11 "(3) A tax at the general rate applies to the gross receipts derived from the rental
12 of an accommodation. The tax does not apply to (i) a private residence or
13 cottage that is rented for fewer than 15 days in a calendar year ~~or to year~~; (ii)
14 an accommodation rented to the same person for a period of 90 or more
15 continuous ~~days~~; or (iii) an accommodation arranged or provided to a
16 person by a school, camp, or similar entity where a tuition or fee is charged
17 to the person for enrollment in the school, camp, or similar entity.

18 Gross receipts derived from the rental of an accommodation include the
19 sales price of the rental of the accommodation. The sales price of the rental
20 of an accommodation is determined as if the rental were a rental of tangible
21 personal property. The sales price of the rental of an accommodation
22 marketed by a facilitator includes charges designated as facilitation fees and
23 any other charges necessary to complete the rental.

24 A person who provides an accommodation that is offered for rent is
25 considered a retailer under this Article. A facilitator must report to the
26 retailer with whom it has a contract the sales price a consumer pays to the
27 facilitator for an accommodation rental marketed by the facilitator. A retailer
28 must notify a facilitator when an accommodation rental marketed by the
29 facilitator is completed and, within three business days of receiving the
30 notice, the facilitator must send the retailer the portion of the sales price the
31 facilitator owes the retailer and the tax due on the sales price. A facilitator
32 that does not send the retailer the tax due on the sales price is liable for the
33 amount of tax the facilitator fails to send. A facilitator is not liable for tax
34 sent to a retailer but not remitted by the retailer to the Secretary. Tax
35 payments received by a retailer from a facilitator are held in trust by the
36 retailer for remittance to the Secretary. A retailer that receives a tax payment
37 from a facilitator must remit the amount received to the Secretary. A retailer
38 is not liable for tax due but not received from a facilitator. The requirements
39 imposed by this subdivision on a retailer and a facilitator are considered
40 terms of the contract between the retailer and the facilitator.

41 A person who, by written contract, agrees to be the rental agent for the
42 provider of an accommodation is considered a retailer under this Article and
43 is liable for the tax imposed by this subdivision. The liability of a rental
44 agent for the tax imposed by this subdivision relieves the provider of the
45 accommodation from liability. A rental agent includes a real estate broker, as
46 defined in G.S. 93A-2.

47 The following definitions apply in this subdivision:

48 a. Accommodation. – A hotel room, a motel room, a residence, a
49 cottage, or a similar lodging facility for occupancy by an individual.

b. Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation."

SECTION 17. G.S. 105-164.4C(h)(5) reads as rewritten:

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

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid ~~wireline~~ telephone calling service, except the exclusive use requirement.

...."

SECTION 18. G.S. 105-164.13(12), (26a), (33), (38), and (49) read as rewritten:

"§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

(12) Sales of any of the following items:

- a. Prosthetic ~~devices~~ devices for human use.
b. Mobility enhancing equipment sold on a prescription.
c. Durable medical equipment sold on prescription.
d. Durable medical supplies sold on prescription.

(26a) Food sold not for profit by a public school cafeteria to a child care center that participates in the Child and Adult Care Food Program of the Department of ~~Public Instruction~~ Health and Human Services.

(33a) Tangible personal property sold by a retailer to a purchaser within or without this State, when the property is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State and the purchaser does not subsequently use the property in this State.

(38) Food and other items lawfully purchased under the Food Stamp Program, 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental ~~Food~~ Nutrition Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental ~~Food~~ Nutrition Program.

(49) Installation charges when the charges are separately ~~stated~~ stated on the invoice at the time of sale."

SECTION 19. G.S. 105-164.13D(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to the Energy Star qualified products listed in this section if sold between 12:01 A.M. on the first Friday of November and 11:59 P.M. the following Sunday. The qualified products are:

- (1) Clothes washers.
(2) Freezers and refrigerators.

- 1 (3) Central air conditioners and room air conditioners.
- 2 (4) Air-source heat pumps and geothermal heat pumps.
- 3 (5) Ceiling fans.
- 4 (6) Dehumidifiers.
- 5 (7) Programmable thermostats."

6 SECTION 20.(a) G.S. 105-164.14A(a)(1) and (a)(4), as amended by this act, read
7 as rewritten:

8 "**§ 105-164.14A. Economic incentive refunds.**

9 (a) Refund. – The following taxpayers are allowed an annual refund of sales and use
10 taxes paid under this Article:

11 (1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund
12 of the sales and use tax paid by it on fuel in excess of two million five
13 hundred thousand dollars (\$2,500,000). The amount of sales and use tax paid
14 does not include a refund allowed to the interstate passenger air carrier under
15 G.S. 105-164.14(a). This subdivision is repealed for purchases made on or
16 after ~~January 1, 2011~~. January 1, 2013.

17 ...
18 (4) Motorsports team or sanctioning body. – A professional motorsports racing
19 team, a motorsports sanctioning body, or a related member of such a team or
20 body is allowed a refund of the sales and use tax paid by it in this State on
21 aviation fuel that is used to travel to or from a motorsports event in this
22 State, to travel to a motorsports event in another state from a location in this
23 State, or to travel to this State from a motorsports event in another state. For
24 purposes of this subdivision, a "motorsports event" includes a motorsports
25 race, a motorsports sponsor event, and motorsports testing. This subdivision
26 is repealed for purchases made on or after ~~January 1, 2011~~. January 1, 2013.

27"

28 SECTION 20.(b) This section applies retroactively to purchases made on or after
29 January 1, 2011.

30 SECTION 21. G.S. 105-164.16(d) reads as rewritten:

31 "(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who
32 purchases the items listed in this subsection ~~tangible personal property other than a boat or an~~
33 ~~aircraft, digital property, or a service~~ outside the State for a nonbusiness purpose is due on an
34 annual basis. For an individual who is not required to file an individual income tax return under
35 Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the
36 calendar year and a use tax return is due by the following April 15. For an individual who is
37 required to file an individual income tax return, the annual reporting period ends on the last day
38 of the individual's income tax year, and the use tax must be paid on the income tax return as
39 provided in G.S. 105-269.14. The items are:

- 40 (1) Tangible personal property other than a boat or an aircraft.
- 41 (2) Digital property.
- 42 (3) A service."

43 SECTION 22. G.S. 105-187.51C(c) reads as rewritten:

44 "(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is
45 not timely made, then the rate provided under this section is forfeited. If the required level of
46 investment is timely made but any eligible machinery and equipment is not located and used at
47 an eligible datacenter, then the rate provided for that machinery and equipment under this
48 section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales
49 and use taxes avoided as a result of the forfeiture, computed at the ~~combined general rate~~
50 applicable State and local rates from the date the taxes would otherwise have been due, plus
51 interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the

1 lack of a timely investment required by this section, then interest is computed from the date the
2 sales or use tax would otherwise have been due. For all other forfeitures, interest is computed at
3 ~~the combined general rate~~ from the time as of which the machinery or equipment was put to a
4 disqualifying use. A credit is allowed against the State sales or use tax owed as a result of the
5 forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For
6 purposes of applying this credit, the fact that payment of the privilege tax occurred in a period
7 outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit
8 reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes
9 and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past
10 taxes and interest by the due date is subject to the provisions of G.S. 105-236."

11 **SECTION 23.** A facilitator is not liable for an overcollection or undercollection of
12 sales tax or local occupancy tax if the facilitator has made a good faith effort to comply with
13 the law and collect the proper amount of tax as the result of the change under Section 31.6 of
14 S.L. 2010-31 regarding a facilitator's collection and remittance obligations imposed under
15 G.S. 105-164.4(a)(3), 153A-155(c), and 160A-215(c). This applies only to the period
16 beginning January 1, 2011, and ending April 1, 2011.

17 **SECTION 24.** Section 9 of S.L. 2010-91 reads as rewritten:

18 "**SECTION 9.** Section 6 of this act becomes effective January 1, 2010. Section 7 of this act
19 is effective when it becomes law and applies retroactively to sales made on or after October 1,
20 2007. Section 8 of this act is effective when it becomes law, applies to all agreements in effect
21 on or entered into after that date, and expires January 1, 2013. The remainder of this act
22 becomes effective July 1, 2010, and applies to sales made on or after that date."

23 **SECTION 25.(a)** G.S. 105-164.6(c) reads as rewritten:

24 "(c) Credit. – A credit is allowed against the tax imposed by this section for the
25 following:

- 26 (1) The amount of sales or use tax paid on the item to this State. Payment of
27 sales or use tax to this State on an item by a retailer extinguishes the liability
28 of a purchaser for the tax imposed under this section.
- 29 (2) The amount of sales or use tax due and paid on the item to another state. If
30 the amount of tax paid to the other state is less than the amount of tax
31 imposed by this section, the difference is payable to this State. The credit
32 allowed by this subdivision does not apply to tax paid to a state that does not
33 grant a similar credit for sales or use taxes paid in North Carolina."

34 **SECTION 25.(b)** G.S. 105-187.52 reads as rewritten:

35 "**§ 105-187.52. Administration.**

36 (a) Administration. – The privilege taxes imposed by this Article are in ~~addition to lieu~~
37 of the State use tax. Except as otherwise provided in this Article, the collection and
38 administration of these taxes is the same as the State use tax imposed by Article 5 of this
39 Chapter.

40 (b) Credit. – A credit is allowed against the tax imposed by this Article for the amount
41 of a sales or use tax, privilege or excise tax, or substantially equivalent tax due and paid to
42 another state. The credit allowed by this subsection does not apply to tax paid to another state
43 that does not grant a similar credit for the privilege tax paid in North Carolina.

44 (c) Exemption. – State agencies are exempted from the privilege taxes imposed by this
45 Article."

46 **SECTION 26.(a)** G.S. 105-164.14 is amended by adding a new subsection to read:

47 "(p) Not an Overpayment. – Taxes for which a refund is allowed under this section are
48 not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

49 **SECTION 26.(b)** G.S. 105-164.14A is amended by adding a new subsection to
50 read:

1 "(d) Not an Overpayment. – Taxes for which a refund is allowed under this section are
2 not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

3 **SECTION 26.(c)** G.S. 105-164.14B is amended by adding a new subsection to
4 read:

5 "(g) Not an Overpayment. – Taxes for which a refund is allowed under this section are
6 not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

7 **SECTION 27.** G.S. 105-164.15A(a)(1) reads as rewritten:

8 "(a) **Services.** – The effective date of a tax change for a service taxable under this Article
9 is administered as follows:

10 (1) For a service that is provided and billed on a monthly or other periodic basis:

11 a. A new tax or a tax rate increase applies to the first billing period that
12 starts on or after the effective date. For a service billed after it is
13 provided, the first billing period starts on the effective date. For a
14 service billed before it is provided, the first billing period starts on
15 the first day of the month after the effective date.

16 b. A tax repeal or a tax rate decrease applies to ~~bills rendered~~ the first
17 billing period that starts on or after the effective date."

18 **SECTION 28.** G.S. 105-164.28 reads as rewritten:

19 "**§ 105-164.28. Certificate of ~~resale~~ exemption.**

20 (a) **Seller's Responsibility.** – A seller who accepts a certificate of ~~resale~~ exemption from
21 a purchaser has the burden of proving that the sale was not a retail sale unless all of the
22 following conditions are met:

23 (1) For a sale made in person, the certificate is signed by the purchaser and
24 states the purchaser's name, address, registration number, and type of
25 business.

26 (2) For a sale made in person, the item sold is the type of item typically sold by
27 the type of business stated on the certificate.

28 (3) For a sale made over the Internet or by other remote means, the seller
29 obtains the purchaser's name, address, registration number, and type of
30 business and maintains this information in a retrievable format in its records.

31 (b) **Purchaser's Liability.** – A purchaser who does not resell an item purchased under a
32 certificate of ~~resale~~ exemption is liable for any tax subsequently determined to be due on the
33 sale."

34 **SECTION 29.** G.S. 105-164.41 is repealed.

35 36 **EXCISE TAX ON CONVEYANCES**

37 **SECTION 30.(a)** G.S. 105-228.37 reads as rewritten:

38 "**§ 105-228.37. Refund of overpayment of tax.**

39 (a) **Refund Request.** – A taxpayer who pays more tax than is due under this Article may
40 request a refund of the overpayment by filing a written request for a refund with the board of
41 county commissioners of the county where the tax was paid. The request must be filed within
42 six months after the date the tax was paid and must explain why the taxpayer believes a refund
43 is due.

44 (b) **Hearing by County.** – A board of county commissioners must conduct a hearing on
45 a request for ~~refund in accordance with the procedures that apply to a hearing held by a board~~
46 ~~of equalization and review on an appeal concerning the listing or appraisal of property.~~ If
47 refund. Within 60 days after a timely request for a refund has been filed and at least 10 days
48 before the date set for the hearing, the board must notify the taxpayer in writing of the time and
49 place at which the hearing will be conducted. The date set for the hearing must be within 90
50 days after the timely request for a hearing was filed or at a later date mutually agreed upon by
51 the taxpayer and the board. The board must make a decision on the requested refund within 90

1 ~~days after conducting a hearing under this subsection, the board decides that a refund is due, it~~
2 ~~must refund the county's portion of the overpayment, together with any applicable interest, to~~
3 ~~the taxpayer. If the board finds that no refund is due, the written decision of the board must~~
4 ~~inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission.~~

5 ~~(c) Review by Commission.—Process if Refund Granted. – If the board of~~
6 ~~commissioners decides that a refund is due, it must refund the overpayment, together with any~~
7 ~~applicable interest, to the taxpayer and inform the Department of the refund. The Department~~
8 ~~may assess the taxpayer for the amount of the refund in accordance with G.S. 105-241.9 if the~~
9 ~~Department disagrees with the board's decision. The procedure in G.S. 105-290 for the appeal~~
10 ~~to the Property Tax Commission of a decision of a board of equalization and review concerning~~
11 ~~the listing or appraisal of property applies to the appeal of a denial by a board of county~~
12 ~~commissioners of a request for a refund of tax paid under this Article. If the Commission~~
13 ~~determines that a refund is due, the board of county commissioners must refund the county's~~
14 ~~portion of the overpayment, together with any applicable interest, to the taxpayer. A decision of~~
15 ~~the Commission is binding on the Secretary and on a board of county commissioners.~~

16 ~~(d) Judicial Review.—Process if Refund Denied. – A decision of the Property Tax~~
17 ~~Commission is subject to judicial review in accordance with G.S. 7A-29. If the board of~~
18 ~~commissioners finds that no refund is due, the written decision of the board must inform the~~
19 ~~taxpayer that the taxpayer may request a departmental review of the denial of the refund in~~
20 ~~accordance with the procedures set out in G.S. 105-241.11.~~

21 ~~(e) Recording Correct Deed. – Before a tax is refunded, the taxpayer must record a new~~
22 ~~instrument reflecting the correct amount of tax due. If no tax is due because an instrument was~~
23 ~~recorded in the wrong county, then the taxpayer must record a document stating that no tax was~~
24 ~~owed because the instrument being corrected was recorded in the wrong county. The taxpayer~~
25 ~~must include in the document the names of the grantors and grantees and the deed book and~~
26 ~~page number of the instrument being corrected.~~

27 ~~When a taxpayer records a corrected instrument, the taxpayer must inform the register of~~
28 ~~deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the~~
29 ~~register of deeds a copy of the decision granting the refund that shows the correct amount of tax~~
30 ~~due. The correcting instrument must include the deed book and page number of the instrument~~
31 ~~being corrected. The register of deeds must notify the county finance officer and the Secretary~~
32 ~~when the correcting instrument has been recorded.~~

33 ~~(f) Interest. – An overpayment of tax bears interest at the rate established in~~
34 ~~G.S. 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an~~
35 ~~overpayment 30 days after the request for a refund is filed by the taxpayer with the board of~~
36 ~~county commissioners."~~

37 **SECTION 30.(b)** G.S. 105-228.30(b) reads as rewritten:

38 "(b) The register of deeds of each county must remit the proceeds of the tax levied by
39 this section to the county finance officer. The finance officer of each county must credit
40 one-half of the proceeds to the county's general fund and remit the remaining one-half of the
41 proceeds, less taxes refunded and the county's allowance for administrative expenses, to the
42 Department of Revenue on a monthly basis. A county may retain two percent (2%) of the
43 amount of tax proceeds allocated for remittance to the Department of Revenue as compensation
44 for the county's cost in collecting and remitting the State's share of the tax. Of the funds
45 remitted to it pursuant to this section, the Department of Revenue must credit seventy-five
46 percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and
47 twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7."
48

49 GENERAL ADMINISTRATION

50 **SECTION 31.(a)** G.S. 105-228.90(b) is amended by adding a new subdivision to
51 read:

1 "(b) Definitions. – The following definitions apply in this Article:

2 ...

3 (4b) NAICS. – The North American Industry Classification System adopted by
4 the United States Office of Management and Budget as of December 31,
5 2007.

6 "

7 **SECTION 31.(b)** G.S. 105-129.81(13) and (18) read as rewritten:

8 "**§ 105-129.81. Definitions.**

9 The following definitions apply in this Article:

10 ...

11 (13) Information technology and services. – An industry in one of the
12 ~~following:~~following, as defined by NAICS:

13 a. ~~Internet service providers, Web search portals, and data processing~~
14 ~~subsector 518 as defined by NAICS.~~Data processing industry group
15 518.

16 b. ~~Software publishers industry group 5112 as defined by NAICS.~~5112.

17 c. ~~Computer systems design and related services industry group 5415 as~~
18 ~~defined by NAICS.~~5415.

19 d. An Internet activity included in industry group 519130.

20 ...

21 (18) ~~NAICS. – The North American Industry Classification System adopted by~~
22 ~~the United States Office of Management and Budget as of December 31,~~
23 ~~2002.~~Defined in G.S. 105-228.90.

24 "

25 **SECTION 31.(c)** G.S. 105-164.3(23a) reads as rewritten:

26 "~~(23a) NAICS. – The North American Industry Classification System adopted by~~
27 ~~the United States Office of Management and Budget as of December 31,~~
28 ~~2007.~~Defined in G.S. 105-228.90."

29 **SECTION 32.** G.S. 105-236(a)(2) reads as rewritten:

30 "(a) Penalties. – The following civil penalties and criminal offenses apply:

31 ...

32 (2) Failure to Obtain a License. – For failure to obtain a license before engaging
33 in a business, trade or profession for which a license is required, the
34 Secretary shall assess a penalty equal to five percent (5%) of the amount
35 prescribed for the license per month or fraction thereof until paid, not to
36 exceed twenty-five percent (25%) of the amount so prescribed, but in any
37 event shall not be less than five dollars (\$5.00). In cases in which the
38 ~~taxpayer~~taxpayer, after written notification by the Department, fails to
39 obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the
40 Secretary may assess a penalty of one thousand dollars (\$1,000).

41 "

42 **SECTION 33.(a)** G.S. 105-256(a)(9) reads as rewritten:

43 "(a) Publications. – The Secretary shall prepare and publish the following:

44 ...

45 (9) A final decision of the Secretary in a contested tax case.~~The Secretary must~~
46 ~~redact identifying taxpayer information from a final decision prior to~~
47 ~~publication."~~

48 **SECTION 33.(b)** G.S. 105-259(b)(27) reads as rewritten:

49 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
50 access to tax information in the course of service to or employment by the State may not
51 disclose the information to any other person except as provided in this subsection. Standards

1 used or to be used for the selection of returns for examination and data used or to be used for
2 determining the standards may not be disclosed for any purpose. All other tax information may
3 be disclosed only if the disclosure is made for one of the following purposes:

4 ...

5 (27) To provide a ~~report~~ publication required under this Chapter."

6 SECTION 33.(c) G.S. 150B-21.17(a)(5) is repealed.

7 SECTION 34. G.S. 105-241.9(b) reads as rewritten:

8 "(b) Time Limit. – The Secretary must propose an assessment within the statute of
9 limitations for proposed assessments unless the taxpayer waives the limitations period ~~in~~
10 ~~writing~~ before it expires by agreeing in writing to extend the period. A taxpayer may waive the
11 limitations period for either a definite or an indefinite time. If the taxpayer waives the
12 limitations period, the Secretary may propose an assessment at any time within the time
13 extended by the waiver."

14 SECTION 35. G.S. 105-256(a)(7) is repealed.

15 SECTION 36. Section 24.18(g) of S.L. 2006-66 reads as rewritten:

16 "SECTION 24.18.(g) This section is effective for taxable years beginning on or after
17 January 1, 2006, and expires for taxable years beginning on or after ~~January 1, 2011.~~ January 1,
18 2013."

19 SECTION 37. G.S. 105-228.90(a) reads as rewritten:

20 "(a) Scope. – This Article applies to all of the following:

21 (1) Subchapters I, V, and VIII of this Chapter, to the Chapter.

22 (2) The annual report filing requirements of G.S. 55-16-22, to the
23 G.S. 55-16-22.

24 (3) The primary forest product assessment levied under Article 12 of Chapter
25 113A of the General Statutes, and to Statutes.

26 (4) The inspection taxes levied under Article 3 of Chapter 119 of the General
27 Statutes.

28 (5) Chapter 105A of the General Statutes."

29 SECTIONS 38-39. Reserved.

30 31 PROPERTY TAX

32 SECTION 40. G.S. 105-330.4 is amended by adding a new subsection to read:

33 "(d) Tax payments submitted by mail are deemed to be received as of the date shown on
34 the postmark affixed by the United States Postal Service. If no date is shown on the postmark
35 or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed
36 to be received when the payment is received in the office of the tax collector. In any dispute
37 arising under this subsection, the burden of proof is on the taxpayer to show that the payment
38 was timely made."

39 SECTION 41. G.S. 105-333(14) reads as rewritten:

40 "§ 105-333. Definitions.

41 The following definitions apply in this Article unless the context requires a different
42 meaning:

43 ...

44 (14) Public service company. – A railroad company, a pipeline company, a gas
45 company, an electric power company, an electric membership corporation, a
46 telephone company, a telegraph company, a bus line company, an airline
47 company, or a motor freight carrier company. The term also includes any
48 company performing a public service that is regulated by the United States
49 Department of Energy, the United States Department of Transportation, the
50 Federal Communications Commission, the Federal Aviation Agency, or the
51 North Carolina Utilities Commission, except that the term does not include a

1 water company, mobile telecommunications service as defined in
2 G.S. 105-164.3, a cable television company, or a radio or television
3 broadcasting company."

4 **SECTION 42.(a)** The prefatory language for Section 65 of S.L. 2008-134 reads as
5 rewritten:

6 "Section 13 of S.L. 2005-294, as amended by Section 31.5 of S.L. 2006-259 and Section
7 ~~22(e)~~Section 22(b) of S.L. 2007-527, reads as rewritten:"

8 **SECTION 42.(b)** Section 22(a) of S.L. 2010-95 is repealed.

9 **SECTION 42.(c)** Section 22(e) of S.L. 2010-95 reads as rewritten:

10 "**SECTION 22.(e)** Section 79 of S.L. 2008-134, as amended by Section 25(b) of S.L.
11 2009-445, reads as rewritten:

12 "**SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009.
13 Except as otherwise provided, the remainder of this act is effective when it becomes law.
14 ~~Section 63 of this act is repealed July 1, 2011.~~ Section 63 of this act is repealed July 1, 2013."

15 **SECTIONS 43-44.** Reserved.

17 LOCAL GOVERNMENT SALES AND USE TAX

18 **SECTION 45.** G.S. 105-467(a) reads as rewritten:

19 "(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax
20 at the rate of one percent (1%) of the ~~transactions listed in this subsection. The sales tax~~
21 ~~authorized by this Article does not apply to sales that are taxable by the State under~~
22 ~~G.S. 105-164.4 but are not specifically included in this subsection.~~ following:

- 23 (1) ~~A retailer's net taxable sales and gross receipts that are~~ The sales price of
24 ~~tangible personal property subject to the general rate of sales tax imposed by~~
25 ~~the State under G.S. 105-164.4(a)(1) and (a)(4b).~~ G.S. 105-164.4.
- 26 (2) ~~The gross receipts derived from the lease or rental of tangible personal~~
27 ~~property when the lease or rental of the property is subject to the general rate~~
28 ~~of sales tax imposed by the State under G.S. 105-164.4(a)(2).~~
- 29 (3) ~~The gross receipts derived from the rental of any room or other~~
30 ~~accommodations subject to the general rate of sales tax imposed by the State~~
31 ~~under G.S. 105-164.4(a)(3).~~
- 32 (4) ~~The gross receipts derived from services rendered by laundries, dry cleaners,~~
33 ~~and other businesses subject to the general rate of sales tax imposed by the~~
34 ~~State under G.S. 105-164.4(a)(4).~~
- 35 (5) The sales price of food that is not otherwise exempt from tax pursuant to
36 G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to
37 G.S. 105-164.13B.
- 38 (5a) The sales price of a bundled transaction that includes food subject to tax
39 under subdivision (5) of this subsection, if the price of the food exceeds ten
40 percent (10%) of the price of the bundle. A retailer must determine the price
41 of food in a bundled transaction in accordance with G.S. 105-164.4D.
- 42 (5b) The sales price of bread, rolls, and buns that are sold at a bakery thrift store
43 and are exempt from State tax under G.S. 105-164.13(27a).
- 44 (6) ~~The sales price of prepaid telephone calling service taxed as tangible~~
45 ~~personal property under G.S. 105-164.4(a)(4d).~~
- 46 (7) ~~The gross receipts derived from providing satellite digital audio radio service~~
47 ~~subject to the general rate of tax under G.S. 105-164.4(a)(6a)."~~

49 MISCELLANEOUS

50 **SECTION 46.** Section 8 of S.L. 2006-209 reads as rewritten:

1 "SECTION 8. As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the Division of
2 Legislative Drafting and Codification to reletter or renumber section subdivisions includes the
3 authority to renumber all the subdivisions in G.S. 20-79.4(b) in sequential and alphabetical
4 order and to eliminate mixed number-letter subdivision designations. ~~This section expires July~~
5 ~~1, 2011.~~"

6 SECTION 47.(a) G.S. 58-70-35(a) reads as rewritten:

7 "(a) Upon the filing of the application and information required by this Article, the
8 applicant shall pay a nonrefundable fee of one thousand dollars (\$1,000), and no permit may be
9 issued until this fee is paid. Fees collected under this subsection shall be ~~used in paying the~~
10 ~~expenses incurred in connection with the consideration of such applications and the issuance of~~
11 ~~such permits credited to the Insurance Regulatory Fund created under G.S. 58-6-25."~~

12 SECTION 47.(b) G.S. 143-143.10(a) reads as rewritten:

13 "(a) There is created the North Carolina Manufactured Housing Board within the
14 Department. The Board shall be composed of 11 members as follows:

- 15 (1) The Commissioner of Insurance or the Commissioner's designee.
- 16 (2) A manufactured home manufacturer.
- 17 (3) A manufactured home dealer.
- 18 (4) A representative of the banking and finance industry.
- 19 (5) A representative of the insurance industry.
- 20 (6) A manufactured home supplier.
- 21 (7) A set-up contractor.
- 22 (8) Two representatives of the general public.
- 23 (9) A person who is employed with a HUD-approved housing counseling
24 agency in the State.
- 25 (10) An accountant.

26 The Commissioner or the Commissioner's designee shall chair the Board. The Governor
27 shall appoint to the Board the manufactured home manufacturer and the manufactured home
28 dealer. The General Assembly upon the recommendation of the Speaker of the House of
29 Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative
30 of the banking and finance industry, the employee of a HUD-approved housing counseling
31 agency, and the representative of the insurance industry. The General Assembly upon the
32 recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121
33 shall appoint to the Board the manufactured home supplier, the accountant, and the set-up
34 contractor. The Commissioner shall appoint two representatives of the general public. Except
35 for the representatives from the general public and the persons appointed by the General
36 Assembly, each member of the Board shall be appointed by the appropriate appointing
37 authority from a list of nominees submitted to the appropriate appointing authority by the
38 Board of Directors of the North Carolina Manufactured Housing Institute. At least three
39 nominations shall be submitted for each position on the Board. The members of the Board shall
40 be residents of the State.

41 The members of the Board shall serve for terms of three years. In the event of any vacancy
42 of a position appointed by the Governor or Commissioner, the appropriate appointing authority
43 shall appoint a replacement in the same manner as provided for the original appointment to
44 serve the remainder of the unexpired term. Vacancies in appointments made by the General
45 Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the
46 appropriate appointing authority shall appoint a replacement to serve the remainder of the
47 unexpired term. Such appointment shall be made in the same manner as provided for the
48 original appointment. No member of the Board shall serve more than two consecutive,
49 three-year terms.

50 The members of the Board designated in subdivisions (8), (9), and (10) of this subsection
51 shall have no current or previous financial interest connected with the manufactured housing

1 industry. No member of the Board shall participate in any proceeding before the Board
2 involving that member's own business.

3 Each member of the Board, except the Commissioner and any other State employee, shall
4 receive per diem and allowances as provided with respect to occupational licensing boards by
5 G.S. 93B-5. ~~All per diem and travel expenses shall be paid exclusively out of the fees received~~
6 ~~by the Board as authorized by this Part. In no case shall any salary, expense, or other obligation~~
7 ~~of the Board be charged against the General Fund of the State of North Carolina. All moneys~~
8 ~~and receipts shall be kept in a special fund by and for the use of the Board for the exclusive~~
9 ~~purpose of carrying out the provisions of this Part. At the end of the fiscal year, the Board shall~~
10 ~~retain fifteen percent (15%) of the unexpended funds collected and received during that year.~~
11 ~~The remaining eighty five percent (85%) of these funds shall be credited to the General~~
12 ~~Fund. Fees collected by the Board under this Article shall be credited to the Insurance~~
13 ~~Regulatory Fund created under G.S. 58-6-25."~~

14 **SECTIONS 48-49. Reserved.**

15
16 **EFFECTIVE DATE**

17 **SECTION 50.** Except as otherwise provided, this act is effective when it becomes
18 law.



HOUSE BILL 122: Rev Laws Tech, Clarify., & Admin. Chngs

2011-2012 General Assembly

Committee: House Finance	Date: June 8, 2011
Introduced by: Reps. Howard, Luebke, Gibson	Prepared by: Cindy Avrette
Analysis of: PCS to First Edition H122-CSRbx-59	Committee Counsel

SUMMARY: *House Bill 122¹ includes several technical, administrative, and clarifying changes to the revenue laws and related statutes. The bill came as a recommendation of the Revenue Laws Study Committee. The proposed committee substitute includes the changes indicated by an asterisk.*

[As introduced, this bill was identical to S267, as introduced by Sens. Clodfelter, Hartsell, which is currently in Senate Finance.]

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

BILL ANALYSIS:

Section	Explanation
Business Tax Changes	
1	Changes the effective date for the exclusion of amenities from general admissions receipts. Prior to February 1, 2009, amenities were excluded from admissions receipts. Effective February 1, 2009, with one day's notice, the Department of Revenue issued a directive providing that amenities would be included in admissions receipts. The Revenue Laws Study Committee recommended, and the General Assembly enacted, a restoration of the prior understanding. The effective date of the legislation was August 1, 2010. Companies that paid the tax with amenities included in the admissions receipts sought a refund of the excess tax paid. The Department denied the refund request because the effective date of the legislative change was August 1, 2010, not February 1, 2009 (the day the directive took effect).
2*	Modifies the cigarette excise tax payment statute to accommodate operating procedural changes being implemented by certain cigarette manufacturers and their affiliates. It does not change the manufacturer that is responsible for paying the tax.
3	Repeals an obsolete provision. When the General Assembly enacted the qualified business venture tax credits in 1987, they applied to investments in North Carolina companies and to both corporations and individuals. In 1996, the General Assembly revised the tax credit to apply to all investments because the restriction to North Carolina companies was unconstitutional. In the same act, S.L. 1996-14, ES2, the General Assembly also restricted the tax credit to individuals and pass-through entities. The subsection being repealed is a carry-over from the original law as it applied to holding companies.
4	Provides a definition for development tier one area in the tax credit for research and

¹ The companion bill is Senate Bill 267.

House PCS 122

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	development. The tax credit amount for research performed in a development tier one area is 3.25%.
5	Repeals an obsolete provision. In S.L. 2010-89, the General Assembly provided an alternative apportionment formula for a corporation that signed a letter of commitment by September 15, 2010, certifying that it planned to invest at least \$500 million in private funds to construct a facility in a development tier one area. No company signed such a letter. The General Assembly enacted the provision at the request of Microsoft; Microsoft announced in August that it would be locating in Virginia.
6*	Repeals obsolete term. S.L. 2005-395 amended the real estate licensing laws to eliminate real estate salespersons licenses, making all licensed real estate agents real estate brokers as of April 1, 2006.
7*	Removes reference to repealed statute. The General Assembly repealed G.S. 105-113.81A in the budget bill in 2009, S.L. 2009-451, as part of the special provision on " <i>Commerce/Enterprise Funds and Special Funds</i> ".
8*	Clarifies the franchise tax base.
9*	Specifies the statutory reference.
10*	Removes reference to obsolete provision. S.L. 2006-196 combined the statewide and local rates for insurance policies providing fire and lightning coverage and established a new statewide rate of 0.85% for the supplemental tax, effective January 1, 2008. The changes effectively replaced the tax on fire and lightning coverage with an additional tax on property coverage contracts.
Personal Tax Changes	
11*	Clarifies that the IRC Update bill applies to the estates of decedents dying on or after January 1, 2011.
12*	Makes changes to the provisions in the budget bill regarding the move from federal taxable income to adjusted gross income to ensure the bill does not inadvertently change the existing tax base in ways that were not intended.
13*	Ensures that a taxpayer may not take a double deduction for a 2009 net operating loss claimed on a 2006 return.
14	Reserved.
Sales and Use Tax and Article 5F Tax Changes	
15*	Clarifies the original intent of the sales tax refund granted to professional motorsports teams for aviation fuel and tangible personal property that comprises part of the racing vehicle. In the last couple of years, the Department of Revenue has changed its interpretation of how the refund is applied. This section modifies the statutes to allow a related entity that pays the tax on behalf of the team to claim the refund and ensures that the refund only applies to professional motorsports

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	<p>teams that compete in at least 66% of the races sponsored in a race series. There are three race series in a season. The narrowing of the refund's applicability becomes effective when it becomes law; the other changes apply retroactively to the date the General Assembly authorized the refunds. Subsection (a) of this section also corrects a reference in the definition of 'over-the-counter drug'.</p>
16*	<p>Clarifies that accommodations provided by schools, camps, and similar entities to a person who pays to attend the school or camp is not subject to sales tax. In the past, DOR did not consider summer camps, dorm rooms, or similar types of accommodations to be subject to sales tax. Recently, however, there appears to be some uncertainty. This section clarifies that there should not be a change in the application of the law in regards to these types of entities.</p>
17	<p>Removes the word "wireline" at the request of the Streamlined Sales Tax Compliance Review and Interpretations Committee. It makes no substantive change in the law.</p>
18*	<p>Clarifies that the sales tax exemption for prosthetic devices is for human use (12), corrects the name of the agency where the Child and Adult Care Food Program is located (26a), and corrects the name of the federal supplemental food program (38). This section also makes technical changes requested by the Department of Revenue in subdivisions (33a) and (49).</p>
19	<p>Removes geothermal heat pumps from the Energy Star sales tax holiday because consumers are not able to purchase them. Only contractors can purchase geothermal heat pumps and they are not entitled to the exemption. The presence of the item in the list raises many questions and frustrates consumers.</p>
20	<p>Corrects the sunset dates of the sales tax refunds for fuel sold to passenger air carriers and motorsports teams. The General Assembly extended these sunsets from January 1, 2011, to January 1, 2013, in S.L. 2010-31. In a subsequent piece of legislation recommended by the Revenue Laws Study Committee, S.L. 2010-166, these refund provisions were reenacted in a new statute dedicated to economic incentive refunds. The later legislation failed to conform to the extended sunset dates.</p>
21	<p>Clarifies that use tax is payable by an individual on an annual basis for purchases made outside the State for a nonbusiness purpose of digital property and certain services. In 2009, the General Assembly imposed the State and local general rate of sales tax on certain digital goods, such as downloaded music and books. The legislation also made several conforming changes by adding the term "digital property" to a number of other sales tax statutes. Among them, the term "digital property" was added to the statute that sets out when an individual is required to pay use tax on out-of-State purchases. Since digital property was being subjected to sales tax, a corresponding change was made to subject it to use tax if it is purchased out of State.</p> <p>The Department of Revenue is interpreting the statute to exclude digital property and services from the annual use tax reporting requirement. This section clarifies that the "other than" phrase applies only to boats and aircraft. All other tangible personal property, digital property, and taxable services purchased outside the State for a nonbusiness use are subject</p>

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	to the annual reporting requirement for use tax.
22	Removes unnecessary and confusing words. If a datacenter fails to maintain its required levels of investments, it forfeits its incentive and must pay sales tax on its purchases. The statute stated that the sales tax would be calculated " <i>at the combined general rate</i> ". The words are not necessary and may not correctly reference the right tax rate since the term "combined general rate" does not include the ¼ ¢ local sales tax applicable in some counties.
23	Provides that a facilitator would not be liable for an overcollection or an undercollection of sales tax or local occupancy tax during the period of January 1, 2011, through April 1, 2011, as the result of the new collection and remittance obligations imposed under Section 31.6 of S.L. 2010-31 as long as the facilitator made a good faith effort to comply with the law and collect the proper amount of tax. During the 2010 Session, the General Assembly established new sales and use tax reporting and remittance obligations on "facilitators," which are entities that enter into a contract with the providers of accommodations to market and collect payment for accommodation rentals. An example of a facilitator is an online travel company, such as Expedia or Travelocity.
24*	Gives effect to the changes the General Assembly made last session to the requirements for a datacenter to qualify for the 1% excise tax on the machinery and equipment it purchases. The modification allows a datacenter to meet its investment threshold through the construction of two facilities, rather than one facility. The language could be read to require a taxpayer to forfeit the reduced rate on all datacenter purchases made before July 1, 2010. This section clarifies that it applies to all investments made to date.
25*	Clarifying change.
26*	Clarifies that a refund of tax allowed under G.S. 105-164.14, 105-164.14A, and 105-164.14B are not an overpayment of tax entitled to interest.
27*	Clarifies the effective date of a tax change for services.
28*	Change the term 'certificate of resale' for 'certificate of exemption' to conform to the name on the certificate.
29*	Deletes a statute concerning the procedure for Department initiated refunds of sales and use tax because the procedure applicable for all Department initiated refunds is in G.S. 105-241.7.
Excise Tax on Conveyances	
30	Clarifies the refund process for the deed stamp tax.
General Administration Tax Changes	
31	Updates the reference to NAICS and places the definition in the statute applicable to most of Chapter 105. NAICS is the North American Industry Classification System adopted by the US Office of Management and Budget. It is updated every

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Page 5

	<p>five years.</p> <p>Makes a conforming change to the term "information technology and services" to reflect the changes from the 2002 NAICS to the 2007 NAICS.</p>
32	<p>Clarifies that the higher penalty for failure to obtain a license under the motor fuel statutes only applies after the taxpayer has received written notification from the Department of Revenue to obtain the requisite license.</p>
33	<p>Reconciles two current conflicting provisions concerning whether the identity of certain taxpayers is public information. This section also makes conforming changes.</p> <p>The taxpayers affected are those who bring a contested case action at the Office of Administrative Hearings to obtain a review of an assessment or a denial of a refund by the Department of Revenue. Currently, G.S. 150B-31.1(e) states that the record, proceedings, and decision in a contested case are confidential until the final decision is issued. The Secretary of Revenue makes the final decision and, once that decision is issued, the records with the taxpayer name is public.</p> <p>G.S. 105-256(a)(9) requires the Secretary of Revenue to publish the final decision in a contested case in a format that redacts identifying information. The requirement to redact the identifying information serves no purposes, however, because once the decision is published, the record in the contested case proceeding becomes public in an unredacted form under G.S. 150B-31.1.</p> <p>Subsection (a) reconciles these provisions by amending G.S. 105-269(a)(9) to delete the requirement that the Secretary redact identifying taxpayer information when publishing final decisions. Subsection (b) makes a conforming change to the secrecy statute, G.S. 105-259, to change the word "report" to "publication" to ensure that the final decisions are included within the current exception for reports.</p> <p>G.S. 150B-31.1 and G.S. 105-256(a)(9) were both enacted in 2007 in Senate Bill 242, S.L. 2007-491. Under prior law, the Tax Review Board reviewed administrative decisions of the Secretary and made a decision, called an order, after the review. Orders of the Tax Review Board were published in the North Carolina Register, as required by G.S. 150B-21.17(a)(5), and were not redacted. S.L. 2007-491 revised the procedure for the review of contested tax cases and, as part of the revisions, eliminated the Tax Review Board. Subsection (c) makes a conforming change and repeals the obsolete requirement in G.S. 150B-21.17(a)(5) to publish orders of the Tax Review Board in the North Carolina Register.</p>
34	<p>Clarifies that a waiver of a statute of limitations must be executed before the statute of limitations expires.</p>
35*	<p>Repeals an obsolete reporting provision. The reporting provisions were consolidated into a single statute in S.L. 2010-166.</p>
36	<p>Conforms the sunset provisions of miscellaneous provisions associated to the tax credit for recycling oyster shells. The General Assembly extended the sunset on this credit from January 1, 2011, to January 1, 2013, in S.L. 2010-147.</p>

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37*	Ensures that the definition of 'person' for purposes of the Setoff Debt Collection Act of Chapter 105A is the same as the definition of 'person' for tax purposes under Chapter 105.
38-39	Reserved.
Property Tax Changes	
40*	Clarifies the postmark rule for property taxes on registered motor vehicles. The provision is the same as the rule for other property tax payments and is the same as current administrative practice.
41	Clarifies that the definition of "public service company" in the property tax statutes does not include mobile telecommunication service.
42*	Corrects errors in the effective date section of the legislation regarding the change in the collection of motor vehicle property taxes.
43-44	Reserved.
Local Government Sales and Use Tax Changes	
45	Modernizes the local sales tax base to conform to the State sales tax base for items taxed at the general rate of tax. This change will remove the need to amend the local sales tax statute whenever an item is added to the State sales tax base and taxed at the general rate of tax. It effectively includes digital products in the local sales tax base, as intended by the General Assembly.
Miscellaneous Changes	
46	Removes the sunset from the provision that allows the Codifier of Statutes to renumber the subdivisions in the special license plates statute in sequential and alphabetical order.
47*	Clarifies the fees that should be credited to the Insurance Regulatory Fund.
48-49	Reserved.
Effective Date	
50	Except as otherwise provided, the bill is effective when it becomes law.

H122-SMRB-91(CSRBx-59) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 867*
PROPOSED COMMITTEE SUBSTITUTE H867-CSSV-31 [v.1]

6/8/2011 5:44:04 PM

Short Title: Remote Retailer Click-Through Study. (Public)

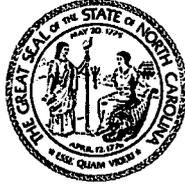
Sponsors:

Referred to:

April 21, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR A STUDY BY THE REVENUE LAWS STUDY COMMITTEE
3 REGARDING THE CLICK-THROUGH PROVISION AND A REMOTE RETAILER'S
4 OBLIGATION TO COLLECT SALES TAX BASED ON AFFILIATE CONTRACTS
5 WITH NORTH CAROLINA RESIDENTS.
6 The General Assembly of North Carolina enacts:
7 SECTION 1. The Revenue Laws Study Committee may study the click-through
8 provision and a remote retailer's obligation to collect sales tax based on affiliate contracts with
9 North Carolina residents. The Committee may report on this issue, including any
10 recommendations or legislative proposals, to the 2012 Regular Session of the 2011 General
11 Assembly upon its convening.
12 SECTION 2. This act is effective when it becomes law.





North Carolina General Assembly
House Committee on Finance

Minutes

~
June 14, 2011

The House Committee on Finance met on Tuesday, June 14, 2011 at 8:02 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Folwell and Setzer; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGuirt, Moore, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Earl Coker and Champ Claris. Staff persons present included Cindy Avrette, Rodney Bizzell, Judy Collier, Dan Ettefagh, Trina Griffin, Sandra Johnson, Greg Roney, and Brian Slivka, Jonathan Tart. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Setzer called the meeting to order at 8:02 am and recognized the six (6) pages present (1) Morgan Bizzell of Onslow County sponsored by Representative Shepard; (2) Lindsay Westmoreland of Carteret County sponsored by Representative McElraft; (3) John Gavin of Randolph County sponsored by Representative Brubaker; (4) Wes Heavner of Gaston County sponsored by Representative Current; (5) Jennie Cunningham of Moore County sponsored by Representative Boles; and (6) Hayden Rudd of Moore County sponsored by Representative Boles.

The first bill to be heard by the Committee was **HB 886 Increase Charitable Contribution Deduction (see attachment 3)**. Chairman Setzer recognized Representative Howard who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer then recognized Representative Brawley to explain the proposed committee substitute. The Chair recognized Representative Samuelson who moved that HB 886 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill considered by the Committee was **HB 889 Amend Locksmith Licensing Act/Increase Fees (see attachment 4)**. The Chair recognized Representative Collins, Chair of the subcommittee assigned to review bill. Representative Collins reported that the bill was amended and a proposed committee substitute was prepared. As a result, HB 889 was reported favorably by the subcommittee. The Chair recognized Representative Brawley who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer then recognized Representative Collins to explain the proposed committee substitute. Staff member, Trina Griffin assisted with answering member's questions. The Chair recognized Barden

Culbreth, Executive Director of the North Carolina Locksmith Licensing Board, who spoke in favor of the bill and assisted in answering member's questions. Chairman Setzer recognized Representative Lewis who moved that HB 889 be given a favorable report on the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill considered by the Committee was **HB 751 Clarify Mill Machinery Privilege Tax** (see **attachment 5**). The Chair recognized Representative Jordan who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer then recognized Representative McComas to explain the proposed committee substitute. The Chair then recognized Representative Howard who moved that HB 751 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion was set aside for further discussion. Staff members Cindy Averette, Rodney Bizzell and Jonathon Tart assisted in answering member's questions. The Chair recognized Keith Criscoe of the North Carolina Department of Commerce who spoke in favor of the bill. Chairman Starnes recognized Representative Luebke who sent forth amendment 1 that moved to amend the bill on page 3, lines 4 and 5 (see **attachment 6**). Representative Luebke explained his amendment and moved for adoption. The motion carried. Representative Howard was again recognized and she restated her earlier motion. Representative Howard moved that HB 751 be given a favorable report as amended and rolled into a committee substitute, unfavorable report to the original bill. The motion carried.

The next bill before the Committee was **SB 447 Rewrite Landscape Contractor Laws** (see **attachment 7**). The Chair recognized Representative Samuelson to explain the bill. Representative Samuelson sent forth amendment 1 that moved to amend the bill on page 3, line 42 (see **attachment 8**) and moved for adoption. The motion carried. Chairman Setzer recognized Mark Peters of the North Carolina Green Industry Council who spoke in favor of the bill and answered questions from members. The Chair then recognized Representative Hackney who sent forth amendment 2 that moved to amend the bill on page 2, line 2 and on page 2, lines 3 and 4 (see **attachment 9**). Representative Hackney explained his amendment. Chairman Starnes recognized Representative Samuelson who moved to adopt the amendment. The motion carried. Representative Samuelson moved that SB 447 be given a favorable report as amended and rolled into a committee substitute, unfavorable report to the original bill. The motion was set aside for further discussion. The Chair temporarily displaced the bill and stated it would be brought back before the Committee at the 3:00 pm meeting.

The next bill considered by the Committee was **HB 761 Ignition Interlock Systems/Record Checks** (see **attachment 10**). The Chair recognized Representative Ross who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer then recognized Representative McComas to explain the proposed committee substitute. Chairman Setzer recognized Representative Samuelson who moved that HB 761 be given a favorable report on the proposed committee substitute, unfavorable report to the committee substitute. The motion carried.

The next bill before the Committee was **SB 309 Conservation Easements Stewardship Funds** (see **attachment 11**). The Chair recognized Representative Lewis to explain the bill. Chairman Setzer recognized Representative Hackney who moved that SB 309 be given a favorable report. The motion carried.

The next bill before the Committee was **SB 537 Increase In Rem Foreclosure Fee** (see **attachment 12**). The Chair recognized Representative Stam to explain the bill. Chairman Setzer recognized Representative Jordan who moved that SB 537 be given a favorable report. The motion carried.

SB 385 Small Business Assistance Records (see **attachment 13**) was the next bill before the Committee. The Chair recognized Representative Hill who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer recognized Representative Stam to explain the proposed committee substitute. Staff members Cindy Averette and Jonathan Tart assisted with answering member's questions. The Chair then recognized Representative Stam who moved that SB 385 be given a favorable report to the proposed committee substitute, unfavorable report to the Senate committee substitute. The motion carried.

Next before the Committee was **SB 532 ESC/Jobs Reform** (see **attachment 14**). Chairperson Setzer recognized Representative Carney who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair recognized Senator Clary to explain the proposed committee substitute. Chairman Setzer recognized Representative Howard who sent forth amendment 1 that moved to amend the bill on page 61, lines 2 through 4 (see **attachment 15**). Representative Howard was recognized to explain the amendment and then moved for adoption. The motion carried. The Chair then recognized Representative Howard who moved that SB 532 be given a favorable report as amended and rolled into a committee substitute, unfavorable report to the Senate committee substitute. The motion carried.

The next bill before the Committee was **SB 237 Incorporate Castle Hayne** (see **attachment 16**). The Chair recognized Representative Hamilton to explain the bill. Chairman Setzer then recognized Representative Carney who moved that SB 237 be given a favorable report. The motion carried.

SB 345 Encourage Invest to Retain Art 3A Installment (see **attachment 17**) was the next bill before the Committee. The Chair recognized Representative McGuirt who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer recognized Senators Garrou and Allran to explain the proposed committee substitute. Staff member Rodney Bizzell assisted with answering member's questions. The Chair then recognized Keith Criscoe of the North Carolina Department of Commerce who spoke in favor of the bill. Chairman Setzer temporarily displaced bill until the 3:00 pm afternoon meeting.

The final bill heard before the Committee was **SB 409 Global TransPark Gov. Reform & Loan Repayment** (see **attachment 18**). Chairperson Setzer recognized Representative Brawley who moved to adopt the proposed committee substitute for the purpose of discussion. The motion

carried. The Chair recognized Senator Clary to explain the proposed committee substitute. Staff member Andrea Poole assisted in answering member's questions. Chairman Setzer recognized Representative Howard who sent forth amendment 1 that moved to amend the bill on page 3, line 8 and also on line 9, by deleting (see **attachment 19**). Representative Howard was recognized to explain the amendment and then moved for adoption. The motion carried. The Chair then recognized Representative Howard who moved that SB 409 be given a favorable report as amended and rolled into a committee substitute, unfavorable report to the Senate committee substitute. The motion carried.

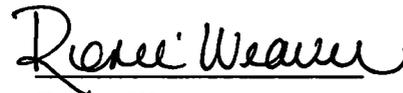
Due to time, the following bills were re-calendared to the afternoon meeting scheduled for 3:00 pm in room 544: **HB 911 Increase Criminal Court Costs/Victim's Comp.; SB 345 Encourage Invest to Retain Art 3A Installment; and SB 447 Rewrite Landscape Contractor Laws.**

There being no further business presently before the Committee, Chairman Setzer adjourned the meeting at 9:47 am.

Respectfully submitted,



Representative Mitchell Setzer
Presiding Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 751 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT A PORT FACILITY THAT UTILIZES SPECIALIZED MACHINERY TO PROCESS BULK CARGO INTO A FORM SUITABLE FOR DELIVERY AND USE BY A MANUFACTURING FACILITY QUALIFIES AS A MANUFACTURING FACILITY FOR PURPOSES OF THE PRIVILEGE TAX ON MILL MACHINERY.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 761 A BILL TO BE ENTITLED AN ACT TO REMOVE COLORED BORDER REQUIREMENTS FROM CERTAIN LICENSES, TO CLARIFY THAT SPECIAL IDENTIFICATION CARDS ARE SUBJECT TO VIOLATION PROVISIONS, AND TO ALLOW THE DIVISION OF MOTOR VEHICLES TO CONDUCT BACKGROUND INVESTIGATIONS ON EVERY PERSON APPLYING FOR A RESTORATION OF A REVOKED LICENSE, A DEALER'S LICENSE, MECHANIC'S LICENSE, OR ANY OTHER LICENSE ISSUED BY THE DIVISION EXCEPT FOR A DRIVERS LICENSE UNLESS IT IS BEING RESTORED AFTER A REVOCATION.

With a favorable report as to Committee substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 886 A BILL TO BE ENTITLED AN ACT TO INCREASE THE LIMITS ON CORPORATE INCOME TAX DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS IN CONFORMANCE WITH THE INTERNAL REVENUE CODE.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 889 A BILL TO BE ENTITLED AN ACT AMENDING THE LOCKSMITH LICENSING ACT AND AUTHORIZING THE NORTH CAROLINA LOCKSMITH LICENSING BOARD TO INCREASE CERTAIN FEES.

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 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.

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 237 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF CASTLE HAYNE, SUBJECT TO A REFERENDUM.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 309 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE GOVERNING BOARD OF ANY SOIL AND WATER CONSERVATION DISTRICT TO ESTABLISH A SPECIAL RESERVE FUND TO BE USED FOR MAINTAINING CONSERVATION EASEMENTS.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 385 A BILL TO BE ENTITLED AN ACT PROVIDING THAT SMALL BUSINESS ASSISTANCE RECORDS ARE NOT PUBLIC RECORDS.

With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

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

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

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 409 A BILL TO BE ENTITLED AN ACT TO REFORM THE GOVERNANCE OF THE NORTH CAROLINA GLOBAL TRANSPARK AND TO REPAY THE LOAN FROM THE ESCHEATS FUND TO THE GLOBAL TRANSPARK.

With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

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_____ 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.

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

SB 532 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.

With a favorable report as to House committee substitute bill 1, unfavorable as to Senate committee substitute bill 1.

(FOR JOURNAL USE ONLY)

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**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 537 A BILL TO BE ENTITLED AN ACT TO INCREASE THE IN REM FORECLOSURE FEE.

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 _____.

#1

AGENDA
House Finance Committee

Tuesday, June 14, 2011
8:00 am
Room 544 LOB
Chaired by: Representative Mitchell Setzer

Call to Order

Introduction of Pages

Bills:

HB 751 Clarify Mill Machinery Privilege Tax
Representative McComas

HB 761 Ignition Interlock Systems/Record Checks
Representatives McComas, Carney

HB 886 Increase Charitable Contribution Deduction
Representatives Moffitt, Brawley, Stam, Setzer

HB 889 Amend Locksmith Licensing Act/Increase Fees
Representatives Collins, Burr, Lewis, Steen

HB 911 Increase Criminal Court Costs/Victim's Comp.
Representative LaRoque

SB 237 Incorporate Castle Hayne
Senator Goolsby

SB 309 Conservation Easements Stewardship Funds
Senator Jackson

SB 345 Encourage Invest to Retain Art 3A Installment
Senators Garrou, Allran

SB 385 Small Business Assistance Records
Senator Hartsell

SB 409 Global TransPark Gov. Reform & Loan Repayment
Senators Hartsell, Clary, Clodfelter

SB 447 Rewrite Landscape Contractor Laws

Senators Apodaca, Brown

SB 532 ESC/Jobs Reform

Senators Clary, Rucho

SB 537 Increase In Rem Foreclosure Fee

Senator Hartsell

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: JUNE 14, 2011 Room: 544

*Name: Morgan Bizzell | Hayden Rudd

County: Onslow | Moore

Sponsor: Rep. Shepard | Rep. Boles

*Name: Lindsay Westmoreland

County: Carteret

Sponsor: Rep. Mc Elraft

*Name: John Gavin

County: Randolph

Sponsor: Rep. Brubaker

*Name: Wes Heavner

County: Gaston

Sponsor: Rep. Current

*Name: Jennie Cunningham

County: Moore

Sponsor: Rep. Boles

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: CHAMP CLARIS

2. Name: JOHN BRANDON

5. Name: _____

3. Name: EARL COKER

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

June 14, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Paul Bone</i>	<i>Bone : KSSA</i>
<i>Bill Rowe</i>	<i>NC Justice Center</i>
<i>Alexandra Sivota</i>	<i>NC Budget & Tax Center</i>
<i>Gene Causby</i>	<i>NC SCA</i>
<i>Allison Fowler</i>	<i>NC Grange</i>
<i>Mari Wilden</i>	<i>Novant</i>
<i>Camora Howley</i>	<i>Chick & Co</i>
<i>Jon Carr</i>	<i>Jordan Price Law Firm</i>
<i>BNSBLY JR</i>	<i>WM</i>
<i>JIM FAIN</i>	<i>GTP</i>
<i>Jim Mator</i>	<i>R. J. Corp.</i>

VISITOR REGISTRATION SHEET

House Finance

June 14, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Scott R. Daugherty	NC State University / SBTDC
MICHELLE HEALY	SMITH ANDERSON
Elizabeth Bise	Brooks Pierce
Alyssa Willett	NCAAC
Rebecca Troutman	NCAAC
Sam Walker	NCleg

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 886
PROPOSED COMMITTEE SUBSTITUTE H886-CSSV-38 [v.1]

6/13/2011 7:04:29 PM

Short Title: Increase Charitable Contribution Deduction. (Public)

Sponsors:

Referred to:

May 4, 2011

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A BILL TO BE ENTITLED
AN ACT TO INCREASE THE LIMITS ON CORPORATE INCOME TAX DEDUCTIONS
FOR CHARITABLE CONTRIBUTIONS IN CONFORMANCE WITH THE INTERNAL
REVENUE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.9 reads as rewritten:

"§ 105-130.9. Contributions.

Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:

(1) Charitable contributions as defined in section 170(c) of the Code, exclusive of contributions allowed in subdivision (2) of this section, shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five-ten percent ~~(5%)~~(10%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this section. Any unused portion of a deduction under this subsection may be carried forward for the next succeeding five years. ~~Provided, that a carryover of contributions shall not be allowed and that contributions~~Contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.

(3) Corporations allocating a part of their total net income outside North Carolina under the provisions of G.S. 105-130.4 shall deduct from total income allocable to North Carolina contributions made to North Carolina donees qualified under subdivisions (1) and (2) of this section or made through North Carolina offices or branches of other donees qualified under the above-mentioned subdivisions of this section; provided, such deduction for contributions made to North Carolina donees qualified under subdivision (1) of this section shall be limited in amount to five-ten percent ~~(5%)~~(10%) of the total income allocated to North Carolina as computed without the benefit of this deduction for contributions.

...."



1 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
2 2014.

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 886 (First Edition)

SHORT TITLE: Increase Charitable Contribution Deduction.

SPONSOR(S): Representatives Setzer, Stam, Brawley, and Moffitt

FISCAL IMPACT					
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES: (\$Millions)	0	-1.1	-2.5	-2.5	-2.5
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue					
EFFECTIVE DATE: Taxable years beginning on or after January 1, 2013					

BILL SUMMARY: House Bill 886 increases the limit on corporate income tax deductions for charitable contributions made to qualified organizations other than to the State and its subdivisions from 5% to 10% of a corporation's net income (contributions made to the State and its subdivisions are fully deductible). The bill also establishes a 5-year carryforward provision for contributions in excess of the cap. Currently, carryforward of contributions in excess of the cap is not permitted.

ASSUMPTIONS AND METHODOLOGY: The estimated fiscal impact is based on a query of 2007 and 2008 corporate tax returns. The query identified all corporations taking the deduction for charitable contributions, and the corporations whose deduction equaled the 5% cap. Using this data, the estimated tax year impact of House Bill 886 was calculated by doubling the deduction for the corporations whose contributions equaled the 5% cap, and averaging the impact for the two years queried. The tax year impact was adjusted to align with the State's fiscal year. Since the bill is effective for taxable years beginning on or after January 1, 2013, there is no fiscal impact for FY 11-12, and a partial year impact for FY 12-13.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

**APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division**

DATE: May 27, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 886: Increase Charitable Contribution Deduction

2011-2012 General Assembly

Committee: House Finance	Date: June 14, 2011
Introduced by: Reps. Moffitt, Brawley, Stam, Setzer	Prepared by: Greg Roney
Analysis of: PCS to First Edition H886-CSSV-38	Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 886 would increase the maximum amount of corporate taxable income offset by a charitable deduction from 5% to 10%. The PCS would also allow any unused deduction for corporations that do not have operations in other states to be carried forward for 5 years.*

The PCS makes one change to House Bill 886: the PCS is effective for taxable years beginning on or after January 1, 2014.

CURRENT LAW: For NC corporate income tax purposes, corporations are generally allowed to deduct a maximum of 5% of net income for charitable contributions.¹ Charitable contributions to the State, agencies, counties, cities, and certain educational institutions located within NC are 100% deductible.² No carry forward is allowed for unused charitable contributions.

BILL ANALYSIS: The PCS to House Bill 886 would increase the maximum deduction for charitable contributions to 10% of a corporation's net income. The 100% deduction for charitable contributions to the State, counties, cities, and certain educational institutions located within NC is unchanged.

For corporations that do not have operations in other states, the PCS would allow a five year carry forward of any unused charitable contributions.

BACKGROUND: For federal tax purposes, corporations are generally allowed to deduct a maximum of 10% of taxable income for charitable contributions³ and carry forward any unused amounts for the next 5 years.⁴

EFFECTIVE DATE: the PCS is effective for taxable years beginning on or after January 1, 2014.

H886-SMTM-41(CSSV-38) v1

¹ G.S. 105-130.9(1); G.S. 105-130.9(3).

² G.S. 105-130.9(2).

³ I.R.C. 170(b)(2)(A).

⁴ I.R.C. 170(d)(2).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 889
PROPOSED COMMITTEE SUBSTITUTE H889-CSSVf-30 [v.3]

6/9/2011 10:28:46 AM

Short Title: Amend Locksmith Licensing Act/Increase Fees.

(Public)

Sponsors:

Referred to:

May 5, 2011

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LOCKSMITH LICENSING ACT AND AUTHORIZING THE
3 NORTH CAROLINA LOCKSMITH LICENSING BOARD TO INCREASE CERTAIN
4 FEES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 74F-3 reads as rewritten:

7 "§ 74F-3. Licenses required.

8 No person shall perform or offer to perform locksmith services in this State unless the
9 person has been licensed under the provisions of this Chapter. A violation of this section is a
10 Class 31 misdemeanor unless the conduct is covered under some other provision of law
11 providing greater punishment."

12 SECTION 2. G.S. 74F-4 reads as rewritten:

13 "§ 74F-4. Definitions.

14 The following definitions apply in this Chapter:

- 15 (1) Apprentice. – A person who has been issued an apprenticeship designation
16 by the Board.
- 17 (1a) Board. – The North Carolina Locksmith Licensing Board.
- 18 (2) Code book. – A compilation, in any form, of key codes and combinations.
- 19 (3) License. – A certificate issued by the Board recognizing the person named
20 therein as having met the requirements to perform locksmith services as
21 defined in this Chapter.
- 22 (4) Locksmith. – A person who has been issued a license by the Board.
- 23 (5) Locksmith services. – Repairing Services that include repairing, rebuilding,
24 rekeying, repinning, servicing, adjusting, or installing locks, mechanical or
25 electronic locking devices, access control devices, egress control devices,
26 safes, vaults, and safe-deposit boxes for compensation or other
27 consideration, including services performed by safe technicians. The
28 definition also includes any method of bypassing a locking mechanism of
29 any kind, whether in a commercial, residential, or automotive setting, for
30 compensation.
- 31 (6) Locksmith tools. – Any tools that are designed or used to open a mechanical
32 or electrical locking device in a way other than that which was intended by
33 the manufacturer."



1 SECTION 3. G.S. 74F-9 reads as rewritten:

2 "§ 74F-9. Fees.

3 The Board shall establish fees ~~not exceeding~~in the following amounts:

4	(1)	Issuance of a license	\$100.00 <u>\$300.00</u>
5	(2)	Renewal of a license	\$100.00 <u>\$300.00</u>
6	(3)	Examination	\$200.00
7	(4)	Reinstatement	\$150.00 <u>\$250.00</u>
8	(5)	Late fees	\$150.00 <u>\$300.00</u>
9	(6)	Apprentice <u>license</u> fee	\$100.00 <u>\$300.00</u>
10	(7)	Apprentice transfer fee	\$25.00."

11 SECTION 4. G.S. 74F-10(b) reads as rewritten:

12 "(b) All licenses shall expire three years after the date they were issued unless renewed.
 13 All applications for renewal shall be filed with the Board and shall be accompanied by the
 14 renewal fee as required by G.S. 74F-9. A license that has expired for failure to renew may be
 15 reinstated after the applicant pays the ~~late-renewal, late,~~ and reinstatement fees as required by
 16 G.S. 74F-9. If an applicant whose license has expired can show good cause to the Board the
 17 reason for allowing the license to expire, the Board, in its discretion, may adjust the renewal
 18 and reinstatement fees accordingly."

19 SECTION 5. G.S. 74F-12(b) reads as rewritten:

20 "(b) ~~Every person advertising locksmith services performed by the person shall include~~
 21 ~~in the advertisement the identification number that is printed on the license issued by the~~
 22 ~~Board.~~ All advertisements for locksmith services shall include a valid license number issued by
 23 the Board. The license number of the owner of the locksmith company shall satisfy the
 24 requirements of this subsection."

25 SECTION 6. G.S. 74F-15 reads as rewritten:

26 "§ 74F-15. Disciplinary procedures.

27 (a) The Board may deny or refuse to renew, suspend, or revoke a license or
 28 apprenticeship designation if the licensee, apprentice, or applicant:

- 29 (1) Gives false information to or withholds information from the Board in
- 30 procuring or attempting to procure a license.
- 31 (2) Has been convicted of or pled guilty or no contest to any of the crimes listed
- 32 in G.S. 74F-18(a)(2).
- 33 (3) Has demonstrated gross negligence, incompetency, or misconduct in
- 34 performing locksmith services.
- 35 (4) Has willfully violated any of the provisions of this Chapter.

36 (b) The Board may assess the costs of disciplinary action, including attorneys' fees,
 37 against an applicant or licensee found to be in violation of this Chapter or rules adopted by the
 38 Board."

39 SECTION 7. G.S. 74F-16 reads as rewritten:

40 "§ 74F-16. Exemptions.

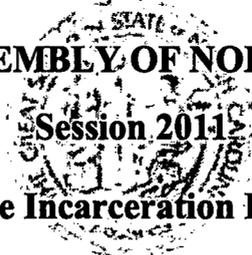
41 The provisions of this Chapter do not apply to:

- 42 (1) An employee of a licensed locksmith when acting under the direct control
- 43 and supervision of the licensed locksmith. For purposes of this subdivision,
- 44 'direct control and supervision' means that a licensed locksmith is required to
- 45 physically accompany the employee to the premises where locksmith
- 46 services are to be performed.
- 47 (1a) An employee of a locksmith company performing administrative duties only.
- 48 For purposes of this section, 'administrative duties' means managing the
- 49 daily operations of an office in a locksmith company, including performing
- 50 clerical tasks, answering telephones, and greeting customers.

- 1 (2) A person working as an apprentice pursuant to G.S. 74F-7.1.
2 (3) A person or business required to be licensed or registered by the North
3 Carolina Alarm Systems Licensing Board pursuant to Chapter 74D of the
4 General Statutes, when acting within the scope and course of the alarm
5 systems license or registration.
6 (4) An employee of a towing service or an automotive repair business providing
7 services in the normal course of its business, a reposessor, a taxi cab
8 service, a motor vehicle dealer as defined in G.S. 20-286(11), or a motor
9 club as defined in G.S. 58-69-1 when opening automotive locks in the
10 normal course of their duties, so long as the employee does not represent
11 himself or herself as a locksmith.
12 (5) A property owner, or the owner's employee, when providing locksmith
13 services on the property owner's property, so long as the owner or employee
14 does not represent himself or herself as a locksmith. For purposes of this
15 section, "property" means, but is not limited to, a hotel, motel, apartment,
16 condominium, commercial rental property, and residential rental property.
17 (6) A merchant, or retail or hardware store, when it lawfully duplicates keys or
18 installs, services, repairs, rebuilds, reprograms, rekeys, or maintains locks in
19 the normal course of its business, so long as the merchant or store does not
20 represent itself as a locksmith.
21 (7) A member of a law enforcement agency, fire department, or other
22 government agency who, when acting within the scope and course of the
23 member's employment with the agency or department, opens locked doors to
24 vehicles, homes, or businesses.
25 (8) A salesperson while demonstrating the use of locksmith tools to persons
26 licensed under this Chapter.
27 (9) A general contractor licensed under Article 1 of Chapter 87 of the General
28 Statutes when acting within the scope and course of the general contractor
29 license, or an agent or subcontractor of a licensed general contractor when
30 acting within the ordinary course of business.
31 (10) A person or business when lawfully installing or maintaining a safety lock
32 device on a wastewater system when the safety lock device is required by
33 permit or requested by the owner of the wastewater system, provided the
34 person or business does not represent itself as a locksmith. For purposes of
35 this subdivision, "wastewater system" has the same meaning as in G.S.
36 130A-334.
37 (11) Any person or firm that sells gun safes or locking devices for firearms when
38 acting within the scope and course of the sale of gun safes or locking devices
39 for firearms.
40 (12) A person while performing a locksmith service in an emergency situation
41 without receiving any compensation for this service and who does not
42 advertise those services."

43 **SECTION 8.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 889 (First Edition)
SHORT TITLE: Amend Locksmith Licensing Act/Increase Fees.
SPONSOR(S): Representatives Lewis, Steen, Burr, and Collins

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES					
NC Locksmith Licensing Board	\$145,000	\$155,000	\$165,000	\$175,000	\$185,000
EXPENDITURES:					
Correction		<i>*See Assumptions and Methodology*</i>			
Probation		<i>*See Assumptions and Methodology*</i>			
Judicial		<i>*See Assumptions and Methodology*</i>			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; NC Locksmith Licensing Board.					
EFFECTIVE DATE: The act is effective when it becomes law.					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY:

The proposed legislation amends G.S. 74F-3 by forbidding any person from possessing any locksmith tools, as defined by G.S. 74F-4(6), unless the person is licensed as a locksmith under G.S. Chapter 74F or exempted from the provisions of G.S. Chapter 74F. The act makes the first violation of the provision a Class 1 misdemeanor, and provides that any subsequent offense of the provision is a Class I felony (currently, all violations considered Class 3 misdemeanor).

The act also rewrites G.S. 74F-4 to include the term safes in the definition of Locksmith services, and further expands the definition of Locksmith services to include any method of bypassing a locking mechanism of any kind, whether in a commercial, residential, or automotive setting, for compensation.

In addition, the proposed legislation amends G.S. 74F-6 by allowing the NC Locksmith Licensing Board to obtain certain records of a person or company offering locksmith services, including employees, contractors, and subcontractors.

The bill also increases various fees under G.S. 74F-9. The act adds a provision to G.S. 74F-10(b) allowing the Board, in its discretion, to adjust renewal and reinstatement fees if an applicant whose license has expired can show good cause for such license expiration. The bill rewrites G.S. 74F-12(b) to require that all advertisements for locksmith services include a valid license number issued by the Board, and rewrites G.S. 74F-15 by adding a new subsection which grants the Board power to assess the costs of disciplinary action, including attorneys' fees, against an applicant or licensee found to be in violation of G.S. Chapter 74F or rules adopted by the Board. Amends G.S. 74F-16 by rewriting, adding, or clarifying various entities exempted from G.S. Chapter 74F.

SOURCE: BILL DIGEST H.B. 889 (05/04/201)

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The bill amends G.S. 74F-3, Licenses required; use of locksmith tools, by reclassifying the existing offense contained therein and adding one new offense.

Currently, G.S. 74F-3 provides that it shall be a Class 3 misdemeanor for any person to perform or offer to perform locksmith services in this State without being licensed under Chapter 74F of the General Statutes, the Locksmith Licensing Act. The bill reclassifies the existing offense as a Class 1 misdemeanor for first violations of the section and as a Class I felony for any subsequent violations.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 74F-3. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2009-10, 17 percent of Class I convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

This bill also creates a new offense. G.S. 74F-3 is amended to provide that it shall be unlawful for any person to possess any locksmith tools unless the person is licensed as a locksmith under this Chapter or exempted from the provisions of this Chapter. Violation of this offense is a Class 1 misdemeanor for the first offense and a Class I felony for any subsequent violations. This provision reclassifies some conduct which may already be charged as a Class I felony under G.S. 14-55, Preparation to commit burglary or other housebreakings. G.S. 14-55 provides that it shall be a Class I felony for any person to be in possession, without lawful excuse, of any picklock, key, bit or other implement of housebreaking.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed bill.

In FY 2009-10, 24 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2009/10, 17 percent of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

In FY 2009-10, there were 34 convictions for possession of burglary tools. It is not known how many current convictions for this offense would qualify for the new Class I felony in G.S. 74F-3. Given that possession of burglary tools is currently a Class I offense, however, convictions under the proposed G.S. 74F-3 would not be expected to affect the prison population because the two offenses are in the same felony offense class.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation,

community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.49 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.93 to \$14.96, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.96 for the initial six-month intensive duration, and \$2.49 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, potential costs to DCC cannot be determined.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

There is currently a Class 3 misdemeanor offense of performing or offering to perform locksmith services in the State unless the person has been properly licensed. AOC does not have a charge code for this offense, possibly indicating that it is not used on a regular basis. The bill increases the penalty of violating G.S. 74F-3 to a Class 1 misdemeanor for the first offense and a Class I felony for any subsequent offense(s). Because the bill (1) expands the definition of locksmith services (to include any method of bypassing a locking mechanism of any kind, whether in a commercial, residential, or automotive setting, for compensation), and (2) adds the offense of possession of any locksmith tools as defined under G.S. 74F-4(6) unless the person is licensed as a locksmith or is exempt from the regulations, AOC is unable to estimate how many new charges may arise from the passage of this legislation.

New misdemeanor charges would impact district court judges, deputy clerks, assistant district attorneys, and other judge and district attorney support staff; superior court personnel could be impacted due to appeals. On average, the monetary value of court personnel time to process a misdemeanor is estimated at \$131. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a misdemeanor case was \$225 (three hours at \$75 per hour) per indigent defendant.

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

While pleas to Class H and I felonies are sometimes handled in district court, many pleas and all trials for Class H and I felonies are handled in superior court. Overall, the monetary value of the average workload of a lower level (Class I through F) felony case for those positions typically involved in felony cases – Superior Court Judge, Assistant District Attorney, Deputy Clerk, Court Reporter, and Victim Witness Legal Assistant – is \$945. As the Class I felonies in the bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for those offenses increased from Class 3 misdemeanors to Class I felonies, the average fiscal impact of each case would be the full \$945. In addition, a 2005 Office of Indigent Defense study of fee applications found that the average indigent defense cost for a Class H felony case was \$540 per indigent defendant.

NC Locksmith Licensing Board

House Bill 889 establishes fee increases in the following amounts:

Fee	Current Amount	Proposed Amount
Issuance of a license	\$100.00	\$300.00
Renewal of a license	\$100.00	\$300.00
Reinstatement	\$150.00	\$250.00
Late Fees	\$150.00	\$300.00
Apprentice License Fee	\$100.00	\$300.00

The NC Locksmith Licensing Board estimates that there are currently 725 licensed members. Based on historical data, we've assumed an average of 50 new locksmith and apprentice licenses issued per fiscal year. We've also assumed that all licensees submit payment on time; meaning late fees and reinstatement fees have not been included in this estimate. By increasing the license renewal fee by \$200.00 (from \$100.00 to \$300.00), the NC Locksmith Licensing Board would collect approximately \$145,000 in additional FY 2011-12 revenue.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and NC Locksmith Licensing Board.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Poteat Stone and Brian Slivka

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 7, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 889: Amend Locksmith Licensing Act/Increase Fees

2011-2012 General Assembly

Committee: House Finance	Date: June 9, 2011
Introduced by: Reps. Collins, Burr, Lewis, Steen	Prepared by: Trina Griffin
Analysis of: PCS to First Edition H889-CSSVf-30	Committee Counsel

SUMMARY: *The PCS for House Bill 889 would do the following:*

- *Increase the penalty for performing locksmith services in this State without a license from a Class 3 to a Class 1 misdemeanor.*
- *Expand the definition of locksmith services to include any method of bypassing a locking mechanism, whether in a commercial, residential, or automotive setting, for compensation.*
- *Increase the fees for issuance, renewal, late renewal, and reinstatement of a license and the fee for an apprentice license.*
- *Modify the licensure exemption for employees of locksmiths.*

CURRENT LAW: Prior to 2002, locksmiths were not licensed or regulated in this State. In 2001, the General Assembly enacted the Locksmith Licensing Act (Act) establishing the North Carolina Locksmith Licensing Board and providing the qualifications for licensure.¹ There are approximately 1,400 licensees in North Carolina. To become licensed, an applicant must meet the following qualifications:

- (1) Be of good moral and ethical character, as evidenced in part by a criminal history record check.
- (2) Be at least 18 years of age.
- (3) Successfully complete an examination administered by the Board that measures the knowledge and skill of the applicant in locksmith services and the laws applicable to licensed locksmiths.
- (4) Pay the required fee.

Performing locksmith services without a license is punishable as a Class 3 misdemeanor unless the conduct is covered under some other provision of law providing for greater punishment.² "Locksmith services" is defined as repairing, rebuilding, rekeying, repinning, servicing, adjusting, or installing locks mechanical or electronic locking devices, access control devices, egress control devices, safes, vaults, and safe deposit boxes for compensation, including services performed by safe technicians.

There are 12 exemptions from licensure,³ including: an employee acting under the control and supervision of a licensed locksmith, an apprentice, an employee of a towing service, an automotive repair business, a reposessor, a taxicab service as long as the person does not represent himself to be a locksmith, a property owner providing locksmith services on the owner's property, a merchant that duplicates keys or maintains locks in the normal course of business, or a member of law enforcement who opens locked doors to vehicles, homes, or businesses when acting within the scope and course of the member's employment.

¹ Chapter 74F of the General Statutes.

² G.S. 14-55 is the Class I felony of possessing burglary tools with the intent to commit a felony or a larceny.

³ See Section 8 of bill for complete list of exemptions.

House PCS 889

Page 2

In North Carolina, the locksmith profession is represented by the North Carolina Locksmith Association (NCLA). There is also a national association – The Associated Locksmiths of America (ALOA). These organizations set ethical standards for their members; however, membership is voluntary. In addition, the ALOA offers a certification program to its members.

BILL ANALYSIS:

Section 1 would increase the penalty for performing locksmith services in this State without a license from a Class 3 misdemeanor to a Class 1 misdemeanor. The maximum punishment that may be imposed for a Class 1 misdemeanor is 1-120 days of community, intermediate, or active punishment and a fine in an amount set by the court.

Section 2 would expand the definition of locksmith services to include "any method of bypassing a locking mechanism of any kin, whether in a commercial, residential, or automotive setting, for compensation."

Sections 3 and 4 would increase the fees as follows:

	Current Fee	Proposed Fee
Issuance of license	\$100	\$300
Renewal of license	\$100	\$300
Examination	\$200	No change
Reinstatement	\$150	\$250
Late Fees	\$150	\$300
Apprentice fee	\$100	\$300
Apprentice transfer fee	\$25	No change

In addition, the Board would be able to charge a licensee whose license has expired for failure to renew a renewal fee in addition to a late fee and a reinstatement fee. The Board would have authority to adjust the renewal and reinstatement fees for good cause shown.

Section 5 would require that any advertisement for locksmith services include a valid license number. Current law already requires that advertising contain the "identification number printed on the license."

Section 6 would allow the Board to assess an applicant or licensee the costs of a disciplinary action, including attorney fees, if a violation has occurred.

Section 7 would modify the exemption for employees of locksmiths. For the exemption to apply, a licensed locksmith must physically accompany the employee to the premises or the employee must be one who performs administrative duties only.

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

H889-SMSV-70(CSSVf-30) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 751
PROPOSED COMMITTEE SUBSTITUTE H751-CSR-70 [v.1]

6/13/2011 9:53:22 PM

Short Title: Expand Excise Tax on Mill Machinery. (Public)

Sponsors:

Referred to:

April 7, 2011

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A BILL TO BE ENTITLED
AN ACT TO EXPAND THE APPLICATION OF THE 1%, \$80 EXCISE TAX ON MILL
MACHINERY TO CERTAIN EQUIPMENT IN LIEU OF THE STATE AND LOCAL
SALES AND USE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-187.51(a) reads as rewritten:

"(a) Scope. - A privilege tax is imposed on the following persons:

- (1) A manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State. A manufacturing industry or plant does not include the following:
 - a. A delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises.
 - b. A production company.
- (2) A contractor or subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a manufacturing industry or plant.
- (3) A subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.
- (4) A manufacturing industry or plant located at a port facility for waterborne commerce that purchases specialized equipment to be used to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

SECTION 2. Article 5F of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-187.51D. Tax imposed on machinery at large manufacturing and distribution facility.

(a) Definition. - For the purposes of this section, a 'large manufacturing and distribution facility' is a facility used primarily for manufacturing or assembling products and distributing finished products for which the Secretary of Commerce makes a certification that an investment of private funds of at least one hundred twenty five million dollars (\$125,000,000) million has been or will be made in real and tangible personal property for the facility within



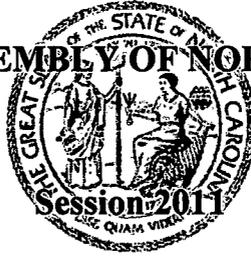
1 five years after the date on which the first property investment is made and that the facility will
2 achieve an employment level of at least 1,130 within two years after the date the facility is
3 placed into service and maintain that minimum level of employment throughout its operation.

4 (b) Tax. – A privilege tax is imposed on a large manufacturing and distribution facility
5 that purchases mill machinery, distribution machinery, or parts or accessories for mill
6 machinery or distribution machinery for storage, use or consumption in this State. The tax is
7 one percent (1%) of the sales price of the machinery, part, or accessory purchased. The
8 maximum tax is eighty dollars (\$80.00) per article. As used in this section, the term
9 'accessories' does not include electricity.

10 (c) Forfeiture. – If the required level of investment or employment to qualify as large
11 manufacturing and distribution facility is not timely made, achieved, or maintained, then the
12 rate provided under this section is forfeited. A taxpayer that forfeits a rate under this section is
13 liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the
14 applicable State and local rates from the date the taxes would otherwise have been due, plus
15 interest at the rate established under G.S. 105-241.21. Interest is computed from the date the
16 sales or use tax would otherwise have been due. A credit is allowed against the State sales or
17 use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid
18 pursuant to this section. For purposes of applying this credit, the fact that payment of the
19 privilege tax occurred in a period outside the statute of limitations provided under
20 G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies
21 only to the reduced amount. The past taxes and interest are due 30 days after the date of
22 forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to
23 the provisions of G.S. 105-236."

24 **SECTION 3.** This act becomes effective July 1, 2013, and applies to purchases
25 made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: June 14, 2011

TO: House Finance Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: House Bill 751 (Proposed Committee Substitute)

FISCAL IMPACT (\$ In Millions)					
	Yes (X)		No ()		No Estimate Available ()
REVENUES:	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
Article 5F for Ports			\$ (0.07)	\$ (0.07)	\$ (0.07)
EXPENDITURES:					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
North Carolina Department of Revenue					
EFFECTIVE DATE: July 1, 2013					

BILL SUMMARY: The proposed committee substitute for HB 751 expands the definition of mill machinery. HB 751 would allow purchases of specialized machinery utilized in the business activities of port facilities, particularly machinery used in the unloading or processing of bulk cargo to be exempt from the sales tax and subject to the tax on mill machinery under Article 5F.

ASSUMPTIONS AND METHODOLOGY: There are six years of outstanding sales and use tax assessments from purchases made by businesses that would qualify for Article 5F under HB 751. These assessments represent \$460,000 in unremitted sales and use tax over a six year period. There is also \$91,000 of outstanding interest associated with these assessments. Should HB 751 become law, future machinery purchases by port facilities under HB 751 would be exempt from the sales and use tax and subject to the lower 1%/\$80 per item under Article 5F.

Fiscal Research estimates, based on information provided by the Department, that HB 751 will reduce General Fund availability by \$0.07 million annually beginning July 1, 2013.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None



HOUSE BILL 751: Expand Excise Tax on Mill Machinery

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. McComas
Analysis of: PCS to First Edition
H751-CSR-70

Date: June 14, 2011
Prepared by: Cindy Avrette
Committee Counsel

SUMMARY: *House Bill 751 would substitute the 1%, \$80 cap excise tax for the State and local sales and use tax on the following:*

- *Specialized equipment purchased by a business for use at a port facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities.*
- *Mill machinery, distribution machinery, or parts or accessories for mill machinery purchased by a large manufacturing and distribution facility for storage, use, or consumption in this State.*

CURRENT LAW: The 2001 General Assembly enacted Article 5F in response to the requirement of the Streamlined Sales and Use Tax Agreement that states must simplify their sales tax rates. The 2001 legislation, which became effective January 1, 2006, repealed the 1% sales tax rate, with an \$80 cap, imposed on mill machinery purchased by a manufacturing industry or plant and replaced it with a privilege tax having the same rate. Items that are subject to the 1%, \$80 excise tax under Article 5F are exempt from sales and use tax. The current State sales tax rate is 5.75%; the local rates vary from 2% to 2.5% in Mecklenburg County.

Article 5F has been expanded since its enactment to apply to purchases of fuel and equipment and machinery by a number of different industries, including:

- Fuel, other than electricity or piped natural gas, purchased by a manufacturing industry or plant to operate the industry or plant.
- Certain personal property purchased by a major recycling facility.
- Equipment purchased by a research and development company in the physical, engineering, and life sciences and used by that company in the research and development of tangible personal property.
- Equipment purchased by a software publishing company that is used in the research and development of tangible personal property.
- Equipment purchased by an eligible datacenter.

BILL ANALYSIS: House Bill 751 would expand Article 5F to include specialized machinery used at a port facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

The House proposed committee substitute would also expand the 1%, \$80 tax to include mill machinery and distribution machinery purchased by a large manufacturing and distribution facility. A large manufacturing and distribution facility is defined as one that meets both investment and employment thresholds:

House PCS 751

Page 2

- Must invest at least \$125 million in real and tangible personal property at the facility within five years after the date on which the first property investment is made.
- Must employ at least 1,130 within two years after the date the facility is placed into service.

A facility that fails to meet or maintain its investment and employment levels, it must forfeit the preferential tax allowed under this section.

EFFECTIVE DATE: The bill would become effective July 1, 2013, and apply to purchases made on or after that date.

H751-SMRB-100(CSRB-70) v2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

#6

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 751 PCS RB-70

DATE 6.14.11

S. B. No. _____

Amendment No. 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Luebke

Sen.)

1 moves to amend the bill on page 3, line 4-5

2 () WHICH CHANGES THE TITLE

3 by inserting the following between these lines:

4
5 (d) Sunset. - This section expires for
6 sales occurring on or after July 1, 2018."
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SIGNED [Signature]

ADOPTED FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 447
Commerce Committee Substitute Adopted 6/7/11
Third Edition Engrossed 6/8/11

Short Title: Rewrite Landscape Contractor Laws. (Public)

Sponsors:

Referred to:

March 30, 2011

A BILL TO BE ENTITLED
AN ACT REWRITING THE LAWS REGULATING LANDSCAPE CONTRACTORS AND
AUTHORIZING THE NORTH CAROLINA LANDSCAPE CONTRACTORS'
LICENSING BOARD TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89D-1 through G.S. 89D-10 are repealed.

SECTION 2. Chapter 89D of the General Statutes is amended by adding the
following new sections to read:

"§ 89D-11. Definitions.

The following definitions apply in this Chapter:

- (1) Board. – The North Carolina Landscape Contractors' Licensing Board.
- (2) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.
- (3) Landscape contractor. – Any person who, for compensation or other consideration, does any of the following:
 - a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other decorative vegetation, including the finish grading and preparation of plots and areas of land for decorative utilitarian treatment and arrangement.
 - b. Practices the act of horticulture consultation or planting design for employment purposes.
 - c. Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building, to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.
 - d. Designs, installs, or maintains low voltage landscape lighting systems; provided such low voltage lighting systems do not exceed 50 volts and constitute a Class II or III cord and plug connected power system within the meaning of G.S. 87-43.1(7).



1 e. Engages in the construction of garden pools, fountains, pavilions,
2 arbors, retaining walls, fences, walks, patios, driveways, or other
3 decorative landscape features, excluding poured concrete or asphalt
4 driveways.

5 (4) Person. – An individual, firm, partnership, association, corporation, or other
6 legal entity.

7 **"§ 89D-12. License required; use of seal; posting license.**

8 (a) Except as otherwise provided in this Chapter, no person shall engage in the practice
9 of landscape construction or contracting, use the designation 'landscape contractor,' or advertise
10 using any title or description that implies licensure as a landscape contractor unless the person
11 is licensed as a landscape contractor as provided by this Chapter. All landscape construction or
12 contracting performed by a partnership, association, corporation, firm, or other group shall be
13 under the direct supervision of an individual licensed by the Board under this Chapter.

14 (b) Nothing in this Chapter shall be construed to authorize a landscape contractor to
15 engage in any of the following:

16 (1) The practice of landscape architecture as defined in G.S. 89A-1.

17 (2) The practice of engineering as defined in G.S. 89C-3.

18 (3) Practice as a well contractor certified under Article 7A of Chapter 87 of the
19 General Statutes.

20 (4) The practice of irrigation contracting as defined in G.S. 89G-1.

21 (5) The practice of architecture as defined in G.S. 83A-1.

22 (6) The practice of plumbing, heating group number one, heating group number
23 two, heating group number three, fire sprinkler or fuel piping contracting as
24 defined in G.S. 87-21, provided the landscaping contractor may install
25 piping, fittings, valves, and associated components for the purpose of
26 landscape contracting that is downstream of potable water source,
27 groundwater source, or grey water source, and downstream of a backflow
28 prevention assembly.

29 (7) The practice of electrical contracting as defined in G.S. 87-43.

30 (c) Upon licensure by the Board, each landscape contractor shall obtain a seal of the
31 design authorized by the Board and bearing the name of the licensee, the number of the license,
32 and the legend 'N.C. Licensed Landscape Contractor.' A landscape contractor may use the seal
33 only while the license is valid.

34 (d) Every landscape contractor issued a license under this Chapter shall display the
35 license conspicuously in the landscape contractor's place of business. Every landscape
36 contractor shall display the license number issued to the contractor by the Board on all business
37 cards, contracts, and vehicles used by the contractor in the landscape contracting business.

38 **"§ 89D-13. Exemptions.**

39 The provisions of this Chapter shall not apply to the following:

40 (1) Any federal, State, or local governmental agency performing landscaping on
41 public property.

42 (2) The North Carolina Department of Transportation (NCDOT). However, for
43 landscape installations or establishment periods for any project that exceeds
44 the current contract amount requiring performance and payment bonds
45 according to State law, NCDOT shall require a licensed landscape contractor
46 to perform the work. NCDOT, at its discretion, may require a licensed
47 landscape contractor for landscape projects of any cost.

48 (3) Any property owner performing landscape work on his or her own property.

49 (4) Any person or business owning or operating a golf course.

- 1 (5) Any landscaping work where the price of all contracts for labor, material,
2 and other items for a given job site during any consecutive 12-month period
3 is less than two thousand five hundred dollars (\$2,500).
- 4 (6) Any person or business licensed pursuant to Article 1 of Chapter 87 of the
5 General Statutes who possesses a classification under G.S. 87-10(b) as a
6 building contractor, a residential contractor, or a public utilities contractor
7 when the contractor uses the contractor's own employees to perform
8 landscape construction or contracting. A public utilities contractor exempted
9 by this subdivision may only perform the activities described in
10 G.S. 87-10(b)(3)a.
- 11 (7) Any person or business licensed as an electrical contractor under Article 4 of
12 Chapter 87 of the General Statutes who is designing, installing, or
13 maintaining any electric work, wiring, devices, appliances, or equipment.
- 14 (8) Any person or business licensed as a plumbing contractor under Article 2 of
15 Chapter 87 of the General Statutes who is installing pipes, fixtures,
16 apparatus, or appurtenances to supply water thereto or convey sewage or
17 other waste therefrom, including the installation, repair, or maintenance of
18 water mains, water taps, services lines, water meters, or backflow prevention
19 assemblies supplying water for irrigation systems or repairs to an irrigation
20 system.
- 21 (9) A professional engineer licensed pursuant to Chapter 89C of the General
22 Statutes.
- 23 (10) A professional landscape architect licensed under Chapter 89A of the
24 General Statutes.
- 25 (11) An individual or a business engaged in any of the following activities in
26 performing that activity:
- 27 a. Clearing and grading plots and areas of land.
- 28 b. Erosion control.
- 29 c. Arboriculture, including consultations on pruning and removal of
30 trees.
- 31 d. North Carolina Department of Agriculture and Consumer Services
32 certified sod producers that install sod, seed, or plugs.
- 33 e. Landscape construction performed by utilities contractors for the
34 purpose of grading and erosion control.
- 35 f. Lawn mowing, turf edging, and debris removal services.
- 36 g. Turf management or lawn care services only, including fertilization,
37 aeration, weed control, or other turf management or lawn care
38 practices other than mowing or edging.
- 39 h. Design, installation, and maintenance of on-site wastewater disposal
40 or reuse systems within the on-site wastewater permit specifications.
- 41 (12) Any person performing landscaping work on a farm for use in agriculture
42 production, farming, or ranching.

43 **"§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.**

44 (a) There is created the North Carolina Landscape Contractors' Licensing Board. The
45 Board shall consist of nine members appointed as follows:

- 46 (1) One member appointed by the Governor who is a member of the general
47 public.
- 48 (2) One member appointed by the Commissioner of Agriculture pursuant to
49 recommendations from The North Carolina Green Industry Council.
- 50 (3) One member appointed by the Board of Directors of the North Carolina
51 Nursery and Landscape Association, Inc., who is a practicing nurseryman

1 operating a nursery certified by the North Carolina Department of
2 Agriculture and Consumer Services Plant Pest Inspection Program.

3 (4) Four members who are licensed landscape contractors in the business of
4 landscape construction or contracting. One of the four members shall be
5 appointed by the General Assembly upon the recommendation of the
6 Speaker of the House of Representatives pursuant to recommendations from
7 The North Carolina Green Industry Council; one shall be appointed by the
8 General Assembly upon the recommendation of the President Pro Tempore
9 of the Senate pursuant to recommendations from the Carolinas Irrigation
10 Association, who is also a licensed irrigation contractor; and two shall be
11 appointed by the Board of Directors of the North Carolina Nursery and
12 Landscape Association, Inc.

13 (5) One member appointed by the Board of Directors of the North Carolina
14 Chapter of the American Society of Landscape Architects who is a
15 registered landscape architect.

16 (6) One member appointed by the President of The University of North Carolina
17 from within the land grant university community who is knowledgeable in
18 landscaping methods and practices.

19 (b) All appointments shall be for three-year terms. No member shall serve more than
20 two complete consecutive terms.

21 (c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in
22 the same manner as the original appointment, except that all unexpired terms of Board
23 members appointed by the General Assembly shall be filled in accordance with G.S. 120-122.
24 Appointees to fill vacancies shall serve the remainder of the unexpired term and until their
25 successors are appointed and qualified.

26 (d) The Board shall elect annually a chair and other officers as it deems necessary to
27 carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority
28 of the Board shall constitute a quorum.

29 (e) Each member of the Board may receive per diem and reimbursement for travel and
30 subsistence as set forth in G.S. 93B-5.

31 (f) The Board shall be entitled to the services of the Attorney General in connection
32 with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent
33 it in the enforcement of this Chapter.

34 **"§ 89D-15. Powers and duties.**

35 The Board shall have the following powers and duties to:

36 (1) Administer and enforce the provisions of this Chapter.

37 (2) Adopt, amend, or repeal rules to carry out the provisions of this Chapter.

38 (3) Examine and determine the qualifications and fitness of applicants for
39 licensure and licensure renewal.

40 (4) Issue, renew, deny, restrict, suspend, or revoke licenses.

41 (5) Reprimand or otherwise discipline licensees under this Chapter.

42 (6) Receive and investigate complaints from members of the public.

43 (7) Conduct investigations to determine whether violations of this Chapter exist
44 or constitute grounds for disciplinary action against licensees under this
45 Chapter.

46 (8) Conduct administrative hearings in accordance with Article 3A of Chapter
47 150B of the General Statutes.

48 (9) Seek injunctive relief through any court of competent jurisdiction for
49 violations of this Chapter.

50 (10) Collect fees required by G.S. 89D-21 and any other monies permitted by law
51 to be paid to the Board.

- 1 (11) Require licensees to file and maintain an adequate surety bond.
- 2 (12) Establish and approve continuing education requirements for persons
- 3 licensed under this Chapter.
- 4 (13) Employ a secretary-treasurer and any other clerical personnel the Board
- 5 deems necessary to carry out the provisions of this Chapter and to fix
- 6 compensation for employees.
- 7 (14) Maintain a record of all proceedings conducted by the Board and make
- 8 available to licensees and other concerned parties an annual report of all
- 9 Board action.
- 10 (15) Adopt and publish a code of professional conduct for all persons licensed
- 11 under this Chapter.
- 12 (16) Adopt and publish a code of minimum practice standards for landscape
- 13 construction and contracting.
- 14 (17) Adopt a seal containing the name of the Board for use on licenses and
- 15 official reports issued by the Board.

16 **"§ 89D-16. Application for license; qualifications; examination; issuance.**

17 (a) Upon application to the Board and payment of the required fees, an applicant for

18 licensure as a landscape contractor may sit for the examination if the applicant submits

19 evidence demonstrating the applicant's qualifications for licensure under this Chapter as

20 prescribed in rules adopted by the Board and meets all of the following qualifications:

- 21 (1) Is at least 18 years of age.
- 22 (2) Is of good moral character as determined by the Board.
- 23 (3) Provides evidence of business identification as required by the Board.
- 24 (4) Has at least three years of experience in landscape construction or
- 25 contracting or the educational equivalent. Two years of educational training
- 26 in landscape construction or contracting shall be the equivalent of one year
- 27 of experience.
- 28 (5) Files with the Board and maintains a corporate surety bond executed by a
- 29 company authorized to do business in this State or an irrevocable letter of
- 30 credit issued by an insured institution. The surety bond or the letter of credit
- 31 shall be in the amount of ten thousand dollars (\$10,000). The surety bond or
- 32 letter of credit shall be approved by the Board as to form and shall be
- 33 conditioned upon the obligor faithfully conforming to and abiding by the
- 34 provisions of this Chapter. Any person claiming to be injured by an act of a
- 35 licensed landscape contractor that constitutes a violation of this Chapter may
- 36 institute an action to recover against the licensee and the surety.

37 (b) If the applicant meets all the qualifications in subsection (a) of this section, the

38 applicant shall be required to pass an examination administered by the Board before the Board

39 may issue the license. The Board shall establish the scope and subject matter of the

40 examination to be administered. The Board shall administer examinations at least twice a year

41 at a time and place to be determined by the Board.

42 (c) When the Board determines that an applicant has met all the qualifications for

43 licensure, submitted the required fee, and passed the examination, the Board shall issue a

44 license to the applicant.

45 **"§ 89D-17. Corporations; partnerships; persons doing business under trade name.**

46 (a) The Board may issue a license in the name of a corporation if the corporation pays

47 the license fee required by G.S. 89D-21 and complies with the following:

- 48 (1) One or more officers or full-time employees, or both, empowered to act for
- 49 the corporation, are individuals licensed under this Chapter.
- 50 (2) Only the officers or employees described in subdivision (1) of this
- 51 subsection execute contracts for landscape construction or contracting in the

1 name of a corporation and exercise direct supervision over the work
2 performed pursuant to the contract.

3 (b) The Board may issue a license in the name of a limited liability company if the
4 company pays the fee required by G.S. 89D-21 and complies with the following:

5 (1) One or more managers or executives, as defined in G.S. 57C-1-03, or
6 full-time employees, or a combination thereof, are individuals licensed under
7 this Chapter.

8 (2) Only the managers, executives, or employees described in subdivision (1) of
9 this subsection execute contracts for landscape construction or contracting in
10 the name of the limited liability company and exercise direct supervision
11 over the work performed pursuant to the contract.

12 (c) The Board may issue a license in the name of a partnership if the partnership pays
13 the fee required by G.S. 89D-21 and complies with the following:

14 (1) One or more general partners or full-time employees empowered to act for
15 the partnership are individuals licensed under this Chapter.

16 (2) Only the partners or employees described in subdivision (1) of this
17 subsection execute contracts for landscape construction or contracting in the
18 name of the partnership and exercise direct supervision over the work
19 performed pursuant to the contract.

20 (d) The Board may issue a license in an assumed or designated trade name if the owner
21 of the business pays the fee required by G.S. 89D-21 and complies with the following:

22 (1) The owner or one or more full-time employees empowered to act for the
23 owner is an individual licensed under this Chapter.

24 (2) Only the persons described in subdivision (1) of this subsection execute
25 contracts for landscape construction or contracting in the assumed or
26 designated trade name of the business and exercise direct supervision over
27 the work performed pursuant to the contract.

28 (e) When the Board issues a license under this section, the Board shall indicate on the
29 license the name and license number of the individual licensee connected to the corporation,
30 partnership, or business conducted under an assumed or designated trade name.

31 (f) A person licensed pursuant to this section shall exercise direct supervision over a
32 contract for landscape construction or contracting until the contract is completed.

33 (g) When a licensee executes a contract for landscape construction or contracting in any
34 capacity other than as a sole proprietor contracting on the licensee's own behalf, the person on
35 whose behalf the licensee is executing the contract shall be licensed under this section.

36 (h) A corporation, partnership, or person doing business under an assumed or
37 designated trade name shall notify the Board in accordance with rules adopted by the Board if
38 an individual licensee who is indicated in the license issued under this section ceases to be an
39 officer, partner, owner, or employee of the corporation, partnership, or person doing business
40 under the assumed or designated trade name. If the corporation, partnership, or person no
41 longer has an officer, general partner, owner, or employee described in subdivision (a)(1),
42 (b)(1), or (c)(1) of this section, the corporation, partnership, or person shall have 90 days from
43 the date the officer, general partner, owner, or employee ceases the relationship with the
44 corporation, partnership, or person to satisfy the requirements described in subdivision (a)(1),
45 (b)(1), or (c)(1) of this section. After 90 days, if the corporation, partnership, or person does not
46 have an officer, general partner, owner, or employee as described in subdivision (a)(1), (b)(1),
47 or (c)(1) of this section, the license issued under this section is automatically suspended, and
48 the corporation, partnership, or person shall cease practicing landscape construction or
49 contracting.

50 **"§ 89D-18. Licensing of nonresidents.**

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

1 (1) Delinquent income tax debt. – The amount of income tax due as stated in a
2 final notice of assessment issued to a taxpayer by the Secretary of Revenue
3 when the taxpayer no longer has the right to contest the amount.

4 (2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

5 (3) Foreign entity. – A foreign corporation, a foreign limited liability company,
6 or a foreign partnership.

7 (4) Foreign limited liability company. – A company as defined in
8 G.S. 57C-1-03.

9 (5) Foreign partnership. – One of the following that does not have a permanent
10 place of business in this State:

11 a. A foreign limited partnership as defined in G.S. 59-102.

12 b. A general partnership formed under the laws of a jurisdiction other
13 than this State.

14 (b) Licensing. – Except as provided in this section, the Board may issue a license to a
15 nonresident individual or a foreign entity that meets the requirements for licensure under this
16 Chapter.

17 (c) Certificate of Authority Required. – The Board shall not issue a license for a foreign
18 corporation unless the corporation has obtained a certificate of authority from the Secretary of
19 State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a
20 license for a foreign limited liability company unless the company has obtained a certificate of
21 authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General
22 Statutes.

23 (d) Information. – The Board, upon request, shall provide the Secretary of Revenue the
24 name, address, and tax identification number of every nonresident individual and foreign entity
25 licensed by the Board. The information to be provided under this section shall be in a form
26 required by the Secretary of Revenue.

27 (e) Delinquents. – If the Secretary of Revenue determines that any nonresident
28 individual or foreign entity licensed by the Board owes a delinquent income tax debt, the
29 Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and
30 instruct the Board not to renew the nonresident individual or foreign entity's license. The Board
31 shall not renew the license of a nonresident individual or foreign entity identified by the
32 Secretary of Revenue unless the Board receives a written statement from the Secretary that (i)
33 the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement.

34 "**§ 89D-19. Reciprocity.**

35 The Board may issue a license, without examination, to any person who is a landscape
36 contractor licensed, certified, or registered in another state or country if the requirements for
37 licensure, certification, or registration in the other state or country are substantially equivalent
38 to the requirements for licensure in this State.

39 "**§ 89D-20. License renewal and continuing education.**

40 (a) Every license issued under this Chapter shall be renewed on or before the first day
41 of August of each year. Any person who desires to continue to practice shall apply for a license
42 renewal and shall submit the required fee. Licenses that are not renewed shall be automatically
43 revoked. A license may be renewed at any time within one year after its expiration if (i) the
44 applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the
45 applicant has not used the license in a manner inconsistent with the provisions of this Chapter
46 or engaged in the practice of landscape construction or contracting after notice of revocation;
47 and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter.
48 When necessary, the Board may require licensees to demonstrate continued competence as a
49 condition of license renewal.

50 (b) As a condition of license renewal, a licensee shall meet the continuing education
51 requirements set by the Board. Each licensee shall complete seven continuing education units

1 per year. The Board may suspend a licensee's license for 30 days for failure to obtain
 2 continuing education units required by this subsection. Upon payment of a reinstatement fee,
 3 the license shall be reinstated. Failure to request a reinstatement of the license and payment of
 4 the reinstatement fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be
 5 required to submit a new application and retake the examination as provided in this Chapter.

6 **"§ 89D-21. Expenses and fees.**

7 (a) The Board may impose the following fees not to exceed the amounts listed below:

- | | | | |
|----|-----|--|-----------------|
| 8 | (1) | <u>Application fee.....</u> | <u>\$100.00</u> |
| 9 | (2) | <u>Examination fee.....</u> | <u>250.00</u> |
| 10 | (3) | <u>Individual license fee and individual license renewal</u> | <u>100.00</u> |
| 11 | (4) | <u>Initial corporate, limited liability company, partnership,</u> | |
| 12 | | <u>or trade-name license.....</u> | <u>100.00</u> |
| 13 | (5) | <u>Corporate, limited liability company, partnership,</u> | |
| 14 | | <u>or trade-name license renewal</u> | <u>100.00</u> |
| 15 | (6) | <u>Late renewal fee.....</u> | <u>50.00</u> |
| 16 | (7) | <u>Reinstatement fee.....</u> | <u>500.00</u> |
| 17 | (8) | <u>License by reciprocity.....</u> | <u>250.00</u> |
| 18 | (9) | <u>Duplicate license.....</u> | <u>25.00</u> |

19 (b) When the Board uses a testing service for the preparation, administration, or grading
 20 of examinations, the Board may charge the applicant the actual cost of the examination services
 21 and a prorated portion of the examination fee.

22 **"§ 89D-22. Disciplinary action.**

23 The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a
 24 license if a licensee or applicant does any of the following:

- 25 (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or
 26 attempting to obtain a license or the renewal of a license.
- 27 (2) Practices or attempts to practice landscape construction or contracting by
 28 fraudulent misrepresentation.
- 29 (3) Commits an act of gross malpractice or incompetence as determined by the
 30 Board.
- 31 (4) Has been convicted of or pled guilty or no contest to a crime that indicates
 32 that the person is unfit or incompetent to practice as a landscape contractor
 33 or that indicates that the person has deceived or defrauded the public.
- 34 (5) Has been declared incompetent by a court of competent jurisdiction.
- 35 (6) Has willfully violated any provision in this Chapter or any rules adopted by
 36 the Board.
- 37 (7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.
- 38 (8) Fails to file the required surety bond or letter of credit or to keep the bond or
 39 letter of credit in force.

40 **"§ 89D-23. Civil penalties.**

41 (a) In addition to taking any of the actions permitted under G.S. 89D-22, the Board may
 42 assess a civil penalty not in excess of two thousand dollars (\$2,000) for each violation of any
 43 section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of
 44 any civil penalty assessed under this section shall be remitted to the Civil Penalty and
 45 Forfeiture Fund in accordance with G.S. 115C-457.2.

46 (b) Before imposing and assessing a civil penalty and fixing the amount of the penalty,
 47 the Board shall, as a part of its deliberations, take into consideration the following factors:

- 48 (1) The nature, gravity, and persistence of the particular violation.
- 49 (2) The appropriateness of the imposition of a civil penalty when considered
 50 alone or in combination with other punishment.
- 51 (3) Whether the violation was willful and malicious.

1 (4) Any other factors that would tend to mitigate or aggravate the violations
2 found to exist.

3 **"§ 89D-24. Injunction to prevent violation; notification of complaints.**

4 (a) If the Board finds that a person who does not have a license issued under this
5 Chapter is engaging in the practice of landscape construction or contracting, the Board may
6 appear in its own name in superior court in actions for injunctive relief to prevent any person
7 from violating the provisions of this Chapter or the rules adopted by the Board.

8 (b) A licensed landscape contractor shall notify the Board of any written complaints
9 filed against the landscape contractor not resolved within 30 days from the date the complaint
10 was filed by registered mail to the Board."

11 **SECTION 3.(a)** Members serving on the North Carolina Landscape Contractors'
12 Registration Board on the effective date of this act shall continue to serve until members of the
13 North Carolina Landscape Contractors' Licensing Board, newly structured under
14 G.S. 89D-14(a), as enacted by Section 2 of this act, are appointed.

15 **SECTION 3.(b)** Once the term of one of the current public members appointed by
16 the Governor expires, the General Assembly, upon the recommendation of the Speaker of the
17 House of Representatives, shall appoint a licensed landscape contractor in the business of
18 landscape construction and contracting. Once the term of one of the current members appointed
19 by the Commissioner of Agriculture expires, the General Assembly, upon the recommendation
20 of the President Pro Tempore of the Senate, shall appoint a licensed landscape contractor in the
21 business of landscape construction and contracting. All records, staff, funds, and other items of
22 the North Carolina Landscape Contractors' Registration Board are transferred to and made the
23 property of the North Carolina Landscape Contractors' Licensing Board.

24 **SECTION 4.** Any person, who on or before December 31, 2011, meets at least one
25 of the following criteria shall be issued a landscape contractor's license by the North Carolina
26 Landscape Contractors' Licensing Board, without the requirement of examination, upon
27 submission of a completed application and payment of the application fee on or before August
28 1, 2012:

- 29 (1) Is registered as a landscape contractor.
30 (2) Is licensed as an irrigation contractor.
31 (3) Is certified as a turf grass professional.
32 (4) Has 10 years of documented experience in the person's own business as a
33 landscape contractor or 10 years of documented experience as an employee
34 in a landscape contracting business, meets all other requirements and
35 qualifications for licensure as a landscape contractor, and has one of the
36 following:
37 a. One year of credit for a two-year degree in related educational
38 training.
39 b. Two years of credit for a four-year degree in related educational
40 training.
41 c. Up to two years of credit for education or business experience in
42 general business management.

43 Landscape contractors currently registered under Chapter 89D of the General Statutes shall not
44 be required to renew the registration for the 2012 calendar year to qualify for the landscape
45 contractor's license, as enacted by Section 2 of this act.

46 **SECTION 5.** Section 1 of this act becomes effective August 1, 2012. The
47 remainder of this act is effective when it becomes law.



SENATE BILL 447: Rewrite Landscape Contractor Laws

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sens. Apodaca, Brown
Analysis of: Third Edition

Date: June 14, 2011
Prepared by: Heather Fennell
Committee Counsel

SUMMARY: *Senate Bill 447 would rewrite Chapter 89D of the General Statutes, which regulates landscape contractors.*

CURRENT LAW: G.S. 89D-1 through 89D-10 in Chapter 89D provide for certification of landscape contractors in North Carolina. The statutes define 'landscape contractor', establish a Landscape Contractor's Registration Board, provide for examination and certification of contractors, set fees, and sets out powers and duties of the Board.

BILL ANALYSIS: Senate Bill 447 would rewrite the landscape contractor laws as follows:

Section 1 repeals G.S. 89D-1 through 89D-10, which are all of the existing statutes regulating landscape contractors in North Carolina.

Section 2 rewrites the statutes regulating landscape contractors as G.S. 89D-11 through 89D-24:

G.S. 89D-11 provides new definitions that apply in Chapter 89D, including a more detailed definition of what constitutes landscape contracting.

G.S. 89D-12 requires a license for any person engaging in the practice of landscape construction or contracting and using the designation 'landscape contractor'. The section specifies that landscape contractors are not authorized to engage in the following practices: landscape architecture; engineering; well contracting; architecture; plumbing and heating contracting; and electrical contracting.

A licensed landscape contractor is required to display the license conspicuously in the licensee's place of business and to display the license number on all business cards, contracts, and vehicles.

G.S. 89D-13 provides exemptions from licensing for government agencies landscaping public property; the Department of Transportation; property owners landscaping the owner's own property; persons owning or operating a golf course; landscaping work costing less than \$2,500 for a 12-month period; license general contractors possessing classification as building, residential, or public utilities contractor; licensed electrical contractors engaging in electric work, wiring, devices, appliances, or equipment; licensed plumbing contractors installing pipes, fixtures, apparatus, or appurtenances; licensed professional engineers; licensed professional landscape architects; individuals or businesses engaged in specified activities; and landscaping work on a farm for use in agriculture production, farming, or ranching.

G.S. 89D-14 creates a new North Carolina Contractors' Licensing Board with the following members: one member appointed by the Governor; one member appointed by the Commissioner of Agriculture; one practicing nurseryman appointed by the Board of Directors of the NC Nursery and Landscaping Association; four licensed landscape contractors, two appointed by the General Assembly and two by the Board of Directors of the NC Nursery and Landscaping Association; one registered landscape architect appointed by the Board of Directors of the NC Chapter of the American Society of Landscape Architects; and one member that is knowledgeable in landscaping methods and practices appointed by the President of the University of North Carolina.

Senate Bill 447

Page 2

G.S. 89D-15 specifies powers and duties of the Board, including administering and enforcing the Chapter; adopting rules; examining applicants; issuing, denying, and revoking licenses; disciplining licensees; conducting investigations of violations by licensees; conducting administrative hearings; seeking injunctive relief; collecting fees; requiring licensees to maintain surety bonds; requiring continuing education; and publishing a code of professional conduct and minimum practice standards for licensees.

G.S. 89D-16 requires an applicant for licensure to meet the following qualifications: is at least 18 years old; is of good moral character; provides evidence of business identification; has at least 3 years of experience or the educational equivalent; and files with the Board a surety bond or letter of credit in the amount of \$10,000. If the applicant meets all qualifications, then the applicant must pass an examination administered by the Board.

G.S. 89D-17 provides requirements for licensing of corporations, limited liability companies, partnerships, and persons doing business under a trade name.

G.S. 89D-18 provides for licensing of nonresident individuals and foreign entities. The Board is required, upon request, to provide the Secretary of Revenue information about nonresidents licensed by the Board. If the Secretary of Revenue determines that a nonresident owes a delinquent income tax debt, the Board may be required not to renew the license of the nonresident.

G.S. 89D-19 provides for reciprocity with other states and countries, allowing the Board to issue a license to any person who is licensed in another state or country if that state or country has licensing requirements that are substantially equivalent to North Carolina.

G.S. 89D-20 requires that licenses be renewed on or before August 1 each year. If they are not renewed, they are automatically revoked. A license may be renewed in the year following expiration if the applicant pays a late fee; the Board finds the licensee has not misused the license or engaged in landscape contracting after the license was revoked; and the applicant is otherwise eligible.

This section also requires licensees to complete seven units of continuing education per year.

G.S. 89D-21 sets fees to be collected by the Board. The act increases the application, examination, license, and renewal fees from \$75 to \$100, increases the late renewal fee from \$25 to \$50, and increases the fee for a duplicate license from \$5 to \$25. The act also provides for a reinstatement fee of \$500 and a fee of \$250 for license by reciprocity.

G.S. 89D-22 authorizes the Board to deny, restrict, suspend, or revoke a license; or refuse to issue or renew a license if the applicant uses fraud or misrepresentation to obtain a license; practices landscape contracting by misrepresentation; commits gross malpractice; has been convicted of a crime indicating the person is unfit to practice landscape contracting; has been declared incompetent by a court; has violated the provisions of the Chapter or rules adopted by the Board; uses the seal in an unauthorized manner; or fails to file the required surety bond.

G.S. 89D-23 authorizes the Board, after taking into consideration specific listed factors, to assess a civil penalty not in excess of \$2000 for each violation of the Chapter or the violation of any rule adopted by the Board.

G.S. 89D-24 authorizes the Board to seek injunctive relief in superior court to prevent any person from violating the provisions of the Chapter or rules adopted by the Board.

Section 3 provides for the phasing out of the current Landscape Contractors' Registration Board and the phasing in of the new Landscape Contractors' Licensing Board, which is established in this act.

Senate Bill 447

Page 3

Section 4 is a grandfather clause, providing that an applicant who applies and pays the required fee on or before August 12, 2012, shall be issued a license without examination, if he or she meets one of the following criteria: is registered as a landscape contractor; is licensed as an irrigation contractor; is certified as a turf grass professional; or has 10 years of experience, meets all other qualifications, and has required educational experience.

EFFECTIVE DATE: Section 1 of the bill would become effective August 1, 2012. The remainder of the bill would become effective when it becomes law.

Heather Fennell, counsel to Senate Finance and Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.

S447-SMTD-99(e3) v1



#8

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 447

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S447-ARI-30 [v.2]

Page 1 of 1

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

Date 6.14, 2011

Representative Samuelson

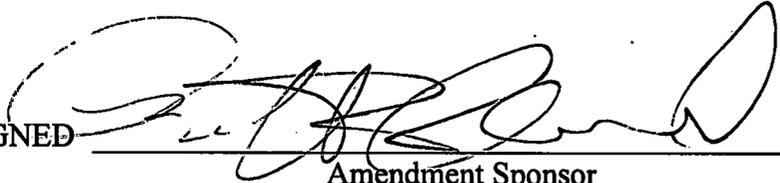
1 moves to amend the bill on page 3, line 42,
2 by rewriting that line to read:

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"production, farming, or ranching.

(13) Practice by those employees of the Natural Resources Conservation Service, state or county employees, or employees of the Soil and Water Conservation Districts who have specific job approval authority from either the Natural Resources Conservation Service or the Soil and Water Conservation Commission that involves the planning, designing, or implementation of best management practices on public or private lands."

SIGNED


Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED



* S 4 4 7 - A R I - 3 0 - V - 2 *

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 6.14.11

S. B. No. 447

Amendment No. 2

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep. Hackney
Sen.)

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

2 () WHICH CHANGES THE TITLE

3 by deleting the term "driveways";

4

5 and on page 2 lines 3 and 4, by

6 re writing those lines to read:

7 "decorative landscape features."

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SIGNED Hackney

ADOPTED FAILED TABLED

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 761
Committee Substitute Favorable 6/7/11
PROPOSED COMMITTEE SUBSTITUTE H761-CSSV-40 [v.1]

6/13/2011 10:15:34 PM

Short Title: Ignition Interlock Systems/Record Checks. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE TAMPERING WITH AN IGNITION INTERLOCK SYSTEM AN UNLAWFUL ACT, TO REMOVE COLORED BORDER REQUIREMENTS FROM CERTAIN LICENSES, TO CLARIFY THAT SPECIAL IDENTIFICATION CARDS ARE SUBJECT TO VIOLATION PROVISIONS, AND TO ALLOW THE DIVISION OF MOTOR VEHICLES TO CONDUCT BACKGROUND INVESTIGATIONS ON EVERY PERSON APPLYING FOR A RESTORATION OF A REVOKED LICENSE, A DEALER'S LICENSE, MECHANIC'S LICENSE, OR ANY OTHER LICENSE ISSUED BY THE DIVISION EXCEPT FOR A DRIVERS LICENSE UNLESS IT IS BEING RESTORED AFTER A REVOCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-17.8A. Tampering with ignition interlock systems.

Any person who tampers with, circumvents, or attempts to circumvent an ignition interlock device required to be installed on a motor vehicle pursuant to judicial order, statute, or as may be otherwise required as a condition for an individual to operate a motor vehicle, for the purpose of avoiding or altering testing on the ignition interlock device in the operation or attempted operation of a vehicle, or altering the testing results received or results in the process of being received on the ignition interlock device, is guilty of a Class 1 misdemeanor. Each act of tampering, circumvention, or attempted circumvention under this statute shall constitute a separate violation."

SECTION 2. G.S. 20-7(n) reads as rewritten:

(n) Format. – A drivers license issued by the Division must be tamperproof and must contain all of the following information:

- (1) An identification of this State as the issuer of the license.
- (2) The license holder's full name.
- (3) The license holder's residence address.
- (4) A color photograph, or a properly applied laser engraved picture on polycarbonate material, of the license holder, taken by the Division.
- (5) A physical description of the license holder, including sex, height, eye color, and hair color.



- 1 (6) The license holder's date of birth.
- 2 (7) An identifying number for the license holder assigned by the Division. The
- 3 identifying number may not be the license holder's social security number.
- 4 (8) Each class of motor vehicle the license holder is authorized to drive and any
- 5 endorsements or restrictions that apply.
- 6 (9) The license holder's signature.
- 7 (10) The date the license was issued and the date the license expires.

8 ~~In taking photographs of license holders, the Division must distinguish between license~~
 9 ~~holders who are less than 21 years old and license holders who are at least 21 years old by~~
 10 ~~using different color backgrounds or borders for each group. The Division shall determine the~~
 11 ~~different colors to be used. The Commissioner shall ensure that applicants 21 years old or older~~
 12 ~~are issued drivers licenses and special identification cards that are printed in a horizontal~~
 13 ~~format. The Commissioner shall ensure that applicants under the age of 21 are issued drivers~~
 14 ~~licenses and special identification cards that are printed in a vertical format, that distinguishes~~
 15 ~~them from the horizontal format, for ease of identification of individuals under age 21 by~~
 16 ~~members of industries that regulate controlled products that are sale restricted by age and law~~
 17 ~~enforcement officers enforcing these laws.~~

18 At the request of an applicant for a drivers license, a license issued to the applicant must
 19 contain the applicant's race."

20 **SECTION 3.** G.S. 20-11(a) reads as rewritten:

21 "(a) Process. – Safe driving requires instruction in driving and experience. To ensure that
 22 a person who is less than 18 years old has both instruction and experience before obtaining a
 23 drivers license, driving privileges are granted first on a limited basis and are then expanded in
 24 accordance with the following process:

- 25 (1) Level 1. – Driving with a limited learner's permit.
- 26 (2) Level 2. – Driving with a limited provisional license.
- 27 (3) Level 3. – Driving with a full provisional license.

28 A permit or license issued under this section must ~~have a color background or border that~~
 29 ~~indicates indicate~~ the level of driving privileges granted by the permit or license."

30 **SECTION 4.** G.S. 20-30 reads as rewritten:

31 "**§ 20-30. Violations of license or license, learner's permit permit, or special identification**
 32 **card provisions.**

33 It shall be unlawful for any person to commit any of the following acts:

- 34 (1) To display or cause to be displayed or to have in possession a driver's ~~license~~
 35 ~~or license, learner's permit, or special identification card~~, knowing the same
 36 to be fictitious or to have been canceled, revoked, suspended or altered.
- 37 (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not
 38 entitled thereto, a driver's ~~license or license, learner's permit permit, or~~
 39 ~~special identification card.~~
- 40 (3) To display or to represent as one's own a ~~license or drivers license, learner's~~
 41 ~~permit permit, or special identification card~~ not issued to the person so
 42 displaying same.
- 43 (4) To fail or refuse to surrender to the Division upon demand any driver's
 44 ~~license or license, learner's permit permit, or special identification card~~ that
 45 has been suspended, canceled or revoked as provided by law.
- 46 (5) To use a false or fictitious name or give a false or fictitious address in any
 47 application for a driver's ~~license or license, learner's permit, or special~~
 48 ~~identification card~~, or any renewal or duplicate thereof, or knowingly to
 49 make a false statement or knowingly conceal a material fact or otherwise
 50 commit a fraud in any such application, or for any person to procure, or

1 knowingly permit or allow another to commit any of the foregoing acts. Any
2 ~~license or license, learner's permit permit, or special identification card~~
3 procured as aforesaid shall be void from the issuance thereof, and any
4 moneys paid therefor shall be forfeited to the State. Any person violating the
5 provisions of this subdivision shall be guilty of a Class 1 misdemeanor.

6 (6) To make a color photocopy or otherwise make a color reproduction of a
7 drivers license, learner's permit, or special identification card which has been
8 color-photocopied or otherwise reproduced in color, unless such color
9 photocopy or other color reproduction was authorized by the Commissioner.
10 It shall be lawful to make a black and white photocopy of a drivers license,
11 learner's permit, or special identification card or otherwise make a black and
12 white reproduction of a drivers license, learner's permit, or special
13 identification card.

14 (7) To sell or offer for sale any reproduction or facsimile or simulation of a
15 driver's ~~license or license, learner's permit permit, or special identification~~
16 ~~card.~~ The provisions of this subdivision shall not apply to agents or
17 employees of the Division while acting in the course and scope of their
18 employment. Any person, firm or corporation violating the provisions of this
19 subsection shall be guilty of a Class I felony.

20 (8) To possess more than one commercial drivers license or to possess a
21 commercial drivers license and a regular drivers license. Any commercial
22 drivers license other than the one most recently issued is subject to
23 immediate seizure by any law enforcement officer or judicial official. Any
24 regular drivers license possessed at the same time as a commercial drivers
25 license is subject to immediate seizure by any law enforcement officer or
26 judicial official.

27 (9) To present, display, or use a drivers ~~license or license, learner's permit~~
28 ~~permit, or special identification card~~ that contains a false or fictitious name
29 in the commission or attempted commission of a felony. Any person
30 violating the provisions of this subdivision shall be guilty of a Class I
31 felony."

32 SECTION 5. Article 4 of Chapter 114 of the General Statutes is amended by
33 adding a new section to read:

34 "§ 114-19.31. Criminal history record checks of applicants for a dealer's license, a
35 mechanic's license, and all other licenses issued by the Division of Motor
36 Vehicles.

37 The Department of Justice may provide to the Division of Motor Vehicles, from the State
38 and National Repositories of Criminal Histories, the criminal history record of any applicant for
39 licensure under Chapter 20 of the General Statutes, including, but not limited to, a restoration
40 of a revoked driving privilege, a nonrenewal of a dealer's license, a mechanic's inspection
41 license, or a station inspection license, as dictated by the licensing guidelines for each
42 application under Chapter 20 of the General Statutes. The provisions of this section shall not
43 apply to (i) an applicant for a drivers license, unless the application is for a restoration of a
44 drivers license that has been revoked; (ii) an applicant for renewal of a dealer's license, a
45 mechanic's inspection license, or a station inspection license; (iii) a license application for an
46 additional or new location made by an individual or entity owned or operated by an existing
47 licensee; or (iv) a manufacturer's license. Along with the request, the Division shall provide to
48 the Department of Justice the fingerprints of the applicant, a form signed by the applicant
49 consenting to the criminal history record check and use of fingerprints, other identifying
50 information required by the State and National Repositories, and any additional information

1 required by the Department of Justice. The applicant's fingerprints shall be forwarded to the
2 State Bureau of Investigation for a search of the State's criminal history record file, and the
3 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
4 Investigation for a national criminal history record check. The Division shall keep all
5 information obtained pursuant to this section confidential. The Department of Justice may
6 charge a fee to offset the cost incurred by it to conduct a criminal history record check under
7 this section. The fee shall not exceed the actual cost of locating, editing, researching, and
8 retrieving the information. Fees and other costs incurred by the Division under this statute may
9 be charged to the applicant."

10 **SECTION 6.** Sections 1 and 4 of this act become effective December 1, 2011, and
11 apply to offenses committed on or after that date. Sections 2, 3, and 5 of this act become
12 effective December 1, 2011, and apply to licenses issued on or after that date. The remainder
13 of this act becomes effective December 1, 2011. Prosecutions for offenses committed before
14 the effective date of this act are not abated or affected by this act, and the statutes that would be
15 applicable but for this act remain applicable to those prosecutions.



HOUSE BILL 761: Ignition Interlock Systems/Record Checks

2011-2012 General Assembly

Committee: House Finance	Date: June 14, 2011
Introduced by: Reps. McComas, Carney	Prepared by: Trina Griffin
Analysis of: PCS to Second Edition H761-CSSV-40	Committee Counsel

SUMMARY: *The Proposed Committee Substitute (PCS) for House Bill 761 would make tampering with an ignition interlock system a Class 1 misdemeanor, would remove colored border requirements from certain licenses, would clarify that special identification cards are subject to violation provisions and would allow the Division of Motor Vehicles (DMV) to conduct background investigations on every person apply for a restoration of a revoked license, a dealer's license, mechanic's license or any other license issue by the Division except for a driver's license unless it is being restored after a revocation.*

BILL ANALYSIS:

Section 1 would create a Class 1 misdemeanor for tampering with, circumventing, or attempting to circumvent an ignition interlock device for the purpose of avoiding or altering testing on the device for operation of the vehicle, or testing results in the process of being received from the device.

Sections 2 & 3 would remove language requiring different color borders on certain driver's licenses. At the end of 2011, DMV will begin issuing a new design of driver's licenses, permits and ID cards intended to make them more secure and to meet federal standards. The new design does not have colored borders. Persons under 21 will still be distinguished by vertical cards.

Section 4 would add special identification cards to the statute prohibiting fraudulent use, possession, sale, etc. of a driver's license or permit. Violation of these offenses is a Class 2 misdemeanor, unless otherwise provided by a particular subdivision of the statute.

Section 5 would authorize DMV to do criminal history record checks on any applicant for licensure under Chapter 20, including, but not limited to, a restoration of a revoked driving privilege and a non-renewal of a dealer's license, mechanic's inspection license, or station inspection license. The provisions of this section would not apply to: (i) an applicant for a driver's license unless the application is for a restoration of a driver's license that has been revoked, or (ii) an applicant for renewal of a dealer's license, mechanic's inspection license, or station inspection license, (iii) a license application for an additional or new location made by an individual or entity owned or operated by an existing licensee, or (iv) a manufacturer's license.

EFFECTIVE DATE: Sections 1 and 4 of this act become effective December 1, 2011, and apply to offenses committed on or after that date. Sections 2, 3, and 5 of this act become effective December 1, 2011, and apply to licenses issued on or after that date. The remainder of this act becomes effective December 1, 2011. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Susan Sitze, counsel to House Judiciary, substantially contributed to this summary.

H761-SMSV-82(CSSV-40) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 309

Short Title: Conservation Easements Stewardship Funds. (Public)

Sponsors: Senators Jackson; Apodaca, Bingham, Blake, Brunstetter, Daniel, Davis, Forrester, Hunt, Meredith, Newton, Pate, Preston, Rabon, Rouzer, Stevens, and Tucker.

Referred to: Appropriations/Base Budget.

March 10, 2011

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A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE GOVERNING BOARD OF ANY SOIL AND WATER CONSERVATION DISTRICT TO ESTABLISH A SPECIAL RESERVE FUND TO BE USED FOR MAINTAINING CONSERVATION EASEMENTS.

Whereas, North Carolina is and always has been a leader in soil and water conservation, with the nation's first soil and water conservation district established in Brown Creek, Anson County, under the leadership of Dr. Hugh Hammond Bennett, the "father of soil conservation" in the United States; and

Whereas, soil and water conservation districts continue into the 21st century to provide a critical voluntary, nonregulatory means to enhance conservation values of private lands, including much of the State's agricultural and timber lands; and

Whereas, conservation easements provide an increasingly important way that soil and water conservation districts, along with other units of State and local government and private land trusts, help private landowners conserve important soil and water resources on their property; and

Whereas, to be effective in the long run, conservation easements require long-term or perpetual monitoring to assure that the intent of the easement donors and sellers is honored; and

Whereas, soil and water conservation districts receive funds from diverse sources for long-term easement stewardship, including private contributions and donations, portions of transaction fees, donations from private charitable foundations, and contributions from and appropriation of public funds; and

Whereas, the current local budgeting and finance laws do not adequately provide a means to ensure that these funds are dedicated to long-term or perpetual stewardship of conservation easements; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 139-3 is amended by adding a new subdivision to read:

"(4a) 'Conservation easement' has the same meaning as provided in G.S. 40A-80."

SECTION 2. Article 1 of Chapter 139 of the General Statutes is amended by adding the following new section to read:

"§ 139-7.1. Special revenue funds for the maintenance of conservation easements.

(a) Establishing Fund. – The governing body of a soil and water conservation district may establish and maintain a special revenue fund for the purpose of maintaining conservation easements, including maintenance activities such as travel to and observation of easement property, remote monitoring of easement property, and education and ongoing communication



1 with landowners about their easement responsibilities. To establish a special revenue fund
2 under this section, the governing body of a soil and water conservation district shall adopt a
3 resolution or ordinance that includes all of the following provisions:

- 4 (1) The specific purposes of maintaining conservation easements for which the
5 special revenue fund is created.
6 (2) The approximate periods of time during which the moneys are to be
7 accumulated for each purpose specified under subdivision (1) of this
8 subsection.
9 (3) The approximate amounts to be accumulated for each purpose specified
10 under subdivision (1) of this subsection.
11 (4) The sources from which moneys will be derived for each purpose specified
12 under subdivision (1) of this subsection.

13 (b) Changes Authorized. – The resolution or ordinance that establishes a special
14 revenue fund under subsection (a) of this section may be amended from time to time in the
15 same manner in which it was adopted. Such amendments may authorize the use of moneys in
16 the special revenue fund for conservation easement maintenance purposes that are not
17 previously provided for by resolution or ordinance.

18 (c) Funding. – Any special revenue fund established under this section shall consist of
19 funds received by appropriation from any other fund consistent with the limitations under
20 G.S. 159-13(b); grant moneys; donations; direct appropriations from the State or any of its
21 agencies or political subdivisions; or any other unrestricted funds appropriated to a soil and
22 water conservation district from any source. When the conservation easement maintenance
23 fund receives moneys or investment securities, the use of which is restricted by law, the
24 identity of such moneys or investment securities shall be maintained by appropriate accounting
25 entries.

26 (d) Investment of Fund. – All or any part of the cash balances of a special revenue fund
27 established under this section may be deposited at interest or invested as provided by
28 G.S. 159-30.

29 (e) Fund Withdrawals When District Adopts Its Own Budget Ordinance. – Withdrawals
30 from a special revenue fund established under this section may be authorized by resolution or
31 ordinance of the governing body of the soil and water conservation district. No withdrawal may
32 be authorized unless it is for a purpose that is specified in the resolution or ordinance under
33 subsection (a) of this section or in a resolution or ordinance under subsection (b) of this section.
34 The resolution or ordinance to authorize a withdrawal under this subsection shall authorize an
35 appropriation from the special revenue fund to one of the funds maintained pursuant to
36 G.S. 159-13(a); however, no withdrawal may be authorized that would result in an
37 appropriation for conservation easement maintenance purposes for which an adequate balance
38 of eligible moneys or investment securities is not available in the special revenue fund at the
39 time the resolution or ordinance under this subsection is adopted.

40 (f) Fund Withdrawals When Other Body Adopts District's Budget Ordinance. – If a soil
41 and water conservation district's budget ordinance is subject to adoption by another governing
42 body, then the governing body that is responsible for adopting the soil and water district's
43 budget ordinance must approve the appropriation of moneys from the special revenue fund
44 established under this section to one of the funds maintained pursuant to G.S. 159-13(a),
45 subject to the other limitations provided in subsection (e) of this section."

46 **SECTION 3.** This act becomes effective July 1, 2011.



SENATE BILL 309: Conservation Easements Stewardship Funds

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Jackson
Analysis of: First Edition

Date: June 14, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *Senate Bill 309 would allow soil and water conservation districts to establish special revenue funds for the maintenance of conservation easements.*

CURRENT LAW AND BACKGROUND: A conservation easement is a voluntary legal agreement that limits the uses of the property to those consistent with the landowner's and the easement holder's conservation objectives. The conservation easement allows landowners to protect features of their property that they wish to preserve, receive tax deductions, and maintain private ownership of the land. The landowner retains the property's ownership and use, while giving up certain rights in part or in full, such as the right to subdivide and develop the land.

Soil and water conservation districts are responsible for stewardship of natural resources in the State, including; water, soil, trees, etc. Conservation easements provide a way that soil and water conservation districts help private landowners conserve important soil and water resources on their property. Once a conservation easement has been established, maintenance of the easement is needed.

BILL ANALYSIS: Senate Bill 309 would allow soil and water conservation districts to establish a special revenue fund for the maintenance of conservation easements. The governing body of a soil and water conservation district must adopt a resolution or ordinance that includes certain provisions, such as:

- Specific purposes of maintaining conservation easements.
- Time period during which the monies are accumulated and approximate amounts.
- The monetary sources for each purpose specified.

Soil and water conservation districts can only withdraw from the fund for the purposes of maintenance of conservation easements. The district may amend the resolution or ordinance to include maintenance purposes not previously included. The district cannot make a withdrawal that would result in inadequate funds at the time the resolution or ordinance is adopted. Funding sources can include grant money, donations, direct appropriations from the State or any of its agencies, or any other unrestricted funds appropriated to a soil and water conservation district from any source. If a soil and water conservation district's budget ordinance is adopted by another governing body, then the governing body must approve the appropriation of money from the fund.

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

Mariah Matheson, research assistant for Senate Agriculture/Environment/Natural Resources, substantially contributed to this summary.

S309-SMSV-81(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 537

Short Title: Increase In Rem Foreclosure Fee. (Public)

Sponsors: Senator Hartsell.

Referred to: Finance.

April 12, 2011

A BILL TO BE ENTITLED
AN ACT TO INCREASE THE IN REM FORECLOSURE FEE.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-375 reads as rewritten:
"§ 105-375. In rem method of foreclosure.

...
(c) Notice to Taxpayer and Others. -

(1) Notice required. - The tax collector filing the certificate provided for in subsection (b) of this section, shall, at least 30 days prior to docketing the judgment, send notice of the tax lien foreclosure to the taxpayer, as defined in G.S. 105-273(17), at the taxpayer's last known address, and to all lienholders of record who have a lien against the taxpayer (including any liens referred to in the conveyance of the property to the taxpayer).

(2) Contents of notice. - All notice required by this subsection shall state that a judgment will be docketed and the proposed date of the docketing, that execution will be issued as provided by law, a brief description of the real property affected, and that the lien may be satisfied prior to judgment being entered.

(3) Service of notice. - The notice required by this subsection shall be sent to the taxpayer by registered or certified mail, return receipt requested.

(4) Additional efforts may be required. - If within 10 days following the mailing of the notice, a return receipt has not been received by the tax collector indicating receipt of the notice, then the tax collector shall do both of the following:

a. Make reasonable efforts to locate and notify the taxpayer and all lienholders of record prior to the docketing of the judgment and the issuance of the execution. Reasonable efforts may include posting the notice in a conspicuous place on the property, or, if the property has an address to which mail may be delivered, mailing the notice by first-class mail to the attention of the occupant.

b. Have a notice published in a newspaper of general circulation in the county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the taxpayer that a judgment will be docketed against the taxpayer.

(5) Costs of notice added to lien. - All costs of mailing and publication, plus a charge of two hundred fifty dollars ~~(\$50.00)~~ (\$250.00) to defray administrative costs, shall be added to the amount of taxes that are a lien on



1 the real property and shall be paid by the taxpayer to the taxing unit at the
2 time the taxes are collected or the property is sold.

3 "

4 **SECTION 2.** This act becomes effective July 1, 2011, and applies to in rem
5 foreclosure proceedings commenced on or after that date.

ASSUMPTIONS AND METHODOLOGY:

Although no data is available on the number of in rem foreclosure proceedings in the state, this method of foreclosure has become more common in recent years. The \$50 fee that is currently charged is not adequate to recover administrative costs to the taxing unit, particularly when a clear chain of title has to be established. The \$250 fee would more closely reflect the actual administrative costs associated with in rem foreclosures.

SOURCES OF DATA: NC Association of Assessing Officers; UNC School of Government

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY

Lynn Muchmore, Director
Fiscal Research Division

DATE: May 18, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 537: Increase In Rem Foreclosure Fee

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Hartsell
Analysis of: First Edition

Date: June 8, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *Senate Bill 537¹ would increase the administrative cost a taxing unit may impose for the in rem procedure of tax foreclosure from \$50 to \$250.*

CURRENT LAW: There are two different tax foreclosure procedures a taxing unit may pursue to enforce a lien on real property for delinquent taxes²: the mortgage style procedure³ which involves a standard civil action filed in State court and the in rem procedure⁴ which is an expedited procedure that permits a taxing unit to docket a judgment against the property in state court and proceed with a foreclosure sale within three months to two years after the judgment is docketed. In a mortgage style procedure, the costs of the action may be added to the amount of the taxes due; these costs may include a reasonable attorney's fee. In an in rem procedure, the costs of mailing and publication plus a \$50 charge to defray administrative expenses may be added to the amount of taxes due; if an attorney is used, the attorney fee is paid by the taxing unit and may not be added to the judgment as part of the costs of the action.⁵

BILL ANALYSIS: Senate Bill 537 would increase the amount of the charge for administrative costs that may be added to the tax due as part of the costs of the action in an in rem foreclosure proceeding for delinquent tax due. The current administrative cost of \$50 has not been increased since it was first allowed in 1987. Senate Bill 537 would increase the amount of the charge to \$250. Much of the administrative time required for an in rem foreclosure is spent researching the property's chain of title.

EFFECTIVE DATE: The bill would become effective July 1, 2011, and apply to in rem foreclosure proceedings commenced on or after that date.

Cindy Avrette, counsel to Senate Finance, substantially contributed to this summary.

S537-SMTM-34(e1) v1

¹ Senate Bill 537 is identical to House Bill 449, introduced by Rep. Setzer. House Bill 449 is currently in House Finance.

² Taxes become delinquent when interest begins to accrue on January 6 of the year in which the taxes were levied.

³ G.S. 105-374.

⁴ G.S. 105-375.

⁵ G.S. 105-375(j).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 385
Commerce Committee Substitute Adopted 5/23/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S385-CSR-71 [v.2]

6/14/2011 6:18:03 AM

Short Title: Small Business Assist. Records/Tax Payments.

(Public)

Sponsors:

Referred to:

March 22, 2011

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A BILL TO BE ENTITLED
AN ACT TO PROVIDE THAT SMALL BUSINESS ASSISTANCE RECORDS AND
FINANCIAL STATEMENTS ARE NOT PUBLIC RECORDS AND TO ALLOW A
PASS-THROUGH ENTITY THAT CLAIMS A TAX CREDIT UNDER ARTICLE 3J TO
TREAT THE CREDIT CLAIMED AS A TAX PAYMENT MADE BY OR ON BEHALF
OF THE TAXPAYER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-78 reads as rewritten:

"§ 115D-78. Access to information and public records; small business counseling information.

(a) In accordance with Chapter 132 of the General Statutes, all rules, regulations and public records of the State Board of Community Colleges, the Community Colleges System Office, and local boards of trustees shall be available for examination and reproduction on payment of fees by any person.

(b) Notwithstanding subsection (a) of this section, documents submitted to the North Carolina Community College System's Small Business Center Network by an individual seeking business counseling or technical assistance and documents created by the Network to provide the individual with counseling and technical assistance are not public records as defined by G.S. 132-1."

SECTION 2. Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-43.16. Small business counseling information.

Documents submitted to The University of North Carolina's Small Business and Technology Development Centers by an individual seeking business counseling or technical assistance and documents created by a Center to provide the individual with counseling and technical assistance are not public records as defined by G.S. 132-1."

SECTION 3. G.S. 143B-431 is amended by adding a new subsection to read:

"(f) Financial statements submitted to the Department by a private company or an individual seeking assistance from the Department are not public records as defined in G.S. 132-1."

SECTION 4. G.S. 105-129.84 is amended by adding a new subsection to read:



1 "(e) Credit Treated as Tax Payment. – The owner of a pass-through entity that claims a
2 credit under this Article may treat some or all of the credit claimed as a tax payment made by
3 or on behalf of the taxpayer. A credit claimed that is treated as a tax payment is subject to all
4 provisions of this section. A credit claimed that is treated as a tax payment does not accrue
5 interest under G.S. 105-241.21 if the payment is determined to be an overpayment. A taxpayer
6 that elects to have a credit claimed under this Article treated as a tax payment must make this
7 election when the return is filed."

8 **SECTION 5.** Section 4 of this act is effective for taxable years beginning on or
9 after January 1, 2011. The remainder of this act is effective when it becomes law.



SENATE BILL 385: Small Business Assistance Records

2011-2012 General Assembly

Committee:	House Finance	Date:	June 14, 2011
Introduced by:	Sen. Hartsell	Prepared by:	Cindy Avrette
Analysis of:	PCS to Second Edition S385-CSR-71		Committee Counsel

SUMMARY: *The House Proposed Committee Substitute for Senate Bill 385 would do the following:*

- **Exempt the following from the definition of a public record:**
 - *Documents submitted to either the North Carolina Community College System's Small Business Center Network or The University of North Carolina's Small Business and Technology Development Centers by an individual seeking business counseling or technical assistance; and*
 - *Documents created by either the Network or a center to provide the individual with business counseling or technical assistance.*
 - *Financial statements submitted to the Department of Commerce by a private company or an individual seeking assistance from the Department. (Added by the House PCS)*
- *Allow the owner of a pass-through entity that claims a credit under Article 3J to treat some or all of the credit as a tax payment made by or on behalf of the taxpayer. By treating the credit as a tax payment, the taxpayer would be able to deduct from another state's tax calculation the taxpayer's tax paid to North Carolina, including any amount for which it received a credit. (Added by the House PCS)*

PUBLIC RECORDS: G.S. 132-1(a) defines a public record as all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. G.S. 132-6 provides that every custodian of public records must permit any record in the custodian's custody to be inspected and examined by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law. Sections 1 through 3 of the bill would specifically exempt documents submitted by businesses to the Small Business Center, the Small Business and Technology Development Centers, or the Department of Commerce for business counseling or assistance.

CREDIT TREATED AS TAX PAYMENT: A taxpayer may typically receive a credit on a tax return for tax payments made another taxing unit. Section 4 of the bill would allow a pass-through entity to treat a tax credit received under Article 3J as a tax payment made by or on behalf of the taxpayer. As a tax payment, nonresident members of a pass-through entity may not only receive the benefit of the credit in North Carolina but also reduce their tax liability in their home state as well.

EFFECTIVE DATE: The provisions of the act related to the tax treatment of an Article 3J tax credit is effective for taxable years beginning on or after January 1, 2011. The remainder of the act is effective when it becomes law.

Senate PCS 385

Page 2

S385-SMRB-99(CSRB-71) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 532*
Finance Committee Substitute Adopted 6/2/11
Third Edition Engrossed 6/2/11
PROPOSED COMMITTEE SUBSTITUTE S532-CSTD-55 [v.1]

6/13/2011 6:49:43 PM

Short Title: ESC/Jobs Reform. (Public)

Sponsors:

Referred to:

April 12, 2011

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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,



1 Division of Employment Security. In these actions and proceedings, the Secretary of
2 Commerce or the Department of Commerce shall be substituted as a party upon proper
3 application to the courts or other administrative or quasi-judicial bodies.

4 Any business or other matter undertaken or commanded by any State program or
5 office or contract transferred by this act to the Employment Safety and Security Commission,
6 or by the commissioners or directors thereof, pertaining to or connected with the functions,
7 powers, obligations, and duties set forth herein, which is pending on the date this act becomes
8 effective, may be conducted and completed by the Employment Safety and Security
9 Commission in the same manner and under the same terms and conditions and with the same
10 effect as if conducted and completed by the original program, office, or commissioners, or
11 directors thereof.

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

13 **"§ 143B-431. Department of Commerce – functions.**

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

16 (1) All of the executive functions of the State in relation to economic
17 development and employment security, including by way of enumeration
18 and not of limitation, the expansion and recruitment of environmentally
19 sound industry, labor force development, the administration of
20 unemployment insurance, the promotion of and assistance in the orderly
21 development of North Carolina counties and communities, the promotion
22 and growth of the travel and tourism industries, the development of our
23 State's ports, energy resource management and energy policy development;

24 (2) All functions, powers, duties and obligations heretofore vested in an agency
25 enumerated in Article 15 of Chapter 143A, to wit:

- 26 a. The State Board of Alcoholic Control,
 - 27 b. The North Carolina Utilities Commission,
 - 28 ~~c. The Employment Security Commission,~~
 - 29 d. The North Carolina Industrial Commission,
 - 30 e. State Banking Commission and the Commissioner of Banks,
 - 31 f. Savings Institutions Division,
 - 32 g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
 - 33 h. Credit Union Commission,
 - 34 i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17,
35 2004.
 - 36 j. The North Carolina Mutual Burial Association Commission,
 - 37 k. The North Carolina Rural Electrification Authority,
 - 38 l. The North Carolina State Ports Authority,
- 39 all of which enumerated agencies are hereby expressly transferred by a Type
40 II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted
41 Department of Commerce; and

42"

43 **SECTION 1.5.** G.S. 143B-433 reads as rewritten:

44 **"§ 143B-433. Department of Commerce – organization.**

45 The Department of Commerce shall be organized to include:

46 (1) The following agencies:

- 47 a. The North Carolina Alcoholic Beverage Control Commission.
- 48 b. The North Carolina Utilities Commission.
- 49 ~~c. The Employment Security Commission.~~
- 50 d. The North Carolina Industrial Commission.

- 1 e. State Banking Commission.
- 2 f. Savings Institutions Division.
- 3 g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
- 4 h. Credit Union Commission.
- 5 i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17,
- 6 2004.
- 7 j. The North Carolina Mutual Burial Association Commission.
- 8 k. North Carolina Cemetery Commission.
- 9 l. The North Carolina Rural Electrification Authority.
- 10 m. Repealed by Session Laws 1985, c. 757, s. 179(d).
- 11 n. North Carolina Science and Technology Research Center.
- 12 o. The North Carolina State Ports Authority.
- 13 p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2,
- 14 2010.
- 15 q. Economic Development Board.
- 16 r. Labor Force Development Council.
- 17 s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective
- 18 September 30, 2000.
- 19 u. Navigation and Pilotage Commissions established by Chapter 76 of
- 20 the General Statutes.
- 21 v. Repealed by Session Laws 1993, c. 321, s. 313b.
- 22 (2) Those agencies which are transferred to the Department of Commerce
- 23 including the:
- 24 a. Community Assistance Division.
- 25 b. Community Development Council.
- 26 c. Employment and Training Division.
- 27 d. Job Training Coordinating Council.
- 28 (3) The Division of Employment Security.
- 29 (4) Such divisions as may be established pursuant to Article 1 of this Chapter."

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

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

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

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

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

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

- 47 (1) By virtue of their offices, the following department and agency heads or
- 48 their respective designees shall serve on the Commission: the Secretary of
- 49 the Department of Health and Human Services, the Chair-Assistant Secretary
- 50 of Commerce in charge of the Division of Employment Security

1 ~~Commission, Security,~~ the Superintendent of Public Instruction, the
2 President of the Community Colleges System Office, the Commissioner of
3 the Department of Labor, and the Secretary of the Department of
4 Commerce."

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

6 "**§ 143B-438.16. Trade Jobs for Success initiative established; funds; program**
7 **components and guidelines.**

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

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

- 16 (1) The ~~Chairman Assistant Secretary of Commerce in charge of the~~ Division of
17 ~~Employment Security Commission Security~~ or that officer's designee.
18 (2) The President of the Community Colleges System or that officer's designee.
19 (3) The State Auditor or that officer's designee.
20 (4) A representative of a statewide association to further the interests of business
21 and industry in North Carolina designated by the Secretary of Commerce.

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

- 24 (1) Displaced workers participating in the TJS initiative shall receive (i)
25 on-the-job training to learn new job skills and (ii) educational assistance or
26 remedial education specifically designed to help displaced workers qualify
27 for new jobs.
28 (2) Displaced workers participating in the TJS initiative shall not lose their
29 eligibility for unemployment insurance benefits while they are in the
30 program and may receive wage supplements, as appropriate.
31 (3) In-State relocation assistance, in appropriate instances, where participating
32 individuals must relocate to work for participating employers.
33 (4) Mentoring, both on and off the job, shall be provided to participants in a
34 dignified manner through telephone assistance and other appropriate means.
35 (5) Financial assistance and other incentives may be provided to participating
36 employers who provide jobs to participating displaced workers to help
37 defray the costs of providing the on-the-job training opportunities.
38 (6) Work provided by participating employers as part of the TJS initiative must
39 be full-time employment. Wages paid shall not be less than the hourly
40 entry-level wage normally paid by the employer.
41 (7) Staff of the Division of the Employment Security Commission, Security, in
42 conjunction with other appropriate staff of the Department of Commerce,
43 shall match participating displaced workers to the most suitable employer.
44 (8) Local Employment Security ~~Commission~~-offices operated by the Division of
45 Employment Security and community colleges shall enter into partnership
46 agreements with local chambers of commerce, and other appropriate
47 organizations, that would encourage employer participation in the TJS
48 initiative.
49 (9) Tracking of participating individuals and businesses by the Department of
50 Commerce ~~and the Employment Security Commission~~ to assure program

1 integrity and effectiveness and the compilation of data to generate the
2 reports necessary to evaluate the success of the TJS initiative.

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

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

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

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

20 "**§ 150B-1. Policy and scope.**

21 ...
22 (c) Full Exemptions. – This Chapter applies to every agency except:

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

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

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

- 43 ...
44 (18) The Department of Commerce for hearings and appeals authorized under
45 Chapter 96 of the General Statutes."

46 **SECTION 1.10.(c)** The Department of Commerce, Division of Employment
47 Security, shall adopt all existing rules and regulations in accordance with Article 2A of Chapter
48 150B of the General Statutes. Any existing rule that has not been readopted by December 31,
49 2012, shall expire.

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

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

4 "Article 1.

5 "~~Employment Security Commission~~ Division of Employment Security.

6 "**§ 96-1. Title.**

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

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

14 "**§ 96-3. ~~Employment Security Commission~~ Division of Employment Security.**

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

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

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

44 (c) ~~Salaries.~~ The chairman of the Employment Security Commission of North
45 Carolina, appointed by the Governor, shall be paid from the Employment Security
46 Administration Fund a salary payable on a monthly basis, which salary shall be the same as the
47 salary fixed by the General Assembly in the Current Operations Appropriations Act for the
48 Secretary of Commerce, and the members of the Commission, other than the chairman, shall
49 each receive the same amount per diem for their services as is provided for the members of
50 other State boards, commissions, and committees who receive compensation for their services

1 as such, including necessary time spent in traveling to and from his place of residence within
2 the State to the place of meeting while engaged in the discharge of the duties of his office and
3 his actual traveling expenses, the same to be paid from the aforesaid fund.

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

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

7 "§ 96-4. Administration-Administration; powers and duties of the Assistant Secretary;
8 Board of Review.

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

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

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

1 ~~(b)(d) Regulations and General and Special Rules. — Rule Making. — Rules adopted to~~
2 ~~implement the Employment Security Laws in accordance with this Chapter shall be made~~
3 ~~pursuant to Article 2A of Chapter 150B of the General Statutes, the Administrative Procedures~~
4 ~~Act. General and special rules may be adopted, amended, or rescinded by the Commission only~~
5 ~~after public hearing or opportunity to be heard thereon, of which proper notice has been given~~
6 ~~by mail to the last known address in cases of special rules, or by publication as herein provided,~~
7 ~~and by one publication as herein provided as to general rules. The Commission shall not take~~
8 ~~final action on a general or special rule that has a substantial economic impact, as defined in~~
9 ~~G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management has~~
10 ~~prepared a fiscal note for the rule. General rules shall become effective 10 days after filing with~~
11 ~~the Secretary of State and publication in one or more newspapers of general circulation in this~~
12 ~~State. Special rules shall become effective 10 days after notification to or mailing to the last~~
13 ~~known address of the individuals or concerns affected thereby. Before the adoption,~~
14 ~~amendment, or repeal of any permanent regulation, the Commission shall publish notice of the~~
15 ~~public hearing and offer any person an opportunity to present data, opinions, and arguments.~~
16 ~~The notice shall be published in one or more newspapers of general circulation in this State at~~
17 ~~least 10 days before the public hearing and at least 20 days prior to the proposed effective date~~
18 ~~of the proposed permanent regulation. The published notice of public hearing shall include the~~
19 ~~time and place of the public hearing; a statement of the manner in which data, opinions, and~~
20 ~~arguments may be submitted to or before the Commission; a statement of the terms or~~
21 ~~substance of the proposed regulation; a statement of whether a fiscal note has been or will be~~
22 ~~prepared for the proposed regulation; and the proposed effective date of the regulation. Any~~
23 ~~permanent regulation adopted after following the above procedure shall become effective on its~~
24 ~~effective date and after it is published in the manner provided for in subsection (c) as well as~~
25 ~~such additional publication as the Commission deems appropriate. Additionally, the~~
26 ~~Commission shall provide notice of adoption by mail to the last known addresses of all persons~~
27 ~~who submitted data, opinions, or arguments to the Commission with respect to the regulation.~~
28 ~~Temporary regulations may be adopted, amended, or rescinded by the Commission and shall~~
29 ~~become effective in the manner and at the time prescribed by the Commission but shall remain~~
30 ~~in force for no longer than 120 days.~~

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

36 ~~(d)(f) Personnel. — Subject to other provisions of this Chapter, the Commission-Assistant~~
37 ~~Secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of~~
38 ~~such officers, accountants, attorneys, experts, and other persons as may be necessary in the~~
39 ~~performance of its duties. It-the Division's duties under this Chapter. The Assistant Secretary~~
40 ~~shall provide for the holding of examinations to determine the qualifications of applicants for~~
41 ~~the positions so classified, and except for temporary appointments not to exceed six months in~~
42 ~~duration, shall appoint its personnel on the basis of efficiency and fitness as determined in such~~
43 ~~examinations. All positions shall be filled by persons selected and appointed on a nonpartisan~~
44 ~~merit basis. The Commission-Secretary of Commerce may delegate to any such person so~~
45 ~~appointed such power and authority as it-the Secretary deems reasonable and proper for the~~
46 ~~effective administration of this Chapter, and may, in its-his or her discretion, bond any person~~
47 ~~handling moneys or signing checks hereunder.~~

48 ~~(e)(g) Advisory Councils. — The Governor shall appoint a State Advisory Council~~
49 ~~composed of men and women representing employers, employees, and the general public, in~~
50 ~~equal numbers. The Chairman of the Commission shall be a member of the State Advisory~~

1 ~~Council and shall serve as its chairman. There shall be 15 members of the Council (other than~~
2 ~~its chairman) who shall each be appointed for a term of four years. The State Advisory Council~~
3 ~~shall be composed of the Assistant Secretary and 15 persons representing employers,~~
4 ~~employees, and the general public, to be appointed as follows:~~

5 (1) Five members appointed by the Governor.

6 (2) Five members appointed by the President Pro Tempore of the Senate.

7 (3) Five members appointed by the Speaker of the House of Representatives.

8 Each member shall be appointed for a term of four years. Vacancies on the State Advisory
9 Council shall be filled by the appointing authority. The Assistant Secretary shall serve as chair.
10 A quorum of the State Advisory Council shall consist of the chairman, or such appointed
11 member as he may designate, plus one half of the total appointed members. The function of the
12 Council shall be to aid the ~~Commission~~-Division in formulating policies and discussing
13 problems related to the administration of this Chapter. Each member of the State Advisory
14 Council attending meetings of the Council shall be paid the same amount per diem for his or
15 her services as is provided for the members of other State boards, commissions, and
16 committees who receive compensation for their services, including necessary time spent in
17 traveling to and from his place of residence within the State to the place of meeting while
18 engaged in the discharge of the duties of his office, and his actual mileage and subsistence at
19 the same rate allowed to State officials.

20 ~~(f)(h)~~ Employment Stabilization. - ~~The Commission,~~ Secretary of Commerce, in
21 consultation with the Assistant Secretary and with the advice and aid of its the advisory
22 councils, and through its appropriate divisions, shall take all appropriate steps to reduce and
23 prevent unemployment; to encourage and assist in the adoption of practical methods of
24 vocational training, retraining and vocational guidance; to investigate, recommend, advise, and
25 assist in the establishment and operation, by municipalities, counties, school districts, and the
26 State, of reserves for public works to be used in times of business depression and
27 unemployment; to promote the reemployment of unemployed workers throughout the State in
28 every other way that may be feasible; and to these ends to carry on and publish the results of
29 investigations and research studies.

30 ~~(g)(i)~~ Records and Reports. -

31 (1) Each employing unit shall keep true and accurate employment records,
32 containing such information as the ~~Commission~~-Division may prescribe.
33 ~~Such~~ The records shall be open to inspection and be subject to being copied
34 by the ~~Commission~~-Division or its authorized representatives at any
35 reasonable time and as often as may be necessary. Any employing unit doing
36 business in North Carolina shall make available in this State to the
37 ~~Commission,~~ Division, such information with respect to persons, firms, or
38 other employing units performing services for it which the ~~Commission~~
39 Secretary deems necessary in connection with the administration of this
40 Chapter. The ~~Commission~~-Division may require from any employing unit
41 any sworn or unsworn reports, with respect to persons employed by it, which
42 the ~~Commission~~Secretary deems necessary for the effective administration
43 of this Chapter.

44 (2) If the ~~Commission~~-Division finds that any employer has failed to file any
45 report or return required by this Chapter or any regulation made pursuant
46 hereto, or has filed a report which the ~~Commission~~-Division finds incorrect
47 or insufficient, the ~~Commission~~-Division may make an estimate of the
48 information required from such employer on the basis of the best evidence
49 reasonably available to it at the time, and make, upon the basis of such
50 estimate, a report or return on behalf of such employer, and the report or

1 return so made shall be deemed to be prima facie correct, and the
2 ~~Commission-Division~~ may make an assessment based upon such report and
3 proceed to collect contributions due thereon in the manner as set forth in
4 G.S. 96-10(b) of this Chapter: Provided, however, that no such report or
5 return shall be made until the employer has first been given at least 10 days'
6 notice by registered mail to the last known address of such employer:
7 Provided further, that no such report or return shall be used as a basis in
8 determining whether such employing unit is an employer within the meaning
9 of this Chapter.

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

14 ~~(h)(k)~~ Oaths and Witnesses. – In the discharge of the duties imposed by this Chapter, the
15 ~~chairman-Assistant Secretary, the Chair of the Board of Review, and any duly authorized~~
16 representative ~~or member of the Commission of the Division~~ shall have power to administer
17 oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel
18 the attendance of witnesses and the production of books, papers, correspondence, memoranda,
19 and other records deemed necessary as evidence in connection with a disputed claim or the
20 administration of this Chapter. Upon a motion, the ~~chairman-Assistant Secretary, the Chair of~~
21 ~~the Board of Review, and any duly authorized representative or member of the Commission of~~
22 ~~the Division~~ may quash a subpoena if, after a hearing, ~~the Commission finds any of the~~
23 ~~following: any of the following findings are made:~~

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

30 ~~(h)(l)~~ Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a
31 subpoena pursuant to subsection ~~(h)(k)~~ of this section shall be heard at least ~~10~~20 days prior to
32 the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is
33 subject to immediate judicial review in the Superior Court of Wake County or in the superior
34 court of the county where the person subject to the subpoena resides.

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

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

13 (k)(o) State-Federal Cooperation. – In the administration of this Chapter, the ~~Commission~~
14 ~~Board of Review or Division~~ shall cooperate, to the fullest extent consistent with the provisions
15 of this Chapter, with the federal agency, official, or bureau fully authorized and empowered to
16 administer the provisions of the Social Security Act approved August 14, 1935, as amended,
17 shall make such reports, in such form and containing such information as such federal agency,
18 official, or bureau may from time to time require, and shall comply with such provisions as
19 such federal agency, official, or bureau may from time to time find necessary to assure the
20 correctness and verification of such reports; and shall comply with the regulations prescribed
21 by such agency, official, or bureau governing the expenditures of such sums as may be allotted
22 and paid to this State under Title III of the Social Security Act for the purpose of assisting in
23 the administration of this Chapter. The ~~Commission-Board of Review or Division~~ shall further
24 make its records available to the Railroad Retirement Board, created by the Railroad
25 Retirement Act and the Railroad Unemployment Insurance Act, and shall furnish to the
26 Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies
27 thereof as the Board shall deem necessary for its purposes in accordance with the provisions of
28 section 303 (c) of the Social Security Act as amended.

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

33 The ~~Commission-Division~~ is authorized to make such investigations, secure and transmit
34 such information, make available such services and facilities and exercise such of the other
35 powers provided herein with respect to the administration of this Chapter as it deems necessary
36 or appropriate to facilitate the administration of any employment security or public
37 employment service law, and in like manner, to accept and utilize information, services and
38 facilities made available to this State by the agency charged with the administration of such
39 other employment security or public employment service law.

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

44 (l)(p) Reciprocal Arrangements. –

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

48 a. Services performed by an individual for a single employing unit for
49 which services are customarily performed in more than one state

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shall be deemed to be services performed entirely within any one of the states

1. In which any part of such individual's service is performed or
2. In which such individual has his residence or
3. In which the employing unit maintains a place of business, 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

1 purpose of G.S. 96-6, 96-9, 96-12 and 96-12.01. The ~~Commission-Division~~
2 is authorized to make to other states or federal agencies and to receive from
3 such other state or federal agencies, reimbursements from or to the fund, in
4 accordance with arrangements entered into pursuant to subdivision (1) of
5 this subsection.

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

13 ~~(m)(q)~~ The ~~Commission-Division~~ after due notice shall have the right and power to hold
14 and conduct hearings for the purpose of determining the rights, status and liabilities of any
15 "employing unit" or "employer" as said terms are defined by G.S. 96-8(4) and 96-8(5) and
16 subdivisions thereunder. The ~~Commission-Division~~ shall have the power and authority to
17 determine any and all questions and issues of fact or questions of law that may arise under the
18 Employment Security Law that may affect the rights, liabilities and status of any employing
19 unit or employer as heretofore defined by the Employment Security Law including the right to
20 determine the amount of contributions, if any, which may be due the ~~Commission-Division~~ by
21 any employer. Hearings may be before the ~~Commission or a Deputy Commissioner Board of~~
22 ~~Review or the Division~~ and shall be held in the central office of the ~~Commission-Division~~ or at
23 any other designated place within the State. They shall be open to the public and shall consist
24 of a review of the evidence taken by a hearing officer designated by the ~~Commission-Board of~~
25 ~~Review~~ and a determination of the law applicable to that evidence. The ~~Commission-Division~~
26 shall provide for the taking of evidence by a hearing officer who shall be a member of the legal
27 staff of the ~~Commission-officer~~. Such hearing officer shall have the same power to issue
28 subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the
29 ~~Commission-Division~~ and such hearings shall be recorded, and he shall transmit all testimony
30 and records of such hearings to the ~~Commission-Board of Review or Division~~ for its
31 determination. All such hearings conducted by such hearing officer shall be scheduled and held
32 in any county in this State in which the employing unit or employer either resides, maintains a
33 place of business, or conducts business; however, the ~~Commission-Board of Review or~~
34 ~~Division~~ may require additional testimony at any hearings held by it at its office. From all
35 decisions or determinations made by the ~~Commission or a Deputy Commissioner Assistant~~
36 ~~Secretary or the Board of Review~~, any party affected thereby shall be entitled to an appeal to
37 the superior court. Before such a party shall be allowed to appeal, he the party shall within 10
38 days after notice of such decision or determination, file with the ~~Commission-Board of Review~~
39 exceptions to the decision or the ~~determination of the Commission, determination~~, which
40 exceptions will state the grounds of objection to such the decision or determination. If any one
41 of such the exceptions shall be overruled then such the party may appeal from the order
42 overruling the exceptions, and shall, within 10 days after the decision overruling the
43 exceptions, give notice of his appeal. When an exception is made to the facts as found by the
44 ~~Commission, Board of Review~~, the appeal shall be to the superior court in term time but the
45 decision or determination of the ~~Commission-Division~~ upon such review in the superior court
46 shall be conclusive and binding as to all questions of fact supported by any competent
47 evidence. When an exception is made to any rulings of law, as determined by the ~~Commission,~~
48 ~~Board of Review~~, the appeal shall be to the judge of the superior court at chambers. The party
49 appealing shall, within 10 days after the notice of appeal has been served, file with the
50 ~~Commission-Board of Review~~ exceptions to the decision or determination overruling the

1 exception which statement shall assign the errors complained of and the grounds of the appeal.
2 Upon the filing of such statement the ~~Commission~~ Board of Review shall, within 30 days,
3 transmit all the papers and evidence considered by it, together with the assignments of errors
4 filed by the appellant to a judge of the superior court holding court or residing in some district
5 in which such appellant either resides, maintains a place of business or conducts business, or,
6 unless the appellant objects after being given reasonable opportunity to object, to a judge of the
7 Superior Court of Wake County: Provided, however, the 30-day period specified herein may be
8 extended by agreement of parties. ~~If there be no exceptions to any facts as found by the~~
9 ~~Commission the facts so found shall be binding upon the court and it shall be heard by the~~
10 ~~judge at chambers at some place in the district, above mentioned, of which all parties shall have~~
11 ~~10 days' notice.~~

12 ~~(n)(r)~~ (r) The cause shall be entitled "State of North Carolina on Relationship of the
13 ~~Employment Security Commission~~ Division of Employment Security, Department of
14 Commerce, of North Carolina against (here insert name of appellant)," and if there are
15 ~~exceptions to any facts found by the Commission~~ Board of Review, it shall be placed on the
16 civil issue docket of such court and shall have precedence over other civil actions except those
17 described in G.S. 96-10(b), and such cause shall be tried under such rules and regulations as are
18 prescribed for the trial of other civil causes. By consent of all parties the appeal may be held
19 and determined at chambers before any judge of a district in which the appellant either resides,
20 maintains a place of business or conducts business, or said appeal may be heard before any
21 judge holding court therein, or in any district in which the appellant either resides, maintains a
22 place of business or conducts business. Either party may appeal to the appellate division from
23 the judgment of the superior court under the same rules and regulations as are prescribed by
24 law for appeals, except that if an appeal shall be taken on behalf of the ~~Employment Security~~
25 ~~Commission of North Carolina~~ Department of Commerce, it shall not be required to give any
26 undertaking or make any deposit to secure the cost of such appeal and such court may advance
27 the cause on its docket so as to give the same a speedy hearing.

28 ~~(o)(s)~~ (s) The decision or determination of the ~~Commission~~ Division when docketed in the
29 office of the clerk of the superior court of any county and when properly indexed and
30 cross-indexed shall have the same force and effect as a judgment rendered by the superior
31 court, and if it shall be adjudged in the decision or determination of the ~~Commission~~ Division
32 that any employer is indebted to the ~~Commission~~ Division for contributions, penalties and
33 interest or either of the same, then said judgment shall constitute a lien upon any realty owned
34 by said employer in the county only from the date of docketing of such decision or
35 determination in the office of the clerk of the superior court and upon personalty owned by said
36 employer in said county only from the date of levy on such personalty, and upon the execution
37 thereon no homestead or personal property exemptions shall be allowed; provided, that nothing
38 herein shall affect any rights accruing to the ~~Commission~~ Division under G.S. 96-10. The
39 provisions of this section, however, shall not have the effect of releasing any liens for
40 contributions, penalties or interest, or either of the same, imposed by other law, nor shall they
41 have the effect of postponing the payment of said contributions, penalties or interest, or
42 depriving the ~~said Employment Security Commission of North Carolina~~ Division of
43 Employment Security of any priority in order of payment provided in any other statute under
44 which payment of the said contributions, penalties and interest or either of the same may be
45 required. The superior court or any appellate court shall have full power and authority to issue
46 any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of
47 said decision or determination of the ~~Commission~~ Division or to collect any amount of
48 contribution, penalty or interest adjudged to be due the ~~Commission~~ Division by said decision
49 or determination. In case of an appeal from any decision or determination of the ~~Commission~~
50 Division to the superior court or from any judgment of the superior court to the appellate

1 division all proceedings to enforce said judgment, decision, or determination shall be stayed
2 until final determination of such appeal but no proceedings for the collection of any amount of
3 contribution, penalty or interest due on same shall be suspended or stayed unless the employer
4 or party adjudged to pay the same shall file with the clerk of the superior court a bond in such
5 amount not exceeding double the amount of contribution, penalty, interest or amount due and
6 with such sureties as the clerk of the superior court deems necessary conditioned upon the
7 payment of the contribution, penalty, interest or amount due when the appeal shall be finally
8 decided or terminated.

9 ~~(p)~~(t) The conduct of hearings shall be governed by suitable rules and regulations
10 established by the ~~Commission-Secretary of Commerce~~. The manner in which appeals and
11 hearings shall be presented and conducted before the ~~Commission-Division~~ shall be governed
12 by suitable rules and regulations established by ~~it-the Secretary~~. The ~~Commission-Division~~
13 shall not be bound by common-law or statutory rules of evidence or by technical or formal
14 rules of procedure but shall conduct hearings in such manner as to ascertain the substantial
15 rights of the parties.

16 ~~(q)~~(u) Notices of hearing shall be issued by the ~~Commission-Division~~ or its authorized
17 representative and sent by registered mail, return receipt requested, to the last known address of
18 any employing unit, employers, persons, or firms involved. The notice shall be sent at least
19 ~~10~~15 days prior to the hearing date and shall contain notification of the place, date, hour, and
20 purpose of the hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the
21 ~~Commission-Division~~ or its authorized representative and shall order ~~him-the witness~~ to appear
22 at the time, date and place shown thereon. Any bond or other undertaking required to be given
23 in order to suspend or stay any execution shall be given payable to the ~~Employment Security~~
24 ~~Commission of North Carolina-Department of Commerce~~. Any such bond or other undertaking
25 may be forfeited or sued upon as are any other undertakings payable to the State.

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

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

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

- 35 (1) Confidentiality of Information Contained in Records and Reports. – (i)
36 Except as hereinafter otherwise provided, it shall be unlawful for any person
37 to obtain, disclose, or use, or to authorize or permit the use of any
38 information which is obtained from any employing unit, individual, or unit
39 of government pursuant to the administration of this Chapter or
40 G.S. 108A-29. (ii) Any claimant or employer or their legal representatives
41 shall be supplied with information from the records of the ~~Employment~~
42 ~~Security-Commission-Division~~ to the extent necessary for the proper
43 presentation of claims or defenses in any proceeding under this Chapter.
44 Notwithstanding any other provision of law, any claimant may be supplied,
45 subject to restrictions as the ~~Commission-Division~~ may by regulation
46 prescribe, with any information contained in his payment record or on his
47 most recent monetary determination, and any individual, as well as any
48 interested employer, may be supplied with information as to the individual's
49 potential benefit rights from claim records. (iii) Subject to restrictions as the
50 ~~Commission-Secretary~~ may by regulation provide, information from the

1 records of the ~~Employment Security Commission Division~~ may be made
2 available to any agency or public official for any purpose for which
3 disclosure is required by statute or regulation. (iv) The ~~Commission Division~~
4 may, in its sole discretion, permit the use of information in its possession by
5 public officials in the performance of their public duties. (v) The
6 ~~Commission Division~~ shall release the payment and the amount of
7 unemployment compensation benefits upon receipt of a subpoena in a
8 proceeding involving child support. (vi) The ~~Commission Division~~ shall
9 furnish to the State Controller any information the State Controller needs to
10 prepare and publish a comprehensive annual financial report of the State or
11 to track debtors of the State.

12 (2) Job Service Information. – (i) Except as hereinafter otherwise provided it is
13 unlawful for any person to disclose any information obtained by the ~~North~~
14 ~~Carolina State Employment Service Division~~ from workers, employers,
15 applicants, or other persons or groups of persons in the course of
16 administering the State Public Employment Service Program. Provided,
17 however, that if all interested parties waive in writing the right to hold such
18 information confidential, the information may be disclosed and used but
19 only for those purposes that the parties and the ~~Commission Division~~ have
20 agreed upon in writing. (ii) The ~~Employment Service Division~~ shall make
21 public, through the newspapers and any other suitable media, information as
22 to job openings and available applicants for the purpose of supplying the
23 demand for workers and employment. (iii) The Labor Market Information
24 ~~Division Unit~~ shall collect, collate, and publish statistical and other
25 information relating to the work under the ~~Commission's Division's~~
26 jurisdiction; investigate economic developments, and the extent and causes
27 of unemployment and its remedies with the view of preparing for the
28 information of the General Assembly such facts as in the
29 ~~Commission's Division's~~ opinion may make further legislation desirable. (iv)
30 Except as provided by ~~Commission regulation, rules adopted by the~~
31 ~~Division~~, any information published pursuant to this subdivision shall not be
32 published in any manner revealing the identity of the applicant or the
33 employing unit.

34 (3) Penalties for Disclosure or Improper Use. – Any person violating any
35 provision of this section may be fined not less than twenty dollars (\$20.00)
36 nor more than two hundred dollars (\$200.00), ~~or imprisoned for not longer~~
37 ~~than 90 days, or both. (\$200.00).~~

38 (4) Regulations. – The ~~Commission Division~~ may provide by ~~regulation rule~~ for
39 procedures by which requests for information will be considered and the
40 methods by which such information may be disclosed. The ~~Commission~~
41 ~~Division~~ is authorized to provide by regulation for the assessment of fees for
42 securing and copying information released under this section.

43 (5) Privileged Status of Letters and Reports and Other Information Relating to
44 Administration of this Chapter. – All letters, reports, communication, or any
45 other matters, either oral or written, including any testimony at any hearing,
46 from the employer or employee to each other or to the ~~Commission Division~~
47 or any of its agents, representatives, or employees, which letters, reports, or
48 other communication shall have been written, sent, delivered, or made in
49 connection with the requirements of the administration of this Chapter, shall
50 be absolutely privileged communication in any civil or criminal proceedings

1 except proceedings pursuant to or involving the administration of this
2 Chapter and except proceedings involving child support and only for the
3 purpose of establishing the payment and amount of unemployment
4 compensation benefits. Nothing in this subdivision shall be construed to
5 prohibit the ~~Commission, Division,~~ upon written request and on a
6 reimbursable basis only, from disclosing information from the records of a
7 proceeding ~~before an appeals referee, deputy commissioner, or other hearing~~
8 ~~officer by whatever name called,~~ compiled for the purpose of resolving
9 issues raised pursuant to the Employment Security Law.

10 (6) Nothing in this subsection (t) shall operate to relieve any claimant or
11 employing unit from disclosing any information required by this Chapter or
12 by regulations promulgated thereunder.

13 (7) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~
14 Division from allowing any individual or entity to examine and copy any
15 report, return, or any other written communication made by that individual
16 or entity to the ~~Commission, Division,~~ its agents, or its employees.

17 (7a) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~
18 Division from disclosing, upon request and on a reimbursable basis only, to
19 officers and employees of the Department of Housing and Urban
20 Development and to representatives of a public housing agency as defined in
21 Section 303(i)(4) of the Social Security Act, any information from the
22 records of the ~~Employment Security Commission-Division~~ with respect to
23 individuals applying for or participating in any housing assistance program
24 administered by the Department of Housing and Urban Development who
25 have signed an appropriate consent form approved by the Secretary of
26 Housing and Urban Development. It is the purpose of this paragraph to
27 assure the ~~Employment Security Commission's~~ compliance with Section
28 303(i)(1) of the Social Security Act and it shall be construed accordingly.

29 (7b) Nothing in this subsection (t) shall be construed to prevent the ~~Commission~~
30 Division from disclosing, upon request and on a reimbursable basis, to the
31 Secretary of Health and Human Services, any information from the records
32 of the ~~Employment Security Commission-Division~~ as may be required by
33 Section 303(h)(1) of the Social Security Act. It is the purpose of this
34 paragraph to assure compliance with Section 303(h)(1) of the Social Security
35 Act and it shall be construed accordingly.

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

46 Provided, however, any finding of fact or law, judgment, determination,
47 conclusion, or final order made by an ~~adjudicator, appeals referee,~~
48 ~~commissioner, the Commission~~ the Assistant Secretary, the Board of
49 Review, a hearing officer, appeals referee, or any other person acting under
50 the authority of the ~~Commission-Division~~ pursuant to the Employment

1 Security Law shall be admissible in proceedings before the North Carolina
2 Industrial Commission.

3 ~~(u)~~(y) Service of process upon the ~~Commission-Division~~ in any proceeding instituted
4 before an administrative agency or court of this State shall be pursuant to G.S. 1A-1, Rule
5 4(j)(4); however, notice of the requirement to withhold unemployment compensation benefits
6 pursuant to G.S. 110-136.2(f) shall be served upon the process agent for the ~~Employment~~
7 ~~Security-Commission-Division~~ by regular or courier mail.

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

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

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

31 "**§ 96-5. Employment Security Administration Fund.**

32 (a) Special Fund. – There is hereby created in the State treasury a special fund to be
33 known as the Employment Security Administration Fund. All moneys which are deposited or
34 paid into this fund shall be continuously available to the ~~Commission-Secretary~~ for expenditure
35 in accordance with the provisions of this Chapter, and shall not lapse at any time or be
36 transferred to any other fund. The Employment Security Administration Fund, except as
37 otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act
38 (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys
39 in this fund which are received from the federal government or any agency thereof or which are
40 appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for
41 the purposes and in the amounts found necessary by the Secretary of Labor for the proper and
42 efficient administration of this Chapter. The fund shall consist of all moneys appropriated by
43 this State, all moneys received from the United States of America, or any agency thereof,
44 including the Secretary of Labor, and all moneys received from any other source for such
45 purpose, and shall also include any moneys received from any agency of the United States or
46 any other state as compensation for services or facilities supplied to such agency, any amounts
47 received pursuant to any surety bond or insurance policy or from other sources for losses
48 sustained by the Employment Security Administration Fund or by reason of damage to
49 equipment or supplies purchased from moneys in such fund, and any proceeds realized from
50 the sale or disposition of any such equipment or supplies which may no longer be necessary for

1 the proper administration of this Chapter: Provided, any interest collected on contributions
2 and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment
3 Security Administration Fund created by subsection (c) of this section. All moneys in this fund
4 shall be deposited, administered, and disbursed in the same manner and under the same
5 conditions and requirements as is provided by law for other special funds in the State treasury,
6 and shall be maintained in a separate account on the books of the State treasury. The State
7 Treasurer shall be liable on his official bond for the faithful performance of his duties in
8 connection with the Employment Security Administration Fund provided for under this
9 Chapter. Such liability on the official bond shall be effective immediately upon the enactment
10 of this provision, and such liability shall exist in addition to any liability upon any separate
11 bond existent on the effective date of this provision, or which may be given in the future. All
12 sums recovered on any surety bond for losses sustained by the Employment Security
13 Administration Fund shall be deposited in said fund.

14 (b) Replacement of Funds Lost or Improperly Expended. – If any moneys received
15 from the Secretary of Labor under Title III of the Social Security Act, or any unencumbered
16 balances in the Employment Security Administration Fund or any moneys granted to this State
17 pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this
18 State or its political subdivisions and matched by such moneys granted to this State pursuant to
19 the provisions of the Wagner-Peyser Act, are found by the Secretary of Labor, because of any
20 action or contingency, to have been lost or expended for purposes other than, or in amounts in
21 excess of those found necessary by the Secretary of Labor for the proper administration of this
22 Chapter, it is the policy of this State that such moneys, not available from the Special
23 Employment Security Administration Fund established by subsection (c) of this section, shall
24 be replaced by moneys appropriated for such purpose from the general funds of this State to the
25 Employment Security Administration Fund for expenditure as provided in subsection (a) of this
26 section. Upon receipt of notice of such a finding by the Secretary of Labor, the ~~Commission~~
27 Division shall promptly pay from the Special Employment Security Administration Fund such
28 sum if available in such fund; if not available, it shall promptly report the amount required for
29 such replacement to the Governor and the Governor shall, at the earliest opportunity, submit to
30 the legislature a request for the appropriation of such amount.

31 (c) There is hereby created in the State treasury a special fund to be known as the
32 Special Employment Security Administration Fund. All interest and penalties, regardless of
33 when the same became payable, collected from employers under the provisions of this Chapter
34 subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly,
35 shall be paid into this fund. No part of said fund shall be expended or available for expenditure
36 in lieu of federal funds made available to the ~~Commission-Secretary~~ for the administration of
37 this Chapter. Said fund shall be used by the ~~Commission-Division~~ for the payment of costs and
38 charges of administration which are found by the Secretary of Labor not to be proper and valid
39 charges payable out of any funds in the Employment Security Administration Fund received
40 from any source and shall also be used by the ~~Commission-Secretary~~ for: (i) extensions, repairs,
41 enlargements and improvements to buildings, and the enhancement of the work environment in
42 buildings used for ~~Commission-Division~~ business; (ii) the acquisition of real estate, buildings
43 and equipment required for the expeditious handling of ~~Commission-Division~~ business; and
44 (iii) the temporary stabilization of federal funds cash flow. The ~~Employment Security~~
45 ~~Commission-Division~~ may use funds either from the Special Employment Security
46 ~~Commission-Administration~~ Fund created by this subsection or from federal funds, or from a
47 combination of the two, to offset the costs of compliance with Article 7A of Chapter 163 of the
48 General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest
49 allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such
50 interest was deposited in said fund: Provided further, that in those cases where an employer

1 takes credit for a previous overpayment of interest on contributions due by such employer
2 pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such
3 overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the
4 Special Employment Security Administration Fund. The Special Employment Security
5 Administration Fund, except as otherwise provided in this Chapter, shall be subject to the
6 provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel
7 Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and
8 disbursed in the same manner and under the same conditions and requirements as is provided
9 by law for other special funds in the State treasury, and shall be maintained in a separate
10 account on the books of the State treasury. The State Treasurer shall be liable on his official
11 bond for the faithful performance of his duties in connection with the Special Employment
12 Security Administration Fund provided for under this Chapter. Such liability on the official
13 bond shall be effective immediately upon the enactment of this provision, and such liability
14 shall exist in addition to any liability upon any separate bond existent on the effective date of
15 this provision, or which may be given in the future. All sums recovered on any surety bond for
16 losses sustained by the Special Employment Security Administration Fund shall be deposited in
17 said fund. The moneys in the Special Employment Security Administration Fund shall be
18 continuously available to the ~~Commission~~-Division for expenditure in accordance with the
19 provisions of this section.

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

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

30 (e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General
31 Assembly of North Carolina to the ~~Employment Security Commission~~-Department of
32 Commerce, Division of Employment Security out of funds credited to and held in this State's
33 account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States
34 pursuant to and in accordance with section 903 of the Social Security Act, the ~~Commission~~
35 Division is authorized to utilize such funds for the administration of the Employment Security
36 Law, including personal services, operating and other expenses incurred in the administration
37 of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or
38 parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings
39 or parts of buildings, suitable for use in this State by the ~~Employment Security Commission,~~
40 Division, and for the payment of expenses incurred for the construction, maintenance,
41 improvements or repair of, or alterations to, such real or personal property. Provided, that any
42 such funds appropriated by the General Assembly shall not exceed the amount in the
43 Unemployment Trust Fund which may be obligated for expenditure for such purposes; and
44 provided that said funds shall not be obligated for expenditure, as herein provided, after the
45 close of the two-year period which begins on the effective date of the appropriation.

46 (f) Employment Security ~~Commission~~-Reserve Fund. – There is created in the State
47 treasury a special trust fund, separate and apart from all other public moneys or funds of this
48 State, to be known as the Employment Security ~~Commission~~-Reserve Fund, hereinafter
49 "Reserve Fund". Part of the proceeds from the tax on contributions imposed in G.S. 96-9(b)(3)j
50 shall be credited to the Reserve Fund, as specified in that statute. The moneys in the Reserve

1 Fund may be used by the ~~Commission~~ Secretary for loans to the Unemployment Insurance
2 Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay
3 any interest required on advances under Title XII of the Social Security Act, and shall be
4 continuously available to the ~~Commission~~ Division for expenditure in accordance with the
5 provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian
6 and shall invest said moneys in accordance with existing law as well as rules and regulations
7 promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in
8 accordance with the directions of the ~~Commission~~ Secretary and in accordance with such
9 regulations as the ~~Commission~~ Secretary may prescribe.

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

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

- 15 (1) Fund programs, specifically for the benefit of unemployed workers or
16 workers who have received notice of long-term layoff or permanent
17 unemployment, which will enhance the employability of workers, including,
18 but not limited to, adult basic education, adult high school or equivalency
19 programs, occupational skills training programs, assessment, job counseling
20 and placement programs;
- 21 (2) Continue operation of local ~~Employment Security Commission~~ Division
22 offices throughout the State; or
- 23 (3) Provide refunds to employers.

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

31 (g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not
32 more than a total of twenty-five million dollars (\$25,000,000) of funds in the Employment
33 Security ~~Commission~~ Reserve Fund established under subsection (f) of this section in securities
34 issued by the North Carolina Technological Development Authority, Inc., the proceeds for
35 which are directed to support investment in venture capital funds. The State Treasurer shall
36 report to the Joint Legislative Commission on Governmental Operations and the Fiscal
37 Research Division on October 1 and March 1 of each fiscal year on investments made pursuant
38 to this subsection."

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

40 **"§ 96-6. Unemployment Insurance Fund.**

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

- 45 (1) All contributions collected under this Chapter, together with any interest
46 earned upon any moneys in the fund;
- 47 (2) Any property or securities acquired through the use of moneys belonging to
48 the fund;
- 49 (3) All earnings of such property or securities;

- 1 (4) Any moneys received from the federal unemployment account in the
2 unemployment trust fund in accordance with Title XII of the Social Security
3 Act as amended;
- 4 (5) All moneys credited to this State's account in the Unemployment Trust Fund
5 pursuant to section 903 of Title IX of the Social Security Act, as amended,
6 (U.S.C.A. Title 42, sec. 1103 (a));
- 7 (6) All moneys paid to this State pursuant to section 204 of the Federal-State
8 Extended Unemployment Compensation Act of 1970;
- 9 (7) Reimbursement payments in lieu of contributions.

10 All moneys in the fund shall be commingled and undivided.

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

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

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

39 (c) Moneys shall be requisitioned from this State's account in the unemployment trust
40 fund solely for the payment of benefits (including extended benefits) and in accordance with
41 regulations prescribed by the ~~Commission-Secretary~~. The ~~Commission-Division~~ shall, from
42 time to time, requisition from the unemployment trust fund such amounts, not exceeding the
43 accounts standing to its account therein, as it deems necessary for the payment of benefits for a
44 reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the
45 benefit account and shall pay all warrants drawn thereon as provided in G.S. 143B-426.40G
46 and requisitioned by the ~~Commission-Division~~ for the payment of benefits solely from such
47 benefit account. Expenditures of such moneys in the benefit account and refunds from the
48 clearing account shall not be subject to approval of the Budget Bureau or any provisions of law
49 requiring specific appropriations or other formal release by State officers of money in their
50 custody. All warrants issued upon the treasurer for the payment of benefits and refunds shall be

1 issued as provided in G.S. 143B-426.40G as requisitioned by the ~~chairman of the Commission~~
 2 ~~Secretary, the Assistant Secretary, or a duly authorized agent of the Commission-Division~~ for
 3 that purpose. Any balance of moneys requisitioned from the unemployment trust fund which
 4 remains unclaimed or unpaid in the benefit account after the expiration of the period for which
 5 such sums were requisitioned shall either be deducted from estimates for, and may be utilized
 6 for the payment of, benefits during succeeding periods, or, in the discretion of the ~~Commission,~~
 7 ~~Division,~~ shall be redeposited with the Secretary of the Treasury of the United States of
 8 America, to the credit of this State's account in the unemployment trust fund, as provided in
 9 subsection (b) of this section.

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

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

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

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

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

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

42 **SECTION 2.7.(b)** G.S. 96-8 is amended by adding the following new subdivisions

43 to read:

44 "**§ 96-8. Definitions.**

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

46 ...

47 (3a) Department. – The North Carolina Department of Commerce.

48 (3b) Division or DES. – The Department's Division of Employment Security.

49 (3c) EIS. – The Employment Insurance Section of DES.

50 (3d) ESS. – The Employment Security Section of DES.

1 ...
2 (8c) Secretary. – The Secretary of the Department of Commerce or the Assistant
3 Secretary in charge of the Division of Employment Security.
4"

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

6 "(5) "Employer" means:

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

28 b. Any employing unit which acquired the organization, trade or
29 business, or substantially all the assets thereof, of another which at
30 the time of such acquisition was an employer subject to this Chapter,
31 or which acquired a part of the organization, trade, or business of
32 another, which at the time of such acquisition was an employer
33 subject to this Chapter; provided, such other would have been an
34 employer under paragraph a of this subdivision if such part had
35 constituted its entire organization, trade, or business; provided
36 further, that G.S. 96-10, subsection (d), shall not be applicable to an
37 individual or employing unit acquiring such part of the organization,
38 trade or business. The provisions of G.S. 96-11(a) to the contrary
39 notwithstanding, any employing unit which becomes an employer
40 solely by virtue of the provisions of this paragraph shall not be liable
41 for contributions based on wages paid or payable to individuals with
42 respect to employment performed by such individuals for such
43 employing unit prior to the date of acquisition of the organization,
44 trade, business, or a part thereof as specified herein, or substantially
45 all the assets of another, which at the time of such acquisition was an
46 employer subject to this Chapter. This provision shall not be
47 applicable with respect to any employing unit which is an employer
48 by reason of any other provision of this Chapter. A successor by total
49 acquisition under the provisions of this paragraph may be relieved
50 from coverage hereunder by making written application with the

1 ~~Commission~~ Division within 60 days from the date the ~~Commission~~
 2 Division mails him a notification of his liability and provided the
 3 ~~Commission~~ Division finds the predecessor was an employer at the
 4 time of such acquisition only because such predecessor had failed to
 5 make application for termination of coverage as provided in
 6 G.S. 96-11 of this Chapter. A successor under the provisions of this
 7 paragraph who becomes an employer by virtue of having acquired a
 8 part of the organization, trade or business of the predecessor
 9 hereunder may be relieved from coverage upon making written
 10 application with the ~~Commission~~ Division within 60 days from the
 11 date the ~~Commission~~ Division mails him a notification of his liability
 12 and the ~~Commission~~ Division finds that the predecessor could have
 13 terminated by making the application under G.S. 96-11 if the part
 14 acquired had constituted all of the predecessor's business."

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

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

28 ...
 29 f. The term "employment" shall include:

30 ...
 31 2. Services covered by an election duly approved by the
 32 ~~Commission~~ Division in accordance with an arrangement
 33 pursuant to G.S. 96-4, subsection (l), of this Chapter during
 34 the effective period of such election.

35 ...
 36 k. The term "employment" does not include:

37 ...
 38 3. Service with respect to which unemployment insurance is
 39 payable under an employment security system established by
 40 an act of Congress: Provided, that the ~~Commission~~ Division
 41 is hereby authorized and directed to enter into agreements
 42 with the proper agencies under such act of Congress, which
 43 agreements shall become effective 10 days after publication
 44 thereof in the manner provided in G.S. 96-4(b) for general
 45 rules, to provide potential rights to benefits under this
 46 Chapter, acquired rights to unemployment insurance under
 47 act of Congress, or who have, after acquiring potential rights
 48 to unemployment insurance, under such act of Congress,
 49 acquired rights to benefits under this Chapter.

50 "

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

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

3 a. For the purpose of establishing a benefit year, an individual shall be
4 deemed to be unemployed:

5 1. If the individual has payroll attachment but, because of lack
6 of work during the payroll week for which the individual is
7 requesting the establishment of a benefit year, the individual
8 worked less than the equivalent of three customary scheduled
9 full-time days in the establishment, plant, or industry in
10 which the individual has payroll attachment as a regular
11 employee. If a benefit year is established, it shall begin on the
12 Sunday preceding the payroll week ending date.

13 2. If the individual has no payroll attachment on the date the
14 individual reports to apply for unemployment insurance. If a
15 benefit year is established, it shall begin on the Sunday of the
16 calendar week with respect to which the claimant met the
17 reporting requirements provided by ~~Commission~~
18 ~~regulation~~ rules adopted by the Division.

19 b. For benefit weeks within an established benefit year, a claimant shall
20 be deemed to be:

21 1. Totally unemployed; irrespective of job attachment, if a
22 claimant's earnings for such week, including payments
23 defined in subparagraph c below, would not reduce the
24 claimant's weekly benefit amount as prescribed by
25 G.S. 96-12(c).

26 2. Partially unemployed, if the claimant has payroll attachment
27 but because of lack of work during the payroll week for
28 which the claimant is requesting benefits the claimant worked
29 less than three customary scheduled full-time days in the
30 establishment, plant, or industry in which the claimant is
31 employed and whose earnings from such employment
32 (including payments defined in subparagraph c below) would
33 qualify the claimant for a reduced payment as prescribed by
34 G.S. 96-12(c).

35 3. Part-totally unemployed, if the claimant had no job
36 attachment during all or part of such week and whose
37 earnings for odd jobs or subsidiary work (including payments
38 defined in subparagraph c below) would qualify the claimant
39 for a reduced payment as prescribed by G.S. 96-12(c).

40 c. (For suspension of enforcement, see note) No individual shall be
41 considered unemployed if, with respect to the entire calendar week,
42 the individual is receiving, has received, or will receive as a result of
43 the individual's separation from employment, remuneration in the
44 form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii)
45 terminal leave pay, (iv) separation pay, or (v) dismissal payments or
46 wages by whatever name. Provided, however, if such payment is
47 applicable to less than the entire week, the claimant may be
48 considered to be unemployed as defined in subsections a and b of this
49 paragraph. Sums received by any individual for services performed
50 as an elected official who holds an elective office, as defined in

- 1 G.S. 128-1.1(d), or as a member of the N. C. National Guard, as
2 defined in G.S. 127A-3, or as a member of any reserve component of
3 the United States Armed Forces shall not be considered in
4 determining that individual's employment status under this
5 subsection. Benefits paid under this subdivision shall not be charged
6 to the account or accounts of the base period employer or employers.
- 7 d. An individual's week of unemployment shall be deemed to
8 commence only after ~~his~~ the individual's registration at an
9 employment office, except as the ~~Commission may by regulation~~
10 Division by rule may otherwise prescribe.
- 11 e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009,
12 and applicable to claims filed on or after that date.
- 13 f. No substitute teacher or other substitute school personnel shall be
14 considered unemployed for days or weeks when not called to work
15 unless the individual is or was employed as a full-time substitute
16 during the period of time for which the individual is requesting
17 benefits. For the purposes of this subsection, full-time substitute is
18 defined as a substitute employee who works more than 30 hours a
19 week on a continual basis for a period of six months or more.
- 20 (10) **(Effective July 1, 2011)** Total and partial unemployment.
- 21 a. For the purpose of establishing a benefit year, an individual shall be
22 deemed to be unemployed:
- 23 1. If he has payroll attachment but, because of lack of work
24 during the payroll week for which he is requesting the
25 establishment of a benefit year, he worked less than the
26 equivalent of three customary scheduled full-time days in the
27 establishment, plant, or industry in which he has payroll
28 attachment as a regular employee. If a benefit year is
29 established, it shall begin on the Sunday preceding the payroll
30 week ending date.
- 31 2. If he has no payroll attachment on the date he reports to apply
32 for unemployment insurance. If a benefit year is established,
33 it shall begin on the Sunday of the calendar week with respect
34 to which the claimant met the reporting requirements
35 provided by ~~Commission regulation rules~~ adopted by the
36 Division.
- 37 b. For benefit weeks within an established benefit year, a claimant shall
38 be deemed to be:
- 39 1. Totally unemployed, irrespective of job attachment, if his
40 earnings for such week, including payments defined in
41 subparagraph c below, would not reduce his weekly benefit
42 amount as prescribed by G.S. 96-12(c).
- 43 2. Partially unemployed, if he has payroll attachment but
44 because of lack of work during the payroll week for which he
45 is requesting benefits he worked less than three customary
46 scheduled full-time days in the establishment, plant, or
47 industry in which he is employed and whose earnings from
48 such employment (including payments defined in
49 subparagraph c below) would qualify him for a reduced
50 payment as prescribed by G.S. 96-12(c).

1 3. Part-totally unemployed, if the claimant had no job
 2 attachment during all or part of such week and whose
 3 earnings for odd jobs or subsidiary work (including payments
 4 defined in subparagraph c below) would qualify him for a
 5 reduced payment as prescribed by G.S. 96-12(c).

6 c. No individual shall be considered unemployed if, with respect to the
 7 entire calendar week, he is receiving, has received, or will receive as
 8 a result of his separation from employment, remuneration in the form
 9 of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal
 10 leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal
 11 payments or wages by whatever name. Provided, however, if such
 12 payment is applicable to less than the entire week, the claimant may
 13 be considered to be unemployed as defined in subsections a and b of
 14 this paragraph. Sums received by any individual for services
 15 performed as an elected official who holds an elective office, as
 16 defined in G.S. 128-1.1(d), or as a member of the N. C. National
 17 Guard, as defined in G.S. 127A-3, or as a member of any reserve
 18 component of the United States Armed Forces shall not be
 19 considered in determining that individual's employment status under
 20 this subsection. Provided further, however, that an individual shall be
 21 considered to be unemployed as to receipt of severance pay for any
 22 week the individual is registered at or attending any institution of
 23 higher education as defined in G.S. 96-8(5)j., or secondary school as
 24 defined in G.S. 96-8(5)q., or ~~Commission~~-Division approved
 25 vocational, educational, or training programs as defined in
 26 G.S. 96-13.

27 d. An individual's week of unemployment shall be deemed to
 28 commence only after his registration at an employment office, except
 29 as the ~~Commission~~-Division may by ~~regulation~~-rule otherwise
 30 prescribe.

31 e. Repealed by Session Laws 2009-506, s. 2, effective October 1, 2009,
 32 and applicable to claims filed on or after that date.

33 f. No substitute teacher or other substitute school personnel shall be
 34 considered unemployed for days or weeks when not called to work
 35 unless the individual is or was employed as a full-time substitute
 36 during the period of time for which the individual is requesting
 37 benefits. For the purposes of this subsection, full-time substitute is
 38 defined as a substitute employee who works more than 30 hours a
 39 week on a continual basis for a period of six months or more."

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

41 "(13) a. "Wages" shall include commissions, bonuses, any sums paid to an
 42 employee by an employer pursuant to an order of any court, the National Labor Relations
 43 Board, or any other lawfully constituted adjudicative agency or by private agreement, consent,
 44 or arbitration for loss of pay by reason of discharge, and the cash value of all remuneration in
 45 any medium other than cash. The reasonable cash value of remuneration in any medium other
 46 than cash shall be estimated and determined in accordance with rules prescribed by the
 47 ~~Commission~~-Division; provided, if the remuneration of an individual is not based upon a fixed
 48 period or duration of time or if the individual's wages are paid at irregular intervals or in such
 49 manner as not to extend regularly over the period of employment, the wages for any week or
 50 for any calendar quarter for the purpose of computing an individual's right to unemployment

1 benefits only shall be determined in such manner as may by authorized regulations be
 2 prescribed. The regulations shall, so far as possible, secure results reasonably similar to those
 3 that would prevail if the individual were paid his wages at regular intervals. The term "wages"
 4 shall not include the amount of any payment with respect to services to, or on behalf of, an
 5 individual in its employ under a plan or system established by an employing unit which makes
 6 provision for individuals in its employ generally or for a class or classes of such individuals
 7 (including any amount paid by an employing unit for insurance or annuities, or into a fund, to
 8 provide for any such payment), on account of (i) retirement, or (ii) sickness or accident
 9 disability, or (iii) medical and hospitalization expenses in connection with sickness or accident
 10 disability or (iv) death. However, in the case of payments made to an employee or any of his
 11 dependents on account of sickness or accident disability, only payments which are received
 12 under a worker's compensation law shall be excluded from the term "wages". Furthermore, the
 13 term "wages" shall not include payment by an employer without deduction from the
 14 remuneration of the employee of the tax imposed upon an employee under the Federal
 15 Insurance Contributions Act.

16 ...
 17 d. Wages shall not include the amount of any payment, including any
 18 amount paid into a fund to provide for such payment, made to, or on
 19 behalf of, an employee under a plan or system established by an
 20 employer or others which makes provision for employees generally,
 21 or for a class or group of employees, for the purpose of
 22 supplementing unemployment benefits, provided that the plan has
 23 been approved by the ~~Commission~~ Division under such reasonable
 24 ~~regulations~~ rules as it shall ~~promulgate~~ adopt."

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

26 "(22) Average Weekly Insured Wage. – "Average weekly insured wage" is the
 27 quotient obtained by dividing the total of the wages, as defined in G.S. 96-8(12) and (13),
 28 reported by all insured employers by the monthly average in insured employment under this
 29 Chapter during the immediately preceding calendar year and further dividing the quotient
 30 obtained by 52 to obtain a weekly rate. (For this computation the data as released annually in
 31 the ~~Employment Security Commission's~~ Division's publication "North Carolina Insured
 32 Employment and Wage Payment" shall be used). The quotient thus obtained shall be deemed to
 33 be the average weekly wage for such year.

34 ...
 35 (24) Work, for purposes of this Chapter, means any bona fide permanent
 36 employment the acceptance of which would not result in an undue family hardship as defined
 37 in G.S. 96-8(10a). For purposes of this definition, "bona fide permanent employment" is
 38 presumed to include only those employments of greater than 30 consecutive calendar days
 39 duration (regardless of whether work is performed on all those days) provided: (a) the
 40 presumption that an employment lasting 30 days or less is not bona fide permanent
 41 employment may be rebutted by a finding by the ~~Commission~~ Division, either on its own
 42 motion or upon a clear and convincing showing by an interested party that the application of
 43 the presumption would work a substantial injustice in view of the intent of this Chapter; (b)
 44 Any decision of the ~~Commission~~ Division on the question of bona fide employment may be
 45 disturbed on judicial review only upon a finding of plain error."

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

47 **"§ 96-9. Contributions.**

48 (a) **Payment. –**

49 (1) Except as provided in subsection (d) hereof, contributions shall accrue and
 50 become payable by each employer for each calendar year in which he is

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

28 ...
 29 (3) Benefits paid employees of this State shall be financed and administered in
 30 accordance with the provisions and conditions of G.S. 96-9(d) required for
 31 nonprofit organizations; except as provided by suitable regulations which
 32 may be adopted by the ~~Commission-Division~~. The Department of
 33 Administration shall make an election with respect to financing all such
 34 benefits.

35 ...
 36 (6) If the amount of the contributions shown to be due after all credits is less
 37 than five dollars (\$5.00), no payment need be made. If an employer has paid
 38 contributions, penalties, and/or interest in excess of the amount due, this
 39 shall be considered an overpayment and refunded provided no other debts
 40 are owed to the ~~Commission-Division~~ by the employer. Overpayments of
 41 less than five dollars (\$5.00) shall be refunded only upon receipt by the
 42 Chairman of a written demand for such refund from the employer. Nothing
 43 herein shall be construed to change or extend the limitation set forth in
 44 G.S. 96-10(e), (f), and (i).

45 (7) Effective with the quarter ending September 30, 1999, every employer with
 46 100 or more employees, and every person or organization that, as agent,
 47 reports wages on a total of 100 or more employees on behalf of one or more
 48 subject employers, shall file that portion of the "Employer's Quarterly Tax
 49 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

1 quotient obtained by dividing the credit balance of the employer's
2 account as of July 31 of each year by the total taxable payroll of the
3 employer for the 36 calendar-month period ending June 30 preceding
4 the computation date. Credit balance as used in this section means
5 the total of all contributions paid and credited for all past periods in
6 accordance with the provisions of G.S. 96-9(c)(1) together with all
7 other lawful credits to the account of the employer less the total
8 benefits charged to the account of the employer for all past periods.

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

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

32 Whenever contributions are erroneously paid into one account
33 which should have been paid into another account or which should
34 have been paid into a new account, that erroneous payment can be
35 adjusted only by refunding the erroneously paid amounts to the
36 paying entity. No pro rata adjustment to an existing account may be
37 made, nor can a new account be created by transferring any portion
38 of the erroneously paid amount, notwithstanding that the entities
39 involved may be owned, operated, or controlled by the same person
40 or organization. No adjustment of a contribution rate can be made
41 reducing the rate below the standard rate for any period in which the
42 account was not in actual existence and in which it was not actually
43 chargeable for benefits. Whenever payments are found to have been
44 made to the wrong account, refunds can be made to the entity making
45 the wrongful payment for a period not exceeding five years from the
46 last day of the calendar year in which it is determined that wrongful
47 payments were made. Notwithstanding payment into the wrong
48 account, if an entity is determined to have met the requirements to be
49 a covered employer, whether or not the entity has had paid on the
50 account of its employees any sum into another account, the

1 ~~Commission-Division~~ shall collect contributions at the standard rate
 2 or the assigned rate, whichever is higher, for the five years preceding
 3 the determination of erroneous payments, which five years shall run
 4 from the last day of the calendar year in which the determination of
 5 liability for contributions or additional contributions is made. This
 6 requirement applies regardless of whether the employer acted in
 7 good faith.

8 (3) ...
 9 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	
38	0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
39	0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
40	0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
41	0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
42	0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
43	1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
44	1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
45	1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
46	1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%
47	1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
48	2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
49	2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%

1	2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2	2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
3	2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
4	3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
5	3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
6	3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
7	3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
8	3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
9	4.0%										
10	&										
11	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	Rate Schedules (%)								
	Much	Less									
	As	Than	A	B	C	D	E	F	G	H	I
40											
41	0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
42	0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
43	0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
44	0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
45	0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
46	1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
47	1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
48	1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
49	1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
50	1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%

1	2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2	2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
3	2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
4	2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
5	2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
6	3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
7	3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
8	3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
9	3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
10	3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
11	4.0%										
12	&										
13	OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
14			...								

- 15 g. Any employer may at any time make a voluntary contribution,
 16 additional to the contributions required under this Chapter, to the
 17 fund to be credited to its account, and such voluntary contributions
 18 when made shall for all intents and purposes be deemed
 19 "contributions required" as this term is used in G.S. 96-8(8). Any
 20 voluntary contributions so made by an employer within 30 days after
 21 the date of mailing by the ~~Commission~~-Division pursuant to
 22 G.S. 96-9(c)(3) of notification of contribution rate contained in
 23 cumulative account statement and computation of rate, shall be
 24 credited to its account as of the previous July 31. If, however, the
 25 voluntary contribution is made after July 31 of any year it shall not
 26 be considered a part of the balance of the unemployment insurance
 27 fund for the purposes of G.S. 96-9(b)(3) until the following July 31.
 28 The ~~Commission~~-Division in accepting a voluntary contribution shall
 29 not be bound by any condition stipulated in or made a part of the
 30 voluntary contribution by the employer.
- 31 h. If, within the calendar month in which the computation date occurs,
 32 the ~~Commission~~-Division finds that any employing unit has failed to
 33 file any report required in connection therewith or has filed a report
 34 which the ~~Commission~~-Division finds incorrect or insufficient, the
 35 ~~Commission~~-Division shall make an estimate of the information
 36 required from such employing unit on the basis of the best evidence
 37 reasonably available to it at the time and shall notify the employing
 38 unit thereof by registered mail addressed to its last known address.
 39 Unless such employing unit shall file the report or a corrected or
 40 sufficient report, as the case may be, within 15 days after the mailing
 41 of such notice, the ~~Commission~~-Division shall compute such
 42 employing unit's rate of contributions on the basis of such estimates,
 43 and the rate as so determined shall be subject to increases but not to
 44 reduction, on the basis of subsequently ascertained information.
- 45 i. Repealed by Session Laws 1987, c. 17, s. 5.
- 46 j. A tax is imposed upon contributions at the rate of twenty percent
 47 (20%) of the amount of contributions due. The tax is due and payable
 48 at the time and in the same manner as the contributions. The tax does
 49 not apply in a calendar year if, as of August 1 of the preceding year,
 50 either of the following conditions was met; (i) the amount in the

1 Reserve Fund equals or exceeds one hundred sixty-three million
 2 three hundred forty-nine thousand dollars (\$163,349,000), which is
 3 one percent (1%) of taxable wages for calendar year 1984; or (ii) the
 4 balance in the Unemployment Insurance Fund established by
 5 G.S. 96-6(a) is five hundred million (\$500,000,000) or less. The
 6 collection of this tax, the assessment of interest and penalties on
 7 unpaid taxes, the filing of judgment liens, and the enforcement of the
 8 liens for unpaid taxes is governed by the provisions of G.S. 96-10
 9 where applicable. Taxes collected under this subpart shall be credited
 10 to the Employment Security ~~Commission~~-Reserve Fund, and refunds
 11 of the taxes shall be paid from the same Fund. The clear proceeds of
 12 any civil penalties collected under this subpart shall be remitted to
 13 the Civil Penalty and Forfeiture Fund in accordance with
 14 G.S. 115C-457.2. Any interest collected on unpaid taxes shall be
 15 credited to the Special Employment Security Administration Fund,
 16 and any interest refunded on taxes imposed by this subpart shall be
 17 paid from the same Fund.

18 (c) (1) Except as provided in subsection (d) of this section, the ~~Commission~~
 19 Division shall maintain a separate account for each employer and
 20 shall credit his account with all voluntary contributions made by him
 21 and all other contributions which he has paid or is paid on his behalf,
 22 provided the ~~Commission~~-Division shall credit the account of each
 23 employer in an amount equal to eighty percent (80%) of all voluntary
 24 contributions paid with respect to periods prior to January 1, 1984,
 25 and of all other contributions paid with respect to periods between
 26 July 1, 1965, and December 31, 1983. On the computation date,
 27 beginning first with August 1, 1948, the ratio of the credit balance in
 28 each individual account to the total of all the credit balances in all
 29 employer accounts shall be computed as of such computation date,
 30 and an amount equal to the interest credited to this State's account in
 31 the unemployment trust fund in the treasury of the United States for
 32 the four most recently completed calendar quarters shall be credited
 33 prior to the next computation date on a pro rata basis to all
 34 employers' accounts having a credit balance on the computation date.
 35 Such amount shall be prorated to the individual accounts in the same
 36 ratio that the credit balance in each individual account bears to the
 37 total of the credit balances in all such accounts. In computing the
 38 amount to be credited to the account of an employer as a result of
 39 interest earned by funds on deposit in the unemployment trust fund in
 40 the treasury of the United States to the account of this State, any
 41 voluntary contributions made by an employer after July 31 of any
 42 year shall not be considered a part of the account balance of the
 43 employer until the next computation date occurring after such
 44 voluntary contribution was made. No provision in this section shall
 45 in any way be subject to or affected by any provisions of the
 46 Executive Budget Act, as amended. Nothing in this Act shall be
 47 construed to grant any employer or individual in his service prior
 48 claims or rights to the amount paid by him into the fund either on his
 49 own behalf or on behalf of such individuals.

50 (2) Charging of benefit payments. -

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...
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

1 to May 1 following the effective date of such rates. The ~~Commission~~
2 Division may redetermine on its own motion within the same period of time.

3 (4) Transfer of account. –

4 a. ...

5 2. Consent. – When an employer, as defined in G.S. 96-8(5)b.,
6 in any manner acquires a distinct and severable portion of the
7 organization, trade, or business of another employing unit, the
8 part of the account of the predecessor that relates to the
9 acquired portion of the business shall, upon the mutual
10 consent of the parties concerned and approval of the
11 ~~Commission~~-Division in conformity with the regulations as
12 prescribed therefor, be transferred as of the date of acquisition
13 to the successor employer for use in the determination of the
14 successor's rate of contributions, provided application for
15 transfer is made within 60 days after the ~~Commission~~
16 Division notifies the successor of the right to request such
17 transfer, otherwise the effective date of the transfer shall be
18 the first day of the calendar quarter in which such application
19 is filed, and that after the transfer the successor employing
20 unit continues to operate the transferred portion of such
21 organization, trade or business. On or after January 1, 2006,
22 whenever part of an organization, trade, or business is
23 transferred between entities subject to substantially common
24 ownership, management, or control, the tax account shall be
25 transferred in accordance with regulations. However,
26 employing units transferring entities with any common
27 ownership, management, or control are not entitled to
28 separate and distinct employer status under this Chapter.
29 Provided, however, that the transfer of an account for the
30 purpose of computation of rates shall be deemed to have been
31 made prior to the computation date falling within the calendar
32 year within which the effective date of such transfer occurs
33 and the account shall thereafter be used in the computation of
34 the rate of the successor employer for succeeding years,
35 subject, however, to the provisions of paragraph b of this
36 subdivision. No request for a transfer of the account will be
37 accepted and no transfer of the account will be made if the
38 request for the transfer of the account is not received within
39 two years of the date of acquisition or notification by the
40 ~~Commission~~-Division of the right to request such transfer,
41 whichever occurs later. However, in no event will a request
42 for a transfer be allowed if an account has been terminated
43 because an employer ceases to be an employer pursuant to
44 G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of
45 notification.

46 ...
47 b. Notwithstanding any other provisions of this section, if the successor
48 employer was an employer subject to this Chapter prior to the date of
49 acquisition of the business, the successor's rate of contribution for the
50 period from that date to the end of the then current contribution year

1 shall be the same as the successor's rate in effect on the date of the
 2 acquisition. If the successor was not an employer prior to the date of
 3 the acquisition of the business, the successor shall be assigned a
 4 standard beginning rate of contribution set forth in G.S. 96-9(b)(1)
 5 for the remainder of the year in which the successor acquired the
 6 business of the predecessor; however, if the successor makes
 7 application for the transfer of the account within 60 days after
 8 notification by the ~~Commission~~ Division of the right to do so and the
 9 account is transferred, or meets the requirements for mandatory
 10 transfer, the successor shall be assigned for the remainder of the year
 11 the rate applicable to the predecessor employer or employers on the
 12 date of acquisition of the business, as long as there was only one
 13 predecessor or, if more than one, the predecessors had identical rates.
 14 In the event the rates of the predecessor were not identical, the rate of
 15 the successor shall be the highest rate applicable to any of the
 16 predecessor employers on the date of acquisition of the business.

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

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

- 33 ...
 34 (6) If the ~~Commission~~ Division finds that an employer's business is closed
 35 solely because of the entrance of one or more of the owners, officers,
 36 partners, or the majority stockholder into the Armed Forces of the United
 37 States, or of any of its allies, or of the United Nations, such employer's
 38 experience rating account shall not be terminated; and, if the business is
 39 resumed within two years after the discharge or release from active duty in
 40 the Armed Forces of such person or persons, the employer's account shall be
 41 deemed to have been chargeable with benefits throughout more than 13
 42 consecutive calendar months ending July 31 immediately preceding the
 43 computation date. This subdivision shall apply only to employers who are
 44 liable for contributions under the experience rating system of financing
 45 unemployment benefits. This subdivision shall not be construed to apply to
 46 employers who are liable for payments in lieu of contributions or to
 47 employers using the reimbursable method of financing benefit payments.

- 48 (d) Benefits paid to employees of nonprofit organizations shall be financed in
 49 accordance with the provisions of this paragraph. For the purposes of this paragraph, a
 50 nonprofit organization is an organization (or group of organizations) described in section

1 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of
2 the Internal Revenue Code.

- 3 (1) a. Any nonprofit organization which becomes subject to this
4 Chapter on or after January 1, 1972, shall pay contributions under the
5 provisions of this Chapter, unless it elects in accordance with this
6 paragraph to pay the ~~Commission~~-Division for the Unemployment
7 Insurance Fund an amount equal to the amount of regular benefits
8 and of one half of the extended benefits paid, that is attributable to
9 service in the employ of such nonprofit organization, to individuals
10 for weeks of unemployment which begin within a benefit year
11 established during the effective period of such election.
- 12 b. Any nonprofit organization which is or becomes subject to this
13 Chapter on or after January 1, 1972, may elect to become liable for
14 payments in lieu of contributions for a period of not less than four
15 calendar years beginning with the date on which subjectivity begins
16 by filing a written notice of its election with the ~~Commission~~
17 Division not later than 30 days immediately following the date of
18 written notification of the determination of such subjectivity.
19 Provided if notification is not by registered mail, the election may be
20 made on or after January 1, 1972, within six months following the
21 date of the written notification of the determination of such
22 subjectivity. If such election is not made as set forth herein, no
23 election can be made until after four calendar years have elapsed
24 under the contributions method of payment.
- 25 c. Any nonprofit organization which makes an election in accordance
26 with subparagraph b of this paragraph will continue after such four
27 calendar years to be liable for payments in lieu of contributions until
28 it files with the ~~Commission~~-Division a written notice terminating its
29 election not later than 30 days prior to the next January 1, effective
30 on such January 1. Provided, however, no employer granted or in
31 reimbursement status will be allowed refund of any previous
32 balances used in a transfer to reimbursement status.
- 33 d. Any nonprofit organization which has been paying contributions
34 under this Chapter for a period of at least four consecutive calendar
35 years subsequent to January 1, 1972; may elect to change to a
36 reimbursement basis by filing with the ~~Commission~~-Division not
37 later than 30 days prior to the next January 1 a written notice of
38 election to become liable for payments in lieu of contributions,
39 effective on such January 1. Such election shall not be terminable for
40 a period of four calendar years. In the event of such an election, the
41 account of such employer shall be closed and shall not be used in any
42 future computation of such employer's contribution rate in any
43 manner whatsoever.
- 44 d1. Any nonprofit organization which makes an election in accordance
45 with subparagraph b. of this paragraph must secure such election by
46 making a payment in lieu of contributions as provided in subdivision
47 (2) of this subsection, posting a surety bond from an insurance
48 company duly licensed to conduct business in this State, or obtaining
49 an irrevocable letter of credit with the ~~Commission~~-Division to insure
50 the payments in lieu of contributions as provided in subdivision (2)

1 of this subsection. Any surety bond posted under this paragraph shall
2 be in force for a period of not less than two calendar years and shall
3 be renewed with the approval of the ~~Commission~~-Division. The
4 ~~Commission~~-Division may adopt rules to implement the provisions
5 of this subparagraph.

6 e. The ~~Commission~~-Division, in accordance with such regulations as it
7 may adopt, shall notify each nonprofit organization of any
8 determination which it may make of its status as an employer and of
9 the effective date of any election which it makes and of any
10 termination of such election. Such determinations shall be subject to
11 reconsideration, appeal and review.

12 (2) Payments in lieu of contributions shall be made in accordance with the
13 provisions of this subparagraph and shall be processed as provided herein.

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 96-10, except that the
17 amount of advance payments shall be computed as one percent (1%)
18 of taxable wages and entered on such reports; provided that such
19 advance payments shall become effective only with respect to the
20 first four thousand two hundred dollars (\$4,200) in wages paid in a
21 calendar year until January 1, 1978. On and after that date advance
22 payments shall be effective with respect to the federally required
23 wage base provided that after December 31, 1983, the wage base
24 shall be the same as that provided for in G.S. 96-9(a)(5). Collection
25 of such advance payments shall be made as provided for the
26 collection of contributions in G.S. 96-10.

27 Beginning January 1, 1978, any employer making quarterly
28 reports of employment to the ~~Commission~~-Division and if such
29 employer is a newly electing reimbursement employer he shall pay
30 contributions of one percent (1%) of taxable wages entered on such
31 reports.

32 Any employer paying by reimbursement having been, prior to
33 July 1, under the reimbursement method of payment for the
34 preceding calendar year, shall continue to file quarterly reports but
35 shall make no payments with those reports.

36 b. The ~~Commission~~-Division shall establish a separate account for each
37 such employer and such account shall be credited, and maintained as
38 provided in G.S. 96-9(c)(1), except that advance payments shall be
39 credited in full and voluntary contributions are not applicable.

40 ...
41 d. As of July 31 of each year, and prior to January 1 of the succeeding
42 year, the ~~Commission~~-Division shall determine the balance of each
43 such employer's account and shall furnish him with a statement of all
44 charges and credits thereto.

45 Should the balance in such account not equal that requiring a
46 refund, the employer shall upon notice and demand for payment
47 mailed to his last known address pay into his account an amount that
48 will bring such balance to the minimum required for a refund. Such
49 amount shall become due on or before the tenth day following the
50 mailing of such notice and demand for payment. Any such amount

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

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

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

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

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

27 ...

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

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

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

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

43 b. To pay to the ~~Commission~~-Division within 25 days from the date a
44 list of benefit charges is mailed to such employing unit, a sum equal
45 to the amount which its account would be charged if it were a tax
46 paying employer under G.S. 96-9(c)(2).

47 (3) State or local governmental employing units paying for benefits as provided
48 in subdivision (1) herein may establish pool accounts; provided, that such
49 pool accounts are established and maintained according to ~~the rules and~~
50 regulations of the ~~Commission~~-Division adopted by the Division.

- 1 (4) Any governmental entity paying by reimbursement as provided in
2 subdivision (1) hereof shall not have any benefits paid against its account
3 noncharged or forgiven except as provided in G.S. 96-9(d)(2)c.

4 (g) Nothing contained in subsections (d), (f), and (i) of this section prevents the
5 ~~Commission~~ Division from providing any reimbursing employer with informational bills or
6 lists of charges on a basis more frequent than yearly, if in its sole discretion, the ~~Commission~~
7 Division considers such action to be in the best interest of the ~~Commission~~ Division and the
8 affected employer(s).

9 (h) (1) Any nonprofit organization which has been paying contributions on a
10 reimbursement basis for at least three consecutive calendar years during none of which years
11 the benefit charges exceeded four tenths of one percent (.4%) of its taxable payroll may, before
12 November 1 of the fourth or subsequent calendar year, elect to pay contributions by special
13 reimbursement on the basis provided for in subdivision (2) below but only upon the following
14 conditions:

15 ...
16 b. The election shall apply to no less than the four calendar years
17 following the year of election unless terminated by the ~~Commission~~
18 Division under subdivision (3) below.

19 ...
20 e. No later than January 1 of the first year to which its election applies,
21 the electing nonprofit organization shall furnish the ~~Commission~~
22 Division a letter of credit in an amount equal to one hundred fifty
23 percent (150%) of the account balance required under subdivision (2)
24 below.

25 f. The ~~Commission~~ Division shall by regulation prescribe the form of
26 the letter of credit and the criteria for the financial institution issuing
27 such letter of credit along with the form of election under this
28 section.

- 29 (2) Any qualified nonprofit organization that meets the conditions of
30 subdivision (1) above shall, upon the approval of its election by the
31 ~~Commission~~ Division, pay contributions by special reimbursement as
32 follows:

33 ...
34 b. On the first day of each quarter of any calendar year, the
35 ~~Commission~~ Division shall bill the employer for an amount
36 necessary to bring its account to the required minimum balance, and
37 the amount so billed is due no later than 25 days after the bill is
38 mailed.

- 39 (3) If any electing organization shall fail to make any quarterly payment when
40 due:

41 a. The ~~Commission~~ Division may draw the full amount of the letter of
42 credit for application to the employer's account;

43 ...
44 c. If, after demand, the organization shall fail to pay any sums required
45 under paragraph b. above, the ~~Commission~~ Division may revoke the
46 organization's election for special reimbursement and any difference
47 between the employer's account balance and one percent (1%) of its
48 total taxable payroll shall become immediately due and payable.

49 d. The ~~Commission~~ Division may, in addition, exercise any of the
50 powers granted to it in G.S. 96-10 to collect any amount due.

- 1 e. Pursuant to ~~such regulations as the Commission may adopt, rules~~
2 ~~adopted by the Division, the Commission~~ Division shall afford any
3 organization affected by this paragraph a hearing to determine if any
4 increase in the organization's minimum required balance should be
5 reduced, in whole or in part, or if any revocation of a special
6 reimbursement election should be rescinded. If the ~~Commission,~~
7 Division, in its sole discretion, is satisfied that the conditions giving
8 rise to the increase or revocation have been corrected, it may reduce
9 such increase or rescind such revocation provided that it may require
10 as a condition of such reduction or rescission a new letter of credit up
11 to three times the amount normally required.
12

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

17 (1) Election. –

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

46 (2) Procedure. – Indian tribe employing units' payments by reimbursement in
47 lieu of contributions shall be made and processed as provided in this
48 subdivision.

- 49 a. Quarterly contributions and wage reports and advance payments shall
50 be submitted to the ~~Commission~~ Division quarterly under the same

1 conditions and requirements of G.S. 96-9 and G.S. 96-10, except that
 2 the amount of advance payments shall be computed as one percent
 3 (1%) of taxable wages and entered on the reports, and except that the
 4 wage base shall be the same as that provided for in G.S. 96-9(a)(5).
 5 Collection of these advance payments shall be made as provided for
 6 the collection of contributions in G.S. 96-10.

7 Any Indian tribe employing unit paying by reimbursement having
 8 been, prior to July 1, under the reimbursement method of payment
 9 for the preceding calendar year, shall continue to file quarterly
 10 reports but shall make no payments with those reports.

11 b. The ~~Commission~~-Division shall establish a separate account for each
 12 Indian tribe employing unit paying by reimbursement. The account
 13 shall be credited and maintained as provided in G.S. 96-9(c)(1),
 14 except that advance payments shall be credited in full, and voluntary
 15 contributions are not applicable.

16 ...
 17 d. As of July 31 of each year, and prior to January 1 of the succeeding
 18 year, the ~~Commission~~-Division shall determine the balance of each
 19 Indian tribe employing unit's account and shall furnish the unit with a
 20 statement of all charges and credits to the account.

21 If the balance in the account does not equal one percent (1%) of
 22 taxable wages, the Indian tribe employing unit must, upon notice and
 23 demand for payment mailed to its last known address, pay into the
 24 account an amount that will bring the balance to one percent (1%) of
 25 taxable wages. This amount becomes due on or before the 25th day
 26 after the notice and demand for payment is mailed. Any amount
 27 unpaid on the due date shall be collected in the same manner,
 28 including interest, as prescribed in G.S. 96-10.

29 If there is a debit balance in the account, the Indian tribe
 30 employing unit must, upon notice and demand for payment mailed to
 31 its last known address, pay into the account an amount necessary to
 32 bring the account to one percent (1%) of taxable wages. This amount
 33 becomes due on or before the 25th day after the notice and demand
 34 for payment is mailed. Any amount unpaid on the due date shall be
 35 collected in the same manner, including interest, as prescribed in
 36 G.S. 96-10.

37 ...
 38 (4) Forfeiture of coverage. – If an Indian tribe employing unit fails to make
 39 payments, including interest and penalties, required under this subsection
 40 after all collection activities considered necessary by the ~~Commission~~
 41 Division have been exhausted, services performed for that employing unit
 42 are no longer treated as "employment" for the purpose of coverage under this
 43 Chapter. An Indian tribe employing unit that has lost coverage regains
 44 coverage under this Chapter for services performed for the employing unit if
 45 the ~~Commission~~-Division determines that all contributions, payments in lieu
 46 of contributions, penalties, and interest have been paid.

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

50"

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

2 "§ 96-10. Collection of contributions.

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

16 (b) Collection. –

17 (1) If, after due notice, any employer defaults in any payment of contributions or
18 interest thereon, the amount due shall be collected by civil action in the
19 name of the ~~Commission, Division~~, and the employer adjudged in default
20 shall pay the costs of such action. Civil actions brought under this section to
21 collect contributions or interest thereon from an employer shall be heard by
22 the court at the earliest possible date, and shall be entitled to preference upon
23 the calendar of the court over all other civil actions, except petitions for
24 judicial review under this Chapter and cases arising under the Workers'
25 Compensation Law of this State; or, if any contribution imposed by this
26 Chapter, or any portion thereof, and/or penalties duly provided for the
27 nonpayment thereof shall not be paid within 30 days after the same become
28 due and payable, and after due notice and reasonable opportunity for
29 hearing, the ~~Commission, Division~~, under the hand of its ~~chairman, the~~
30 Assistant Secretary, may certify the same to the clerk of the superior court of
31 the county in which the delinquent resides or has property, and additional
32 copies of said certificate for each county in which the ~~Commission, Division~~
33 has reason to believe the delinquent has property located. If the amount of a
34 delinquency is less than fifty dollars (\$50.00), the ~~Commission, Division~~
35 may not certify the amount to the clerk of court until a field tax auditor or
36 another representative of the ~~Commission, Division~~ personally contacts, or
37 unsuccessfully attempts to personally contact, the delinquent and collect the
38 amount due. A certificate or a copy of a certificate forwarded to the clerk of
39 the superior court shall immediately be docketed and indexed on the cross
40 index of judgments, and from the date of such docketing shall constitute a
41 preferred lien upon any property which said delinquent may own in said
42 county, with the same force and effect as a judgment rendered by the
43 superior court. The ~~Commission, Division~~ shall forward a copy of said
44 certificate to the sheriff or sheriffs of such county or counties, or to a duly
45 authorized agent of the ~~Commission, Division~~, and when so forwarded and in
46 the hands of such sheriff or agent of the ~~Commission, Division~~, shall have
47 all the force and effect of an execution issued to such sheriff or agent of the
48 ~~Commission, Division~~ by the clerk of the superior court upon a judgment of
49 the superior court duly docketed in said county. Provided, however, the
50 ~~Commission, Division~~ may in its discretion withhold the issuance of said

1 certificate or execution to the sheriff or agent of the ~~Commission-Division~~
2 for a period not exceeding 180 days from the date upon which the original
3 certificate is certified to the clerk of superior court. The ~~Commission~~
4 ~~Division~~ is further authorized and empowered to issue alias copies of said
5 certificate or execution to the sheriff or sheriffs of such county or counties,
6 or to a duly authorized agent of the ~~Commission-Division~~ in all cases in
7 which the sheriff or duly authorized agent has returned an execution or
8 certificate unsatisfied; when so issued and in the hands of the sheriff or duly
9 authorized agent of the ~~Commission, Division~~, such alias shall have all the
10 force and effect of an alias execution issued to such sheriff or duly
11 authorized agent of the ~~Commission- Division~~ by the clerk of the superior
12 court upon a judgment of the superior court duly docketed in said county.
13 Provided, however, that notwithstanding any provision of this subsection,
14 upon filing one written notice with the ~~Commission, Division~~, the sheriff of
15 any county shall have the sole and exclusive right to serve all executions and
16 make all collections mentioned in this subsection and in such case no agent
17 of the ~~Commission-Division~~ shall have the authority to serve any executions
18 or make any collections therein in such county. A return of such execution,
19 or alias execution, shall be made to the ~~Commission, Division~~, together with
20 all moneys collected thereunder, and when such order, execution, or alias is
21 referred to the agent of the ~~Commission-Division~~ for service the said agent
22 of the ~~Commission-Division~~ shall be vested with all the powers of the sheriff
23 to the extent of serving such order, execution or alias and levying or
24 collecting thereunder. The agent of the ~~Commission-Division~~ to whom such
25 order or execution is referred shall give a bond not to exceed three thousand
26 dollars (\$3,000) approved by the ~~Commission- Division~~ for the faithful
27 performance of such duties. The liability of said agent shall be in the same
28 manner and to the same extent as is now imposed on sheriffs in the service
29 of executions. If any sheriff of this State or any agent of the ~~Commission~~
30 ~~Division~~ who is charged with the duty of serving executions shall willfully
31 fail, refuse, or neglect to execute any order directed to him by the said
32 ~~Commission- Division~~ and within the time provided by law, the official bond
33 of such sheriff or of such agent of the ~~Commission- Division~~ shall be liable
34 for the contributions, penalty, interest, and costs due by the employer.

35 (2) Any representative of the ~~Employment Security Commission-Division~~ may
36 examine and copy the county tax listings, detailed inventories, statements of
37 assets or similar information required under General Statutes, Chapter 105,
38 to be filed with the tax supervisor of any county in this State by any person,
39 firm, partnership, or corporation, domestic or foreign, engaged in operating
40 any business enterprise in such county. Any such information obtained by an
41 agent or employee of the ~~Commission-Division~~ shall not be divulged,
42 published, or open to public inspection other than to the
43 ~~Commission's Division's~~ employees in the performance of their public duties.
44 Any employee or member of the ~~Commission of the Division~~ who violates
45 any provision of this section shall be fined not less than twenty dollars
46 (\$20.00), nor more than two hundred dollars (\$200.00), or imprisoned for
47 not longer than 90 days, or both.

48 (3) When the ~~Commission-Division~~ furnishes the clerk of superior court of any
49 county in this State a written statement or certificate to the effect that any
50 judgment docketed by the ~~Commission-Division~~ against any firm or

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

18 (c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution
19 of an employer's assets pursuant to an order of any court under the laws of this State, including
20 any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or
21 similar proceeding, contributions then or thereafter due shall be paid in full prior to all other
22 claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars
23 (\$250.00) to each claimant, earned within six months of the commencement of the proceeding.
24 In the event of an employer's adjudication in bankruptcy, judicially confirmed extension
25 proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions
26 then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act
27 (U.S.C., Title 11, section 104(a)), as amended.

28 A receiver of any covered employer placed into an operating receivership pursuant to an
29 order of any court of this State shall pay to the ~~Commission~~ Division any contributions,
30 penalties or interest then due out of moneys or assets on hand or coming into his possession
31 before any such moneys or assets may be used in any manner to continue the operation of the
32 business of the employer while it is in receivership.

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

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

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

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

11 An employer who fails to file a report within the required time shall be assessed a late filing
12 penalty of five percent (5%) of the amount of contributions due with the report for each month
13 or fraction of a month the failure continues. The penalty may not exceed twenty-five percent
14 (25%) of the amount of contributions due. An employer who fails to file a report within the
15 required time but owes no contributions shall not be assessed a penalty unless the employer's
16 failure to file continues for more than 30 days.

17 (h) When any uncertified check is tendered in payment of any contributions to the
18 ~~Commission-Division~~ and such check shall have been returned unpaid on account of
19 insufficient funds of the drawer of said check in the bank upon which same is drawn, a penalty
20 shall be payable to the ~~Commission, Division~~, equal to ten percent (10%) of the amount of said
21 check, and in no case shall such penalty be less than one dollar (\$1.00) nor more than two
22 hundred dollars (\$200.00).

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

40 (j) Waiver of Interest and Penalties. – The ~~Commission-Division~~ may, for good cause
41 shown, reduce or waive any interest assessed on unpaid contributions under this section. The
42 ~~Commission-Division~~ may reduce or waive any penalty provided in G.S. 96-10(a) or
43 G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed
44 report bears a postmark that discloses that it was mailed by midnight of the due date but was
45 addressed or delivered to the wrong State or federal agency. The late payment penalty and the
46 late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay
47 was caused by any of the following:

- 48 (1) The death or serious illness of the employer or a member of his immediate
49 family, or by the death or serious illness of the person in the employer's
50 organization responsible for the preparation and filing of the report;

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

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

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

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

29 **"§ 96-11. Period, election, and termination of employer's coverage.**

30 ...

31 (b) Prior to January 1, 1972, and except as otherwise provided in subsections (a), (c),
32 and (d) of this section, an employing unit shall cease to be an employer subject to this Chapter
33 only as of the first day of January of any calendar year, if it files with the ~~Commission-Division~~
34 prior to the first day of March of such calendar year a written application for termination of
35 coverage and the ~~Commission-Division~~ finds that there were no 20 different weeks in the
36 preceding calendar year (whether or not such weeks are or were consecutive) within which said
37 employing unit employed four or more individuals in employment (not necessarily
38 simultaneously and irrespective of whether the same individuals were employed in each such
39 week); provided that on and after January 1, 1972, except as otherwise provided in subsections
40 (a), (c), and (d) of this section, an employing unit shall cease to be an employer subject to this
41 Chapter only as of the first day of January in any calendar year, if it files with the ~~Commission~~
42 ~~Division~~ prior to the first day of March of such year a written application for termination of
43 coverage and the ~~Commission-Division~~ finds that there were no 20 different weeks within the
44 preceding calendar year (whether or not such weeks are or were consecutive) within which said
45 employing unit employed one or more individuals in employment (not necessarily
46 simultaneously and irrespective of whether the same individual was employed in each such
47 week), and the ~~Commission-Division~~ finds that there was no calendar quarter within the
48 preceding calendar year in which the total wages of its employees were one thousand five
49 hundred dollars (\$1,500) or more. Any employing unit, as defined in G.S. 96-8(5)n, shall cease
50 to be an employer only if it files with the ~~Commission-Division~~ by the first day of March of any

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

48 (c) (1) An employing unit, not otherwise subject to this Chapter, which files with
49 the ~~Commission~~-Division its written election to become an employer subject
50 hereto for not less than two calendar years shall, with the written approval of

1 such election by the ~~Commission~~, Division, become an employer subject
2 hereto to the same extent as all other employers, as of the date stated in such
3 approval, and shall cease to be subject hereto as of January 1 of any calendar
4 year subsequent to such two calendar years only if, prior to the first day of
5 March following such first day of January, it has filed with the ~~Commission~~
6 Division a written notice to that effect, provided such employing unit may be
7 terminated by the ~~Commission~~-Division as provided under the provisions of
8 subdivision (3)(4) of this subsection.

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

24 (3) ...

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

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

34 (d) Except as provided in G.S. 96-9(c)(6), an employer who has not paid any covered
35 wages for a period of two consecutive calendar years shall cease to be an employer subject to
36 this Chapter. An employer who has not had individuals in employment and who has made due
37 application for exemption from filing contributions and wage reports required under this
38 Chapter and has been so exempted may be terminated from liability upon written application
39 within 120 days after notification of the reactivation of his account. Such termination shall be
40 effective January 1 of any calendar year only if the ~~Commission~~-Division finds there were no
41 20 different weeks within the preceding calendar year, whether or not such weeks are or were
42 consecutive, within which said employer employed one or more individuals in employment
43 (four or more prior to January 1, 1972), not necessarily simultaneously and irrespective of
44 whether the same individuals were employed in each such week, and the ~~Commission~~-Division
45 finds that there was no calendar quarter within the preceding calendar year in which the total
46 wages of its employees were one thousand five hundred dollars (\$1,500) or more, except as
47 otherwise provided. Provided further, an employer, as the term is used in G.S. 96-8(5)k, who
48 has not had individuals in employment and who has made due application for exemption from
49 filing contributions and wage reports required under this Chapter and has been so exempted
50 may be terminated from liability upon written application within 120 days after notification of

1 the reactivation of its account. Such termination shall be effective January 1 of any calendar
2 year only if the ~~Commission-Division~~ finds that there were no 20 different weeks within the
3 preceding calendar year, whether or not such weeks are or were consecutive, within which said
4 employer employed four or more individuals in employment, not necessarily simultaneously
5 and irrespective of whether the same individuals were employed in each such week. In such
6 cases a protest of liability shall be considered as an application for termination within the
7 meaning of this provision where the decision with respect to such protest has not become final."

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

9 "**§ 96-12. Benefits.**

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

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

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

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

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

30 ...

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

42 ...

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

- 46 (1) Unemployment compensation is subject to federal and State individual
47 income tax.
48 (2) Requirements exist pertaining to estimated tax payments.

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~~ Division 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, Division,~~ and he has
48 furnished the ~~Commission~~ Division with tangible evidence that he has
49 actively engaged in a systematic and sustained effort to find work. If an
50 individual is found to be ineligible hereunder, he shall be ineligible

beginning with the week in which 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

1 administering this proviso, benefits shall be paid or denied on a payroll-week
 2 basis as established by the employing unit. A week of unemployment due to
 3 a vacation as provided herein means any payroll week within which the
 4 equivalent of three customary full-time working days consist of a vacation
 5 period. For the purpose of this subdivision, any unemployment which is
 6 caused by a vacation period and which occurs in the calendar year following
 7 that within which the vacation period begins shall be deemed to have
 8 occurred in the calendar year within which such vacation period begins. For
 9 purposes of this subdivision, no individual shall be deemed available for
 10 work during any week that the individual tests positive for a controlled
 11 substance if (i) the test is a controlled substance examination administered
 12 under Article 20 of Chapter 95 of the General Statutes, (ii) the test is
 13 required as a condition of hire for a job, and (iii) the job would be suitable
 14 work for the claimant. The employer shall report to the ~~Commission,~~
 15 Division, in accordance with ~~regulations adopted by the Commission, rules~~
 16 adopted by the Division, each claimant that tests positive for a controlled
 17 substance under this subdivision. An unemployed individual shall not be
 18 disqualified for eligibility for unemployment compensation solely on the
 19 basis that the individual is in school. For the purposes of this subdivision:

- 20 a. No individual shall be deemed to be available for work during any
 21 week that the person is incarcerated or has received notice to report
 22 or is otherwise detained in any state or federal jail or penal
 23 institution. This does not apply to any person incarcerated solely on a
 24 weekend in county jail and is otherwise available for work.
 25 b. An individual is exempted for any week that the individual
 26 participates in the Trade Jobs For Success initiative under
 27 G.S. 143B-438.16.

28 ...

29 (c) Beginning February 16, 1977, an unemployed individual shall be eligible to receive
 30 benefits with respect to any week only if the ~~Commission-Division~~ finds that he has been
 31 totally, partially, or part-totally unemployed for a waiting period of one week with respect to
 32 each benefit year. No week shall be counted as a week of unemployment for waiting-period
 33 credit under this provision unless the claimant except for the provisions of this subdivision was
 34 otherwise eligible for benefits. As to claims filed on or after September 5, 1999, the waiting
 35 period for a benefit year shall not be required of any claimant if all of the following conditions
 36 are met:

37 ...

- 38 (4) The claimant files for a waiver of the waiting period week within 30 days
 39 after the date of notification or mailing of the notice of the right to have the
 40 waiting period week waived. The ~~Employment Security Commission,~~
 41 Division, for good cause shown, may at any time in its discretion, with or
 42 without motion or notice, order the period enlarged if the request for an
 43 enlargement of time is made before the expiration of the period originally
 44 prescribed or as extended by a previous order. After expiration of the
 45 specified period, the ~~Employment Security Commission-Division~~ may
 46 permit the act to be done where the failure to act was a result of excusable
 47 neglect.

48 The benefits paid as a result of the waiver of the waiting period week
 49 shall not be charged to the account or accounts of the base period employer
 50 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

1 satisfaction of the ~~Commission~~ Division that it was impracticable or
 2 unduly burdensome for the employee to work until the announced
 3 separation date, the permanent disqualification imposed for leaving
 4 work without good cause attributable to the employer may be
 5 reduced to the greater of four weeks or the period running from the
 6 beginning of the week during which the claim for benefits was made
 7 until the end of the week of the announced separation date.

8 An employer's placing an individual on a bona fide disciplinary
 9 suspension of 10 or fewer consecutive calendar days shall not
 10 constitute good cause for leaving work.

11 ...
 12 (1e) For the duration of an individual's unemployment, beginning with the first
 13 day of the first week after the disqualifying act occurs with respect to which
 14 week an individual files a claim for benefits, if it is determined by the
 15 ~~Commission~~ Division that such individual is, at the time such claim is filed,
 16 unemployed because the individual, without good cause attributable to the
 17 employer and after receiving notice from the employer, refused to return to
 18 work for a former employer when recalled within four weeks from a layoff,
 19 or when recalled in any week in which the work search requirements under
 20 G.S. 96-13 have been waived. As used in this subsection, the term "layoff"
 21 means a temporary separation from work due to no work available for the
 22 individual at the time of separation from work and the individual is retained
 23 on the employer's payroll and is a continuing employee subject to recall by
 24 the employer.

25 ...
 26 (2) For the duration of the individual's unemployment beginning with the first
 27 day of the first week after the disqualifying act occurs with respect to which
 28 week an individual files a claim for benefits if it is determined by the
 29 ~~Commission~~ Division that such individual is, at the time such claim is filed,
 30 unemployed because he or she was discharged for misconduct connected
 31 with the work. Misconduct connected with the work is defined as
 32 intentional acts or omissions evincing disregard of an employer's interest or
 33 standards of behavior which the employer has a right to expect or has
 34 explained orally or in writing to an employee or evincing carelessness or
 35 negligence of such degree as to manifest equal disregard. ~~conduct evincing~~
 36 ~~such willful or wanton disregard of an employer's interest as is found in~~
 37 ~~deliberate violations or disregard of standards of behavior which the~~
 38 ~~employer has the right to expect of an employee, or in carelessness or~~
 39 ~~negligence of such degree or recurrence as to manifest equal culpability,~~
 40 ~~wrongful intent or evil design, or to show an intentional and substantial~~
 41 ~~disregard of the employer's interests or of the employee's duties and~~
 42 ~~obligations to the employer.~~

43 "Discharge for misconduct with the work" as used in this section is
 44 defined to include but not be limited to separation initiated by an employer
 45 for violating the employer's written alcohol or illegal drug policy; reporting
 46 to work significantly impaired by alcohol or illegal drugs; consuming
 47 alcohol or illegal drugs on employer's premises; conviction by a court of
 48 competent jurisdiction for manufacturing, selling, or distribution of a
 49 controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2)
 50 while in the employ of said employer. ~~employer; being terminated or~~

1 suspended from employment after arrest or conviction for an offense
2 involving violence, sex crimes, illegal drugs, or other activities which could
3 negatively affect the employer's reputation in the community or business
4 dealings; any physical violence whatsoever related to an employee's work
5 for an employer, including, but not limited to, physical violence directed at
6 supervisors, subordinates, coworkers, vendors, customers, or the general
7 public; inappropriate comments or behavior towards supervisors,
8 subordinates, coworkers, vendors, customers, or to the general public
9 relating to any federally protected characteristic which creates a hostile work
10 environment; theft in connection with the employment; forging or falsifying
11 any document or data related to employment, including a previously
12 submitted application for employment; violation of an employer's written
13 absenteeism policy; refusing to perform reasonably assigned work tasks; and
14 the failure to adequately perform any other employment duties as evidenced
15 by no fewer than three written reprimands received in the 12 months
16 immediately preceding the employee's termination. This phrase does not
17 discharge or employer-initiated separation of a severely disabled veteran, as
18 defined in G.S. 96-8, for ~~acts or omissions~~ any act or omission of the veteran
19 that the ~~Commission~~ Division determines are attributed to a disability
20 incurred or aggravated in the line of duty during active military service, or to
21 the veteran's absence from work to obtain care and treatment of a disability
22 incurred or aggravated in the line of duty during active military service.

23 (2a) For a period of not less than four nor more than 13 weeks beginning with the
24 first day of the first week during which or after the disqualifying act occurs
25 with respect to which week an individual files a claim for benefits if it is
26 determined by the ~~Commission~~ Division that such individual is, at the time
27 the claim is filed, unemployed because he was discharged for substantial
28 fault on his part connected with his work not rising to the level of
29 misconduct. Substantial fault is defined to include those acts or omissions of
30 employees over which they exercised reasonable control and which violate
31 reasonable requirements of the job but shall not include (1) minor infractions
32 of rules unless such infractions are repeated after a warning was received by
33 the employee, (2) inadvertent mistakes made by the employee, nor (3)
34 failures to perform work because of insufficient skill, ability, or equipment.
35 Upon a finding of discharge under this subsection, the individual shall be
36 disqualified for a period of nine weeks unless, based on findings by the
37 ~~Commission~~ Division of aggravating or mitigating circumstances, the
38 period of disqualification is lengthened or shortened within the limits set out
39 above. The length of the disqualification so set by the ~~Commission~~ Division
40 shall not be disturbed by a reviewing court except upon a finding of plain
41 error.

42 (2b) For the duration of the individual's unemployment beginning with the first
43 day of the first week during which or after the disqualifying act occurs with
44 respect to which week an individual files a claim for benefits if it is
45 determined by the ~~Commission~~ Division that the individual is, at the time
46 such claim is filed, unemployed because the individual has been discharged
47 from employment because a license, certificate, permit, bond, or surety that
48 is necessary for the performance of the individual's employment and that the
49 individual is responsible to supply has been revoked, suspended, or
50 otherwise lost to the individual, or the individual's ability to successfully

1 apply or the individual's application therefor has been lost or denied for a
 2 cause that was within the individual's power to control, guard against, or
 3 prevent. No showing of misconduct connected with the work or substantial
 4 fault connected with the work not rising to the level of misconduct shall be
 5 required in order for an individual to be disqualified for benefits under this
 6 subdivision.

7 (2c) Discharge or employer-initiated separation of a severely disabled veteran, as
 8 defined in G.S. 96-8, for acts or omissions of the veteran that the
 9 ~~Commission~~ Division determines are attributed to a disability incurred or
 10 aggravated in the line of duty during active military service, or to the
 11 veteran's absence from work to obtain care and treatment of a disability
 12 incurred or aggravated in the line of duty during active military service, shall
 13 not disqualify the veteran from receiving benefits under the substantial fault
 14 provisions of subdivision (2a) of this section for any period of time.

15 (3) For the duration of his unemployment beginning with the first day of the
 16 first week in which the disqualifying act occurs if it is determined by the
 17 ~~Commission~~ Division that such individual has failed without good cause (i)
 18 to apply for available suitable work when so directed by the employment
 19 office of the ~~Commission~~; Division; or (ii) to accept suitable work when
 20 offered him; or (iii) to return to his customary self-employment (if any)
 21 when so directed by the ~~Commission~~ Division. Provided further, an
 22 otherwise eligible individual who is attending a vocational school or training
 23 program which has been approved by the ~~Commission~~ Division for such
 24 individual shall not be denied benefits because he refuses to apply for or
 25 accept suitable work during such period of training.

26 In determining whether or not any work is suitable for an individual, the
 27 ~~Commission~~ Division shall consider the degree of risk involved to his health,
 28 safety, and morals, his physical fitness and prior training, his experience and
 29 prior earnings, his length of unemployment and prospects for securing local
 30 work in his customary occupation, and the distance of the available work
 31 from his residence.

32 Notwithstanding any other provisions of this Chapter, no work shall be
 33 deemed suitable and benefits shall not be denied under this Chapter to any
 34 otherwise eligible individual for refusing to accept new work under any of
 35 the following conditions:

- 36 a. If the position offered is vacant due directly to a strike, lockout, or
 37 other labor dispute;
- 38 b. If the remuneration, hours, or other conditions of the work offered
 39 are substantially less favorable to the individual than those prevailing
 40 for similar work in the locality;
- 41 c. If as a condition of being employed the individual would be required
 42 to join a company union or to resign from or refrain from joining any
 43 bona fide labor organization;
- 44 d. If the position offered is full-time work and the individual meets the
 45 part-time worker requirements of G.S. 96-13(a)(6).

46 (4) For the duration of his unemployment beginning with the first day of the
 47 first week after the disqualifying act occurs with respect to which week an
 48 individual files a claim for benefits if it is determined by the ~~Commission~~
 49 Division that:

- 1 a. Such individual has failed without good cause to attend a vocational
2 school or training program when so directed by the ~~Commission;~~
3 Division;
- 4 b. Such individual has discontinued his training course without good
5 cause; or
- 6 c. If the individual is separated from his training course or vocational
7 school due to misconduct.
- 8 (5) For any week with respect to which the ~~Commission~~-Division finds that his
9 total or partial unemployment is caused by a labor dispute in active progress
10 on or after July 1, 1961, at the factory, establishment, or other premises at
11 which he is or was last employed or caused after such date by a labor dispute
12 at another place within this State which is owned or operated by the same
13 employing unit which owns or operates the factory, establishment, or other
14 premises at which he is or was last employed and which supplies materials
15 or services necessary to the continued and usual operation of the premises at
16 which he is or was last employed. Provided, that an individual disqualified
17 under the provisions of this subdivision shall continue to be disqualified
18 thereunder after the labor dispute has ceased to be in active progress for such
19 period of time as is reasonably necessary and required to physically resume
20 operations in the method of operating in use at the plant, factory, or
21 establishment of the employing unit.
- 22 (6) If the ~~Commission~~-Division finds he is customarily self-employed and can
23 reasonably return to self-employment.
- 24 (6a) For the duration of his unemployment beginning with the first day of the
25 first week during which or after the disqualifying act occurs with respect to
26 which week an individual files a claim for benefits if it is determined by the
27 ~~Commission~~-Division that the individual is, at the time the claim is filed,
28 unemployed because the individual's ownership share of the employing
29 entity was voluntarily sold and, at the time of the sale:
- 30 a. The employing entity was a corporation and the individual held five
31 percent (5%) or more of the outstanding shares of the voting stock of
32 the corporation;
- 33 b. The employing entity was a partnership, limited or general, and the
34 individual was a limited or general partner; or
- 35 c. The employing entity was a proprietorship, and the individual was a
36 proprietor.
- 37 ...
- 38 (8) For any week with respect to which he has received any sum from the
39 employer pursuant to an order of any court, the National Labor Relations
40 Board, any other lawfully constituted adjudicative agency, or by private
41 agreement, consent or arbitration for loss of pay by reason of discharge.
42 When the amount so paid by the employer is in a lump sum and covers a
43 period of more than one week, such amount shall be allocated to the weeks
44 in the period on such a pro rata basis as the ~~Commission~~-Division may adopt
45 and if the amount so prorated to a particular week would, if it had been
46 earned by the claimant during that week of unemployment, have resulted in
47 a reduced benefit payment as provided in G.S. 96-12, the claimant shall be
48 entitled to receive such reduced payment if the claimant was otherwise
49 eligible.

1 Further provided, any benefits previously paid for weeks of
 2 unemployment with respect to which back pay awards, or other such
 3 compensation, are made shall constitute an overpayment of benefits and
 4 such amounts shall be deducted from the award by the employer prior to
 5 payment to the employee, and shall be transmitted promptly (or within 5
 6 days) to the ~~Commission-Division~~ by the employer for application against
 7 the overpayment. Provided, however, the removal of any charges made
 8 against the employer as a result of such previously paid benefits shall be
 9 applied to the calendar year in which the overpayment is transmitted to the
 10 ~~Commission-Division~~, and no attempt shall be made to relate such a credit
 11 to the period to which the award applies. Any amount of overpayment so
 12 deducted by the employer and not transmitted to the ~~Commission-Division~~
 13 or the failure of an employer to deduct an overpayment shall be subject to
 14 the same procedures for collection as is provided for contributions by
 15 G.S. 96-10. It is the purpose of this paragraph to assure the prompt collection
 16 of overpayments of U. I. benefits, and it shall be construed accordingly.

- 17 ...
 18 (10) Any employee disqualified for the duration of his unemployment due to the
 19 provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent
 20 disqualification removed if he meets the following three conditions:
 21 a. Returns to work for at least five weeks and is paid cumulative wages of
 22 at least 10 times his weekly benefit amount;
 23 b. Subsequently becomes unemployed through no fault of his own; and
 24 c. Meets the availability requirements of the law.

25 Any time certain disqualification imposed by the provisions of
 26 subsections (1), (1D), and (2A) shall be removed by serving the
 27 disqualification imposed as provided by this subsection.

28 Provided for good cause shown the ~~Commission-Division~~ in its
 29 discretion may as to any permanent disqualification provided in this Chapter
 30 reduce the disqualification period to a time certain but not less than five
 31 weeks. The maximum amount of benefits due any individual whose
 32 permanent disqualification is changed to a time certain shall be reduced by
 33 an amount determined by multiplying the number of weeks of
 34 disqualification by the weekly benefit amount.

35 Provided further, any permanent disqualification pursuant to the
 36 provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the
 37 effective date of the beginning of said disqualification.

- 38 ...
 39 (12) Notwithstanding any other provision of this Chapter, no otherwise eligible
 40 individual shall be denied benefits for any weeks if it is determined by the
 41 ~~Commission-Division~~ that such individual is, at the time such claim is filed,
 42 unemployed because he left work solely as a result of a lack of work caused
 43 by the bankruptcy of his employer."

44 **SECTION 2.16.** G.S. 96-15 reads as rewritten:

45 "**§ 96-15. Claims for benefits.**

46 (a) Filing. – Claims for benefits shall be made in accordance with such regulations as
 47 the ~~Commission-Division~~ may prescribe. Employers may file claims for employees through the
 48 use of automation in the case of partial unemployment. Each employing unit shall post and
 49 maintain in places readily accessible to individuals performing services for it printed
 50 statements, concerning benefit rights, claims for benefits, and such other matters relating to the

1 administration of this Chapter as the ~~Commission~~ Division may direct. Each employing unit
2 shall supply to such individuals copies of such printed statements or other materials relating to
3 claims for benefits as the ~~Commission~~ Division may direct. Such printed statements and other
4 materials shall be supplied by the ~~Commission~~ Division to each employing unit without cost to
5 the employing unit.

6 (b) (1) Initial Determination. – A representative designated by the ~~Commission~~
7 Division shall promptly examine the claim and shall determine whether or
8 not the claim is valid. If the claim is determined to be not valid for any
9 reason other than lack of base period earnings, the claim shall be referred to
10 an Adjudicator for a decision as to the issues presented. If the claim is
11 determined to be valid, a monetary determination shall be issued showing
12 the week with respect to when benefits shall commence, the weekly benefit
13 amount payable, and the potential maximum duration thereof. The claimant
14 shall be furnished a copy of such monetary determination showing the
15 amount of wages paid him by each employer during his base period and the
16 employers by whom such wages were paid, his benefit year, weekly benefit
17 amount, and the maximum amount of benefits that may be paid to him for
18 unemployment during the benefit year. When a claim is not valid due to lack
19 of earnings in his base period, the determination shall so designate. The
20 claimant shall be allowed 10 days from the earlier of mailing or delivery of
21 his monetary determination to him within which to protest his monetary
22 determination and upon the filing of such protest, unless said protest be
23 satisfactorily resolved, the claim shall be referred to the ~~Chief Deputy~~
24 ~~Commissioner~~ Assistant Secretary or his designee for a decision as to the
25 issues presented. All base period employers, as well as the most recent
26 employer of a claimant on a temporary layoff, shall be notified upon the
27 filing of a claim which establishes a benefit year.

28 At any time within one year from the date of the making of an initial
29 determination, the ~~Commission~~ Division on its own initiative may reconsider
30 such determination if it finds that an error in computation or identity has
31 occurred in connection therewith or that additional wages pertinent to the
32 claimant's benefit status have become available, or if such determination of
33 benefit status was made as a result of a nondisclosure or misrepresentation of
34 a material fact.

35 (2) Adjudication. – When a protest is made by the claimant to the initial or
36 monetary determination, or a question or issue is raised or presented as to the
37 eligibility of a claimant under G.S. 96-13, or whether any disqualification
38 should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant
39 to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator
40 may consider any matter, document or statement deemed to be pertinent to
41 the issues, including telephone conversations, and after such consideration
42 shall render a conclusion as to the claimant's benefit entitlements. The
43 adjudicator shall notify the claimant and all other interested parties of the
44 conclusion reached. The conclusion of the adjudicator shall be deemed the
45 final decision of the ~~Commission~~ Division unless within ~~15~~ 30 days after the
46 date of notification or mailing of the conclusion, whichever is earlier, a
47 written appeal is filed pursuant to ~~such regulations as the Commission may~~
48 ~~adopt.~~ The Commission rules adopted by the Division. The Division shall be
49 deemed an interested party for such purposes and may remove to itself or

1 transfer to an appeals referee the proceedings involving any claim pending
2 before an adjudicator.

3 Provided, any interested employer shall be allowed ~~1030~~ days from the
4 earlier of mailing or delivery of the notice of the filing of a claim against the
5 employer's account to protest the claim and have the claim referred to an
6 adjudicator for a decision on the question or issue raised. A copy of the
7 notice of the filing shall be sent contemporaneously to the employer by
8 telefacsimile transmission if a fax number is on file. Provided further, no
9 question or issue may be raised or presented by the ~~Commission-Division~~ as
10 to the eligibility of a claimant under G.S. 96-13, or whether any
11 disqualification should be imposed under G.S. 96-14, after 45 days from the
12 first day of the first week after the question or issue occurs with respect to
13 which week an individual filed a claim for benefits. None of the provisions
14 of this subsection shall have the force and effect nor shall the same be
15 construed or interested as repealing any other provisions of G.S. 96-18.

16 An employer shall receive written notice of the employer's appeal rights
17 and any forms that are required to allow the employer to protest the claim.
18 The forms shall include a section referencing the appropriate rules pertaining
19 to appeals and the instructions on how to appeal.

20 (c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee
21 or hearing officer shall set a hearing in which the parties are given reasonable opportunity to be
22 heard. The conduct of hearings shall be governed by suitable ~~regulations-established-rules~~
23 adopted by the Commission-Division. The ~~regulations-rules~~ need not conform to common law
24 or statutory rules of evidence or technical or formal rules of procedure but shall provide for the
25 conduct of hearings in such manner as to ascertain the substantial rights of the parties. The
26 hearings may be conducted by conference telephone call or other similar means provided that if
27 any party files with the ~~Commission-Division~~ prior written objection to the telephone
28 procedure, that party will be afforded an opportunity for an in-person hearing at such place in
29 the State as the ~~Commission-Division~~ by ~~regulation- rule~~ shall provide. The hearing shall be
30 scheduled for a time that, as much as practicable, least intrudes on and reasonably
31 accommodates the ordinary business activities of an employer and the return to employment of
32 a claimant. The appeals referee or hearing officer may affirm or modify the conclusion of the
33 adjudicator or issue a new decision in which findings of fact and conclusions of law will be set
34 out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute
35 the appeal after having been duly notified of the appeals hearing. The evidence taken at the
36 hearings before the appeals referee shall be recorded and the decision of the appeals referee
37 shall be deemed to be the final decision of the ~~Commission-Division~~ unless within 10 days after
38 the date of notification or mailing of the decision, whichever is earlier a written appeal is filed
39 pursuant to such ~~regulations-rules~~ as the ~~Commission-Board of Review and the Division~~ may
40 adopt. No person may be appointed as an appeals referee or hearing officer unless he or she
41 possesses the minimum qualifications necessary to be a staff attorney eligible for designation
42 by the ~~Commission-Division~~ as a hearing officer under ~~G.S. 96-4(m)-G.S. 96-4(q)~~. No appeals
43 referee or hearing officer in full-time permanent status may engage in the private practice of
44 law as defined in G.S. 84-2.1 while serving in office as appeals referee; ~~referee or hearing~~
45 officer; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken
46 from a decision of the appeals referee, ~~referee or hearing officer~~; the appealing party shall
47 submit a clear written statement containing the grounds for the appeal within the time allowed
48 by law for taking the appeal, and if such timely statement is not submitted, the ~~Commission~~
49 Board of Review may dismiss the appeal.

1 (c1) Unless required for disposition of an ex parte matter authorized by law, a
2 ~~Commissioner, the Division,~~ appeals referee, or employee assigned to make a decision or to
3 make findings of facts and conclusions of law in a case shall not communicate, directly or
4 indirectly, in connection with any issue of fact, or question of law, with any person or party or
5 his representative, except on notice and opportunity for parties to participate.

6 (c2) Whenever a party is notified of an ~~Adjudicator's, Appeals Referee's, or Deputy~~
7 ~~Commissioner's~~ the Board of Review's or a hearing officer's decision by mail, G.S. 1A-1, Rule
8 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

9 (d) Repealed by Session Laws 1977, c. 727, s. 54.

10 (d1) No continuance shall be granted except upon application to the ~~Commissioner,~~
11 Division, the appeals referee, or other authority assigned to make the decision in the matter to
12 be continued. A continuance may be granted only for good cause shown and upon such terms
13 and conditions as justice may require. Good cause for granting a continuance shall include, but
14 not be limited to, those instances when a party to the proceeding, a witness, or counsel of
15 record has an obligation of service to the State, such as service as a member of the North
16 Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater
17 jurisdiction.

18 (e) Review by the ~~Commission-Board of Review.~~ – The Board of Review may on its
19 own motion affirm, modify, or set aside any decision of an appeals referee, hearing officer, or
20 other employee assigned to make a decision on the basis of the evidence previously submitted
21 in such case, or direct the taking of additional evidence, or may permit any of the parties to
22 such decision to initiate further appeals before it, or may provide for group hearings in such
23 cases as the Board of Review finds appropriate. The Board of Review may remove itself or
24 transfer to an appeals referee, hearing officer, or other employee assigned to make a decision
25 the proceedings on any claim pending before an appeals referee, hearing officer, or other
26 employee assigned to make a decision. Interested parties shall be promptly notified of the
27 findings and decision of the Board of Review. Commission or Deputy Commissioner may on
28 its own motion affirm, modify, or set aside any decision of an appeals referee on the basis of
29 the evidence previously submitted in such case, or direct the taking of additional evidence, or
30 may permit any of the parties to such decision to initiate further appeals before it, or may
31 provide for group hearings in such cases as the Commission or Deputy Commissioner may
32 deem proper. The Commission or Deputy Commissioner may remove to itself or transfer to
33 another appeals referee the proceedings on any claim pending before an appeals referee. The
34 Commission shall promptly notify the interested parties of its findings and the decision. In all
35 Commission matters heard by a Deputy Commissioner, the decision of the Deputy
36 Commissioner shall constitute the decision of the Commission; except, the Commission may
37 remove unto itself, upon its own motion, any claim pending for rehearing and redetermination,
38 provided such removal is done prior to the expiration of appeal period applicable to the
39 decision of the Deputy Commissioner.

40 (f) Procedure. – The manner in which disputed claims shall be presented, the reports
41 thereon required from the claimant and from employers, and the conduct of hearings and
42 appeals shall be in accordance with regulations prescribed by the Commission rules adopted by
43 the Division for determining the rights of the parties, whether or not such regulations conform
44 to common-law or statutory rules of evidence and other technical rules of procedure. All
45 testimony at any hearing before an appeals referee upon a disputed claim shall be recorded
46 unless the recording is waived by all interested parties, the parties have waived the evidentiary
47 hearing and entered into a stipulation resolving the issues pending before the appeals referee,
48 hearing officer, or other employee assigned to make the decision, but need not be transcribed
49 unless the disputed claim is further appealed and, one or more of the parties objects, under such
50 regulations as the Commission may prescribe, rules as the Division may adopt, to being

1 provided a copy of the tape recording of the hearing. Any other provisions of this Chapter
2 notwithstanding, any individual receiving the transcript shall pay to the ~~Commission-Division~~
3 such reasonable fee for the transcript as the ~~Commission-Division~~ may by regulation provide.
4 The fee so prescribed by the ~~Commission-Division~~ for a party shall not exceed the lesser of
5 sixty-five cents (65¢) per page or sixty-five dollars (\$65.00) per transcript. The ~~Commission~~
6 ~~Division~~ may by regulation provide for the fee to be waived in such circumstances as it in its
7 sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by
8 such proofs as are required in G.S. 1-110, the ~~Commission-Division~~ shall waive the fee.

9 (g) Witness Fees. – Witnesses subpoenaed pursuant to this section shall be allowed fees
10 at a rate fixed by the ~~Commission-Division~~. Such fees and all expenses of proceedings
11 involving disputed claims shall be deemed a part of the expense of administering this Chapter.

12 (h) Judicial Review. – Any decision of the ~~Commission-Division~~, in the absence of
13 judicial review as herein provided, or in the absence of an interested party filing a request for
14 reconsideration, shall become final 30 days after the date of notification or mailing thereof,
15 whichever is earlier. Judicial review shall be permitted only after a party claiming to be
16 aggrieved by the decision has exhausted his remedies before the ~~Commission-Division~~ as
17 provided in this Chapter and has filed a petition for review in the superior court of the county in
18 which he resides or has his principal place of business. The petition for review shall explicitly
19 state what exceptions are taken to the decision or procedure of the ~~Commission-Division~~ and
20 what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the
21 petitioner shall serve copies of the petition by personal service or by certified mail, return
22 receipt requested, upon the ~~Commission-Division~~ and upon all parties of record to the
23 ~~Commission-Division~~ proceedings. Names and addresses of the parties shall be furnished to the
24 petitioner by the ~~Commission-Division~~ upon request. The ~~Commission-Division~~ shall be
25 deemed to be a party to any judicial action involving any of its decisions and may be
26 represented in the judicial action by any qualified attorney who has been designated by it for
27 that purpose. ~~Upon motion of the Commission, the court shall dismiss any review for which the~~
28 ~~petition is untimely filed, untimely or improperly served, or for which it otherwise fails to~~
29 ~~comply with the requirements of this subsection. Any questions regarding the requirements of~~
30 this subsection concerning the service or filing of a petition shall be determined by the superior
31 court. Any party to the ~~Commission-Division~~ proceeding may become a party to the review
32 proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any
33 person aggrieved may petition to become a party by filing a motion to intervene as provided in
34 G.S. 1A-1, Rule 24.

35 Within 45 days after receipt of the copy of the petition for review or within such additional
36 time as the court may allow, the ~~Commission-Division~~ shall transmit to the reviewing court the
37 original or a certified copy of the entire record of the proceedings under review. With the
38 permission of the court the record may be shortened by stipulation of all parties to the review
39 proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by
40 the court for such additional cost as is occasioned by the refusal. The court may require or
41 permit subsequent corrections or additions to the record when deemed desirable.

42 (i) Review Proceedings. – If a timely petition for review has been filed and served as
43 provided in G.S. 96-15(h), the court may make party defendant any other party it deems
44 necessary or proper to a just and fair determination of the case. The ~~Commission-Division~~ may,
45 in its discretion, certify to the reviewing court questions of law involved in any decision by it.
46 In any judicial proceeding under this section, the findings of fact by the ~~Commission-Division~~,
47 if there is any competent evidence to support them and in the absence of fraud, shall be
48 conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions
49 and the questions so certified shall be heard in a summary manner and shall be given
50 precedence over all civil cases. An appeal may be taken from the judgment of the superior

1 court, as provided in civil cases. The ~~Commission~~-Division shall have the right to appeal to the
 2 appellate division from a decision or judgment of the superior court and for such purpose shall
 3 be deemed to be an aggrieved party. No bond shall be required of the ~~Commission~~-Division
 4 upon appeal. Upon the final determination of the case or proceeding, the ~~Commission~~-Division
 5 shall enter an order in accordance with the determination. When an appeal has been entered to
 6 any judgment, order, or decision of the court below, no benefits shall be paid pending a final
 7 determination of the cause, except in those cases in which the final decision of the ~~Commission~~
 8 Division allowed benefits.

9 (j) Repealed by Session Laws 1985, c. 197, s. 9.

10 (k) Irrespective of any other provision of this Chapter, the ~~Commission~~-Division may
 11 adopt minimum regulations necessary to provide for the payment of benefits to individuals
 12 promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42
 13 U.S.C.A., section 503(a)(1))."

14 **SECTION 2.17.** G.S. 96-16 reads as rewritten:

15 **"§ 96-16. Seasonal pursuits.**

16 (a) A seasonal pursuit is one which, because of seasonal conditions making it
 17 impracticable or impossible to do otherwise, customarily carries on production operations only
 18 within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a
 19 calendar year. No pursuit shall be deemed seasonal unless and until so found by the
 20 ~~Commission~~-Division; ~~Provided, however,~~ except that from March 27, 1953, any successor
 21 under G.S. 96-8(5)b to a seasonal pursuit shall be deemed seasonal unless such successor shall
 22 within 120 days after the acquisition request cancellation of the determination of status of such
 23 seasonal pursuit; provided further that this provision shall not be applicable to pending cases
 24 nor retroactive in effect.

25 (b) Upon application therefor by a pursuit, the ~~Commission~~-Division shall determine or
 26 redetermine whether such pursuit is seasonal and, if seasonal, the active period or periods
 27 thereof. The ~~Commission~~-Division may, on its own motion, redetermine the active period or
 28 periods of a seasonal pursuit. An application for a seasonal determination must be made on
 29 forms prescribed by the ~~Commission~~-Division and must be made at least 20 days prior to the
 30 beginning date of the period of production operations for which a determination is requested.

31 (c) Whenever the ~~Commission~~-Division has determined or redetermined a pursuit to be
 32 seasonal, such pursuit shall be notified immediately, and such notice shall contain the
 33 beginning and ending dates of the pursuit's active period or periods. Such pursuits shall display
 34 notices of its seasonal determination conspicuously on its premises in a sufficient number of
 35 places to be available for inspection by its workers. Such notices shall be furnished by the
 36 ~~Commission~~-Division.

37 ...
 38 (j) As used in this section:

39 ...
 40 (5) "Seasonal wages" mean the wages earned in a seasonal pursuit within its
 41 active period or periods. The ~~Commission~~-Division may prescribe by
 42 regulation the manner in which seasonal wages shall be reported.

43"

44 **SECTION 2.18.** G.S. 96-17 reads as rewritten:

45 **"§ 96-17. Protection of rights and benefits; attorney representation; prohibited fees;
 46 deductions for child support obligations.**

47 ...
 48 (b) Representation. – Any claimant or employer who is a party to any proceeding before
 49 the ~~Commission~~-Division may be represented by (i) an attorney; or (ii) any person who is

1 supervised by an attorney, however, the attorney need not be present at any proceeding before
2 the ~~Commission~~ Division.

3 (b1) Fees Prohibited. – Except as otherwise provided in this Chapter, no individual
4 claiming benefits in any administrative proceeding under this Chapter shall be charged fees of
5 any kind by the ~~Commission~~ Division or its representative, and in any court proceeding under
6 this Chapter each party shall bear its own costs and legal fees.

7 ...

8 (d) (1) Definitions. – For the purpose of this subsection and when used herein:

9 a. "Unemployment compensation" means any compensation found by
10 the ~~Commission~~ Division to be payable to an unemployed individual
11 under the Employment Security Law of North Carolina (including
12 amounts payable by the ~~Commission~~ Division pursuant to an
13 agreement under any federal law providing for compensation,
14 assistance or allowances with respect to unemployment) provided,
15 that nothing in this subsection shall be construed to limit the
16 ~~Commission's~~ Division's ability to reduce or withhold benefits,
17 otherwise payable, under authority granted elsewhere in this Chapter
18 including but not limited to reductions for wages or earnings while
19 unemployed and for the recovery of previous overpayments of
20 benefits.

21 ...
22 (2) a.

23 An individual filing a new claim for unemployment compensation
24 shall, at the time of filing such claim, disclose whether the individual
25 owes child support obligations, as defined under subparagraph (1)b.
26 of this subsection. If any such individual discloses that he or she
27 owes child support obligations and is determined by the ~~Commission~~
28 Division to be eligible for payment of unemployment compensation,
29 the ~~Commission~~ Division shall notify the State or local child support
30 enforcement agency enforcing such obligation that such individual
31 has been determined to be eligible for payment of unemployment
32 compensation.

33 b. Upon payment by the State or local child support enforcement
34 agency of the processing fee provided for in paragraph (4) of this
35 subsection and beginning with any payment of unemployment
36 compensation that, except for the provisions of this subsection,
37 would be made to the individual during the then current benefit year
38 and more than five working days after the receipt of the processing
39 fee by the ~~Commission~~ Division, the ~~Commission~~ Division shall
40 deduct and withhold from any unemployment compensation
41 otherwise payable to an individual who owes child support
42 obligations:

- 43 1. The amount specified by the individual to the ~~Commission~~
44 Division to be deducted and withheld under this paragraph if
45 neither subparagraph 2. nor subparagraph 3. of this paragraph
46 is applicable; or
- 47 2. The amount, if any, determined pursuant to an agreement
48 submitted to the ~~Commission~~ Division under section
49 454(20)(B)(i) of the Social Security Act by the State or local
50 child support enforcement agency, unless subparagraph 3. of
this paragraph is applicable; or

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- 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.

1 ...
2 (b1) Except as provided in this subsection, the penalties and other provisions in
3 subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance
4 contributions under this Chapter to the same extent that they apply to taxes as defined in
5 G.S. 105-228.90(b)(7). The ~~Commission~~-Division has the same powers under those
6 subdivisions with respect to unemployment insurance contributions as does the Secretary of
7 Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

8 G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it
9 applies to an income tax preparer. As used in this subsection, a "contribution tax return
10 preparer" is a person who prepares for compensation, or who employs one or more persons to
11 prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of
12 tax imposed by this Chapter. For purposes of this definition, the completion of a substantial
13 portion of a return or claim for refund is treated as the preparation of the return or claim for
14 refund. The term does not include a person merely because the person (i) furnishes typing,
15 reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the
16 employer, or an officer or employee of the employer, by whom the person is regularly and
17 continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person,
18 or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

19 The penalty in G.S. 105-236(7) applies with respect to unemployment insurance
20 contributions under this Chapter only when one of the following circumstances exist in
21 connection with the violation:

- 22 (1) Any employing units employing more than 10 employees.
- 23 (2) A contribution of more than two thousand dollars (\$2,000) has not been
24 paid.
- 25 (3) An experience rating account balance is more than five thousand dollars
26 (\$5,000) overdrawn.

27 If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist
28 in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is
29 guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate
30 offense.

31 If the ~~Commission~~-Division finds that any person violated G.S. 105-236(9a) and is not
32 subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars (\$500.00)
33 per violation for each day the violations continue, plus the reasonable costs of investigation and
34 enforcement.

35 ...

- 36 (g) (1) Any person who, under subsection (e) above, has been held ineligible for
37 benefits and who, because of those same acts or omissions has received any
38 sum as benefits under this Chapter to which ~~he~~-the person was not entitled,
39 shall be liable to repay any such sum to the ~~Commission~~-Division as
40 provided in subparagraph (3) below, provided no such recovery or
41 recoupment of such sum may be initiated after 10 years from the last day of
42 the year in which the overpayment occurred.
- 43 (2) Any person who has received any sum as benefits under this Chapter by
44 reason of the nondisclosure or misrepresentation by him or by another of a
45 material fact (irrespective of whether such nondisclosure or
46 misrepresentation was known or fraudulent) or has been paid benefits to
47 which he was not entitled for any reason (including errors on the part of any
48 representative of the ~~Commission~~-Division) other than subparagraph (1)
49 above shall be liable to repay such sum to the ~~Commission~~-Division as
50 provided in subparagraph (3) below, provided no such recovery or

1 recoupment of such sum may be initiated after three years from the last day
2 of the year in which the overpayment occurred.

3 (3) The ~~Commission~~Division may collect the overpayments provided for in this
4 subsection by one or more of the following procedures as the ~~Commission~~
5 Division may, except as provided herein, in its sole discretion choose:

6 a. If, after due notice, any overpaid claimant shall fail to repay the sums
7 to which he was not entitled, the amount due may be collected by
8 civil action in the name of the ~~Commission~~,Division, and the cost of
9 such action shall be taxed to the claimant. Civil actions brought
10 under this section to collect overpayments shall be heard by the court
11 at the earliest possible date and shall be entitled to preference upon
12 the calendar of the court over all other civil actions except petitions
13 for judicial review under this Chapter.

14 b. If any overpayment recognized by this subsection shall not be repaid
15 within 30 days after the claimant has received notice and demand for
16 same, and after due notice and reasonable opportunity for hearing (if
17 a hearing on the merits of the claim has not already been had) the
18 ~~Commission~~,Division, under the hand of its ~~Chairman~~,the Assistant
19 Secretary, may certify the same to the clerk of the superior court of
20 the county in which the claimant resides or has property, and
21 additional copies of said certificate for each county in which the
22 ~~Commission~~Division has reason to believe such claimant has
23 property located; such certificate and/or copies thereof so forwarded
24 to the clerk of the superior court shall immediately be docketed and
25 indexed on the cross index of judgments, and from the date of such
26 docketing shall constitute a preferred lien upon any property which
27 said claimant may own in said county, with the same force and effect
28 as a judgment rendered by the superior court. The ~~Commission~~
29 Division shall forward a copy of said certificate to the sheriff or
30 sheriffs of such county or counties, or to a duly authorized agent of
31 the ~~Commission~~,Division, and when so forwarded and in the hands
32 of such sheriff or agent of the ~~Commission~~,Division, shall have all
33 the force and effect of an execution issued to such sheriff or agent of
34 the ~~Commission~~Division by the clerk of the superior court upon a
35 judgment of the superior court duly docketed in said county. The
36 ~~Commission~~Division is further authorized and empowered to issue
37 alias copies of said certificate or execution to the sheriff or sheriffs of
38 such county or counties, or a duly authorized agent of the
39 ~~Commission~~Division in all cases in which the sheriff or duly
40 authorized agent has returned an execution or certificate unsatisfied;
41 when so issued and in the hands of the sheriff or duly authorized
42 agent of the ~~Commission~~,Division, such alias shall have all the force
43 and effect of an alias execution issued to such sheriff or duly
44 authorized agent of the ~~Commission~~Division by the clerk of the
45 superior court upon a judgment of the superior court duly docketed in
46 said county. Provided, however, that notwithstanding any provision
47 of this subsection, upon filing one written notice with the
48 ~~Commission~~,Division, the sheriff of any county shall have the sole
49 and exclusive right to serve all executions and make all collections
50 mentioned in this subsection and in such case, no agent of the

1 ~~Commission~~ Division shall have the authority to serve any
2 executions or make any collections therein in such county. A return
3 of such execution or alias execution, shall be made to the
4 ~~Commission~~, Division, together with all moneys collected
5 thereunder, and when such order, execution or alias is referred to the
6 agent of the ~~Commission~~ Division for service, the said agent of the
7 ~~Commission~~ Division shall be vested with all the powers of the
8 sheriff to the extent of serving such order, execution or alias and
9 levying or collecting thereunder. The agent of the ~~Commission~~
10 Division to whom such order or execution is referred shall give a
11 bond not to exceed three thousand dollars (\$3,000) approved by the
12 ~~Commission~~ Division for the faithful performance of such duties.
13 The liability of said agent shall be in the same manner and to the
14 same extent as is now imposed on sheriffs in the service of
15 execution. If any sheriff of this State or any agent of the ~~Commission~~
16 Division who is charged with the duty of serving executions shall
17 willfully fail, refuse or neglect to execute any order directed to him
18 by the said ~~Commission~~ Division and within the time provided by
19 law, the official bond of such sheriff or of such agent of the
20 ~~Commission~~ Division shall be liable for the overpayments and costs
21 due by the claimant. Additionally, the ~~Commission~~ Division or its
22 designated representatives in the collection of overpayments shall
23 have the powers enumerated in G.S. 96-10(b)(2) and (3).

- 24 c. Any person who has been found by the ~~Commission~~ Division to have
25 been overpaid under subparagraph (1) above shall be liable to have
26 such sums deducted from future benefits payable to him under this
27 Chapter.
- 28 d. Any person who has been found by the ~~Commission~~ Division to have
29 been overpaid under subparagraph (2) above shall be liable to have
30 such sums deducted from future benefits payable to him under this
31 Chapter in such amounts as the ~~Commission~~ Division may by
32 regulation prescribe but no such benefit payable for any week shall
33 be reduced by more than fifty percent (50%) of that person's weekly
34 benefit amount.
- 35 e. To the extent permissible under the laws and Constitution of the
36 United States, the ~~Commission~~ Division is authorized to enter into or
37 cooperate in arrangements or reciprocal agreements with appropriate
38 and duly authorized agencies of other states or the United States
39 Secretary of Labor, or both, whereby: (1) Overpayments of
40 unemployment benefits as determined under subparagraphs (1) and
41 (2) above shall be recovered by offset from unemployment benefits
42 otherwise payable under the unemployment compensation law of
43 another state, and overpayments of unemployment benefits as
44 determined under the unemployment compensation law of such other
45 state shall be recovered by offset from unemployment benefits
46 otherwise payable under this Chapter; and, (2) Overpayments of
47 unemployment benefits as determined under applicable federal law,
48 with respect to benefits or allowances for unemployment provided
49 under a federal program administered by this State under an
50 agreement with the United States Secretary of Labor, shall be

1 recovered by offset from unemployment benefits otherw payable
 2 under this Chapter or any such federal program, or under the
 3 unemployment compensation law of another state or any such federal
 4 unemployment benefit or allowance program administered by such
 5 other state under an agreement with the United States Secretary of
 6 Labor if such other state has in effect a reciprocal agreement with the
 7 United States Secretary of Labor as authorized by Section 303(g)(2)
 8 of the federal Social Security Act, if the United States agrees, as
 9 provided in the reciprocal agreement with this State entered into
 10 under such Section 303(g)(2) of the Social Security Act, that
 11 overpayments of unemployment benefits as determined under
 12 subparagraphs (1) and (2) above, and overpayment as determined
 13 under the unemployment compensation law of another state which
 14 has in effect a reciprocal agreement with the United States Secretary
 15 of Labor as authorized by Section 303(g)(2) of the Social Security
 16 Act, shall be recovered by offset from benefits or allowances for
 17 unemployment otherwise payable under a federal program
 18 administered by this State or such other state under an agreement
 19 with the United States Secretary of Labor.

- 20 f. The ~~Commission-Division~~ may in its discretion decline to collect
 21 overpayments to claimants if the claimant has deceased after the
 22 payment was made. In such a case the ~~Commission-Division~~ may
 23 remove the debt of the deceased claimant from its records."

24 **SECTION 2.20.** G.S. 96-19 reads as rewritten:

25 "**§ 96-19. Enforcement of Employment Security Law discontinued upon repeal or**
 26 **invalidation of federal acts; suspension of enforcement provisions contested.**

27 (a) It is the purpose of this Chapter to secure for employers and employees the benefits
 28 of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to
 29 credit on payment of federal taxes, of State contributions, the receipt of federal grants for
 30 administrative purposes, and all other provisions of the said Federal Social Security Act; and it
 31 is intended as a policy of the State that this Chapter and its requirements for contributions by
 32 employers shall continue in force only so long as such employers are required to pay the federal
 33 taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title
 34 III and Title IX of the said Federal Social Security Act shall be declared invalid by the United
 35 States Supreme Court, or if such law be repealed by congressional action so that the federal tax
 36 cannot be further levied, from and after the declaration of such invalidity by the United States
 37 Supreme Court, or the repeal of said law by congressional action, as the case may be, no further
 38 levy or collection of contributions shall be made hereunder. The enactment by the Congress of
 39 the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance
 40 Act shall in no way affect the administration of this law except as herein expressly provided.

41 All federal grants and all contributions theretofore collected, and all funds in the treasury by
 42 virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far as may be possible,
 43 under the terms of this Chapter: Provided, however, that contributions already due from any
 44 employer shall be collected and paid into the said fund, subject to such distribution; and
 45 provided further, that the personnel of the ~~State Employment Security Commission-Division of~~
 46 Employment Security shall be reduced as rapidly as possible.

47 The funds remaining available for use by the ~~North Carolina Employment Security~~
 48 ~~Commission-Division of Employment Security~~ shall be expended, as necessary, in making
 49 payment of all such awards as have been made and are fully approved at the date aforesaid, and
 50 the payment of the necessary costs for the further administration of this Chapter, and the final

1 settlement of all affairs connected with same. After complete payment of all administrative
2 costs and full payment of all awards made as aforesaid, any and all moneys remaining to the
3 credit of any employer shall be refunded to such employer, or his duly authorized assignee:
4 Provided, that the State employment service, created by Chapter 106, Public Laws of 1935, and
5 transferred by Chapter 1, Public Laws of 1936, Extra Session, and made a part of the former
6 Employment Security Commission of North Carolina, and that is now part of the Division of
7 Employment Security of the North Carolina Department of Commerce, shall in such event
8 return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of
9 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on
10 the duties therein prescribed; but, pending a final settlement of the affairs of the ~~Employment~~
11 ~~Security Commission of North Carolina, Division,~~ the said State employment service shall
12 render such service in connection therewith as shall be demanded or required under the
13 provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

14 (b) The ~~Employment Security Commission~~ Division of Employment Security may,
15 upon receiving notification from the U.S. Department of Labor that any provision of this
16 Chapter is out of conformity with the requirements of the federal law or of the U.S. Department
17 of Labor, suspend the enforcement of the contested section or provision until the North
18 Carolina Legislature next has an opportunity to make changes in the North Carolina law. The
19 ~~Employment Security Commission shall,~~ Division shall, in order to implement the above
20 suspension:

- 21 (1) Notify the Governor's office and provide that office with a copy of the
22 determination or notification of the U.S. Department of Labor;
- 23 (2) Advise the Governor's office as to whether the contested portion or provision
24 of the law would, if not enforced, so seriously hamper the operations of the
25 agency as to make it advisable that a special session of the legislature be
26 called;
- 27 (3) Take all reasonable steps available to obtain a reprieve from the
28 implementation of any federal conformity failure sanctions until the State
29 legislature has been afforded an opportunity to consider the existing
30 conflict."

31 **SECTION 2.21.** G.S. 96-20 reads as rewritten:

32 "**§ 96-20. Duties of Division; conformance to Wagner-Peyser Act; organization; director;**
33 **employees.**

34 The ~~Employment Service Division of the Employment Security Commission~~ Employment
35 Security Section of the Division of Employment Security, Department of Commerce, shall
36 establish and maintain free public employment offices in such number and in such places as
37 may be necessary for the proper administration of this Chapter, and for the purpose of
38 performing such duties as are within the purview of the act of Congress entitled "An act to
39 provide for the establishment of a national employment system and for cooperation with the
40 states in the promotion of such system and for other purposes," approved June 6, 1933, (48
41 Stat., 113; U.S.C., Title 29, section 49(c), as amended). The said Division shall be administered
42 by a full-time salaried director. The ~~Employment Security Commission~~ Division shall be
43 charged with the duty to cooperate with any official or agency of the United States having
44 powers or duties under the provisions of the said act of Congress, as amended, and to do and
45 perform all things necessary to secure to this State the benefits of the said act of Congress, as
46 amended, in the promotion and maintenance of a system of public employment offices. The
47 provisions of the said act of Congress, as amended, are hereby accepted by this State, in
48 conformity with section 4 of said act, and this State will observe and comply with the
49 requirements thereof. The ~~Employment Security Commission~~ Division is hereby designated
50 and constituted the agency of this State for the purpose of said act. The ~~Commission Secretary~~

1 is directed to appoint the ~~director, head,~~ other officers, and employees of the Employment
2 ~~Service Division~~ Security Section."

3 SECTION 2.22. G.S. 96-21 reads as rewritten:

4 "§ 96-21. **Duties concerning veterans and worker profiling.**

5 The duties of the ~~Employment Service Division~~ Employment Security Section include the
6 following:

7 ...
8 (2) To establish and use a worker profiling system that complies with 42 U.S.C.
9 § 503(a)(10) to identify claimants for benefits whom the ~~Division~~ Section
10 must refer to reemployment services in accordance with that law."

11 SECTION 2.23. G.S. 96-22 reads as rewritten:

12 "§ 96-22. **Employment of and assistance to minors.**

13 The Employment Service Division ~~Security Section~~ shall have jurisdiction over all matters
14 contemplated in this Article pertaining to securing employment for all minors who avail
15 themselves of the free employment service. The ~~Employment Service Division~~ Security
16 Section shall have power to so conduct its affairs that at all times it shall be in harmony with
17 laws relating to child labor and compulsory education; to aid in inducing minors over 16, who
18 cannot or do not for various reasons attend day school, to undertake promising skilled
19 employment; to aid in influencing minors who do not come within the purview of compulsory
20 education laws, and who do not attend day school, to avail themselves of continuation or
21 special courses in existing night schools, vocational schools, part-time schools, trade schools,
22 business schools, library schools, university extension courses, etc., so as to become more
23 skilled in such occupation or vocation to which they are respectively inclined or particularly
24 adapted, including assisting those minors who are interested in securing vocational employment
25 in agriculture and to aid in the development of good citizenship and in the study and
26 development of vocational rehabilitation capabilities for handicapped minors."

27 SECTION 2.24. G.S. 96-24 reads as rewritten:

28 "§ 96-24. **Local offices; cooperation with United States service; financial aid from United**
29 **States.**

30 The ~~Employment Service Division~~ Security Section is authorized to enter into agreement
31 with the governing authorities of any municipality, county, township, or school corporation in
32 the State for such period of time as may be deemed desirable for the purpose of establishing
33 and maintaining local free employment offices, and for the extension of vocational guidance in
34 cooperation with the United States Employment Service, and under and by virtue of any such
35 agreement as aforesaid to pay, from any funds appropriated by the State for the purposes of this
36 Article, any part or the whole of the salaries, expenses or rent, maintenance, and equipment of
37 offices and other expenses."

38 SECTION 2.25. G.S. 96-25 reads as rewritten:

39 "§ 96-25. **Acceptance and use of donations.**

40 It shall be lawful for the ~~Employment Service Division~~ Security Section to receive, accept,
41 and use, in the name of the people of the State, or any community or municipal corporation, as
42 the donor may designate, by gift or devise, any moneys, buildings, or real estate for the purpose
43 of extending the benefits of this Article and for the purpose of giving assistance to handicapped
44 citizens through vocational rehabilitation."

45 SECTION 2.26. G.S. 96-26 reads as rewritten:

46 "§ 96-26. **Cooperation of towns, townships, and counties with Division.**

47 It shall be lawful for the governing authorities of any municipality, county, township, or
48 school corporation in the State to enter into cooperative agreement with the ~~Employment~~
49 ~~Service Division~~ Security Section and to appropriate and expend the necessary money upon
50 such conditions as may be approved by the ~~Employment Service Division~~ Security Section and

1 to permit the use of public property for the joint establishment and maintenance of such offices
2 as may be mutually agreed upon, and which will further the purpose of this Article."

3 **SECTION 2.27.** G.S. 96-27 reads as rewritten:

4 "**§ 96-27. Method of handling employment service funds.**

5 All federal funds received by this State under the Wagner-Peyser Act (48 Stat. 113; Title
6 29, U.S.C., section 49) as amended, and all State funds appropriated or made available to the
7 ~~Employment Service Division~~ Security Section shall be paid into the Employment Security
8 Administration Fund, and said moneys are hereby made available to the State employment
9 service to be expended as provided in this Article and by said act of Congress. For the purpose
10 of establishing and maintaining free public employment offices, ~~said Division~~ the Section is
11 authorized to enter into agreements with any political subdivision of this State or with any
12 private, nonprofit organization, and as a part of any such agreement the ~~Commission~~ Division
13 may accept moneys, services, or quarters as a contribution to the Employment Security
14 Administration Fund."

15 **SECTION 2.28.** G.S. 96-29 reads as rewritten:

16 "**§ 96-29. Openings listed by State agencies.**

17 Every State agency shall list with the ~~Employment Security Commission of North Carolina~~
18 Division of Employment Security every job opening occurring within the agency which
19 opening the agency wishes filled and which will not be filled solely by promotion or transfer
20 from within the existing State government work force. The listing shall include a brief
21 description of the duties and salary range and shall be filed with the ~~Commission~~ Division
22 within 30 days after the occurrence of the opening. The State agency may not fill the job
23 opening for at least 21 days after the listing has been filed with the ~~Commission~~ Division. The
24 listing agency shall report to the ~~Commission~~ Division the filling of any listed opening within
25 15 days after the opening has been filled.

26 The ~~Employment Security Commission~~ Division may act to waive the 21-day listing period
27 for job openings in job classifications declared to be in short supply by the State Personnel
28 Commission, upon the request of a State agency, if the 21-day listing requirement for these
29 classifications hinders the agency in providing essential services."

30 **SECTION 2.29.** G.S. 96-31 reads as rewritten:

31 "**§ 96-31. Definitions.**

32 As used in this Article, unless the context clearly requires otherwise, the term:

- 33 (1) "CFS" means the common follow-up information management system
34 developed by ~~DES the Employment Security Commission of North Carolina~~
35 as authorized under this Article.
- 36 (2) ~~"ESC" means the Employment Security Commission of North Carolina.~~
37 "DES" means the Division of Employment Security.
- 38 (3) Repealed by Session Laws 2000, c. 140, s. 93.1(d).
- 39 (4) "State job training, education, and placement program" or "State-funded
40 program" means a program operated by a State or local government agency
41 or entity and supported in whole or in part by State or federal funds, that
42 provides job training and education or job placement services to program
43 participants. The term does not include on-the-job training provided to
44 current employees of the agency or entity for the purposes of professional
45 development."

46 **SECTION 2.30.** G.S. 96-32 reads as rewritten:

47 "**§ 96-32. Common follow-up information management system created.**

48 (a) The ~~Employment Security Commission of North Carolina~~ DES shall develop,
49 implement, and maintain a common follow-up information management system for tracking the
50 employment status of current and former participants in State job training, education, and

1 placement programs. The system shall provide for the automated collection, organization,
 2 dissemination, and analysis of data obtained from State-funded programs that provide job
 3 training and education and job placement services to program participants. In developing the
 4 system, the ~~ESC-DES~~ shall ensure that data and information collected from State agencies is
 5 confidential, not open for general public inspection, and maintained and disseminated in a
 6 manner that protects the identity of individual persons from general public disclosure.

7 (b) The ~~ESC-DES~~ shall adopt procedures and guidelines for the development and
 8 implementation of the CFS authorized under this section.

9 (c) Based on data collected under the CFS, the ~~ESC-DES~~ shall evaluate the
 10 effectiveness of job training, education, and placement programs to determine if specific
 11 program goals and objectives are attained, to determine placement and completion rates for
 12 each program, and to make recommendations regarding the continuation of State funding for
 13 programs evaluated."

14 **SECTION 2.31.** G.S. 96-33 reads as rewritten:

15 "**§ 96-33. State agencies required to provide information and data.**

16 (a) Every State agency and local government agency or entity that receives State or
 17 federal funds for the direct or indirect support of State job training, education, and placement
 18 programs shall provide to the ~~Employment Security Commission of North Carolina-DES~~ all
 19 data and information available to or within the agency or entity's possession requested by the
 20 ~~ESCDES~~ for input into the common follow-up information management system authorized
 21 under this Article.

22 (b) Each agency or entity required to report information and data to the ~~ESC-DES~~ under
 23 this Article shall maintain true and accurate records of the information and data requested by
 24 the ~~ESC-DES~~. The records shall be open to ~~ESC-DES~~ inspection and copying at reasonable
 25 times and as often as necessary. Each agency or entity shall further provide, upon request by
 26 ~~ESCDES~~, sworn or unsworn reports with respect to persons employed or trained by the agency
 27 or entity, as deemed necessary by the ~~ESC-DES~~ to carry out the purposes of this Article.
 28 Information obtained by the ~~ESCDES~~ from the agency or entity shall be held by ~~ESC-DES~~ as
 29 confidential and shall not be published or open to public inspection other than in a manner that
 30 protects the identity of individual persons and employers."

31 **SECTION 2.32.** G.S. 96-35 reads as rewritten:

32 "**§ 96-35. Reports on common follow-up system activities.**

33 (a) The ~~Employment Security Commission of North Carolina-DES~~ shall present
 34 annually by May 1 to the General Assembly and to the Governor a report of CFS activities for
 35 the preceding calendar year. The report shall include information on and evaluation of job
 36 training, education, and placement programs for which data was reported by State and local
 37 agencies subject to this Article. Evaluation of the programs shall be on the basis of fiscal year
 38 data.

39 (b) The ~~ESC-DES~~ shall report to the Governor and to the General Assembly upon the
 40 convening of each biennial session, its evaluation of and recommendations regarding job
 41 training, education, and placement programs for which data was provided to the CFS."

42 **PART III. OTHER CONFORMING AMENDMENTS TO THE GENERAL STATUTES**

43 **SECTION 3.1.** G.S. 7A-343.1 reads as rewritten:

44 "**§ 7A-343.1. Distribution of copies of the appellate division reports.**

45 The Administrative Officer of the Courts shall, at the State's expense distribute such
 46 number of copies of the appellate division reports to federal, State departments and agencies,
 47 and to educational institutions of instruction, as follows:

48 Governor, Office of the

1

49 Lieutenant Governor, Office of the

1

1	Secretary of State, Department of the	2
2	State Auditor, Department of the	1
3	Treasurer, Department of the State	1
4	Superintendent of Public Instruction	1
5	Office of the Attorney General	11
6	State Bureau of Investigation	1
7	Agriculture and Consumer Services, Department of	1
8	Labor, Department of	1
9	Insurance, Department of	1
10	Budget Bureau, Department of Administration	1
11	Property Control, Department of Administration	1
12	State Planning, Department of Administration	1
13	Environment and Natural Resources, Department of	1
14	Revenue, Department of	1
15	Health and Human Services, Department of	1
16	Juvenile Justice and Delinquency Prevention, Department of	1
17	Commission for the Blind	1
18	Transportation, Department of	1
19	Motor Vehicles, Division of	1
20	Utilities Commission	8
21	Industrial Commission	11
22	State Personnel Commission	1
23	Office of State Personnel	1
24	Office of Administrative Hearings	2
25	Community Colleges, Department of	38
26	Employment Security Commission	4
27	<u>Department of Commerce</u>	1
28	Commission of Correction	1
29	Parole Commission	1
30	Archives and History, Division of	1
31	Crime Control and Public Safety, Department of	2
32	Cultural Resources, Department of	3
33	Legislative Building Library	2
34	Justices of the Supreme Court	1 ea.
35	Judges of the Court of Appeals	1 ea.
36	Judges of the Superior Court	1 ea.
37	Clerks of the Superior Court	1 ea.
38	District Attorneys	1 ea.
39	Emergency and Special Judges of the Superior Court	1 ea.
40	Supreme Court Library	AS MANY AS REQUESTED
41		
42	Appellate Division Reporter	1
43	University of North Carolina, Chapel Hill	71
44	University of North Carolina, Charlotte	1
45	University of North Carolina, Greensboro	1
46	University of North Carolina, Asheville	1
47	North Carolina State University, Raleigh	1
48	Appalachian State University	1
49	East Carolina University	1
50	Fayetteville State University	1

1	North Carolina Central University	17
2	Western Carolina University	1
3	Duke University	17
4	Davidson College	2
5	Wake Forest University	25
6	Lenoir Rhyne College	1
7	Elon College	1
8	Campbell University	25
9	Federal, Out-of-State and Foreign Secretary of State	1
10	Secretary of Defense	1
11	Secretary of Health, Education and Welfare	1
12	Secretary of Housing and Urban Development	1
13	Secretary of Transportation	1
14	Attorney General	1
15	Department of Justice	1
16	Internal Revenue Service	1
17	Veterans' Administration	1
18	Library of Congress	5
19	Federal Judges resident in North Carolina	1 ea.
20	Marshal of the United States Supreme Court	1
21	Federal District Attorneys resident in North Carolina	1 ea.
22	Federal Clerks of Court resident in North Carolina	1 ea.
23	Supreme Court Library exchange list	1
24	Cherokee Supreme Court, Eastern Band of Cherokee Indians	1

25

26 Each justice of the Supreme Court and judge of the Court of Appeals shall receive for
 27 private use, one complete and up-to-date set of the appellate division reports. The copies of
 28 reports furnished each justice or judge as set out in the table above may be retained personally
 29 to enable the justice or judge to keep up-to-date the personal set of reports."

30 **SECTION 3.2.** G.S. 8-45.3(a1) reads as rewritten:

31 "(a1) ~~The Employment Security Commission~~ Division of Employment Security is hereby
 32 specifically authorized to have photographed, photocopied, or microphotocopied all records of
 33 the ~~Commission, Division,~~ including filings required by law to be made to the ~~Commission,~~
 34 Division, and said photographs, photocopies, or microphotocopies, when certified by the
 35 ~~Commission-Division~~ as true and correct photographs, photocopies, or microphotocopies, shall
 36 be as admissible in evidence in all actions, proceedings, and matters as the originals thereof
 37 would have been."

38 **SECTION 3.3.** G.S. 52C-5-501(a) reads as rewritten:

39 "(a) An income-withholding order issued in another state may be sent to the person or
 40 entity defined or identified as the obligor's employer under the income-withholding provisions
 41 of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a
 42 petition or comparable pleading or registering the order with a tribunal of this State. In the
 43 event that an obligor is receiving unemployment compensation benefits from ~~the North~~
 44 ~~Carolina Employment Security Commission,~~ the Division of Employment Security (DES) in
 45 accordance with G.S. 96-17, an income-withholding order issued in another state may be sent
 46 to the ~~Employment Security Commission-DES~~ without first filing a petition or comparable
 47 pleading or registering the order with a tribunal of this State. Upon receipt of the order, the
 48 employer or the ~~Employment Security Commission-DES~~ shall:

49 (1) Treat an income-withholding order issued in another state which appears
 50 regular on its face as if it had been issued by a tribunal of this State;

- 1 (2) Immediately provide a copy of the order to the obligor; and
2 (3) Distribute the funds as directed in the withholding order. The ~~Employment~~
3 ~~Security Commission-DES~~ shall not withhold an amount to exceed
4 twenty-five percent (25%) of the unemployment compensation benefits."

5 **SECTION 3.4.** G.S. 58-89A-120 reads as rewritten:

6 "**§ 58-89A-120. Unemployment taxes; payroll.**

7 A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and
8 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and
9 collection of unemployment insurance contributions or the assignment of discrete employer
10 numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and
11 96-8(6). The ~~Employment Security Commission-Department of Commerce, Division of~~
12 Employment Security (DES), shall cooperate with the Commissioner in the investigation of
13 applicants and licensees and shall provide the Commissioner with access to all relevant records
14 and data in the custody of the ~~Employment Security Commission-DES.~~"

15 **SECTION 3.5.** G.S. 84-5(a) reads as rewritten:

16 "(a) It shall be unlawful for any corporation to practice law or appear as an attorney for
17 any person in any court in this State, or before any judicial body or the North Carolina
18 Industrial Commission, Utilities Commission, or the ~~Employment Security Commission,~~
19 Department of Commerce, Division of Employment Security, or hold itself out to the public or
20 advertise as being entitled to practice law; and no corporation shall organize corporations, or
21 draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice,
22 or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through
23 any person orally or by advertisement, letter or circular. The provisions of this section shall be
24 in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in
25 this section shall be construed to prohibit a banking corporation authorized and licensed to act
26 in a fiduciary capacity from performing any clerical, accounting, financial or business acts
27 required of it in the performance of its duties as a fiduciary or from performing ministerial and
28 clerical acts in the preparation and filing of such tax returns as are so required, or from
29 discussing the business and financial aspects of fiduciary relationships. Provided, however, this
30 section shall not apply to corporations authorized to practice law under the provisions of
31 Chapter 55B of the General Statutes of North Carolina.

32 To further clarify the foregoing provisions of this section as they apply to corporations
33 which are authorized and licensed to act in a fiduciary capacity:

- 34 (1) A corporation authorized and licensed to act in a fiduciary capacity shall not:
35 a. Draw wills or trust instruments; provided that this shall not be
36 construed to prohibit an employee of such corporation from
37 conferring and cooperating with an attorney who is not a salaried
38 employee of the corporation, at the request of such attorney, in
39 connection with the attorney's performance of services for a client
40 who desires to appoint the corporation executor or trustee or
41 otherwise to utilize the fiduciary services of the corporation.
42 b. Give legal advice or legal counsel, orally or written, to any customer
43 or prospective customer or to any person who is considering
44 renunciation of the right to qualify as executor or administrator or
45 who proposes to resign as guardian or trustee, or to any other person,
46 firm or corporation.
47 c. Advertise to perform any of the acts prohibited herein; solicit to
48 perform any of the acts prohibited herein; or offer to perform any of
49 the acts prohibited herein.

- 1 (2) Except as provided in subsection (b) of this section, when any of the
2 following acts are to be performed in connection with the fiduciary activities
3 of such a corporation, said acts shall be performed for the corporation by a
4 duly licensed attorney, not a salaried employee of the corporation, retained
5 to perform legal services required in connection with the particular estate,
6 trust or other fiduciary matter:
7 a. Offering wills for probate.
8 b. Preparing and publishing notice of administration to creditors.
9 c. Handling formal court proceedings.
10 d. Drafting legal papers or giving legal advice to spouses concerning
11 rights to an elective share under Article 1A of Chapter 30 of the
12 General Statutes.
13 e. Resolving questions of domicile and residence of a decedent.
14 f. Handling proceedings involving year's allowances of widows and
15 children.
16 g. Drafting deeds, notes, deeds of trust, leases, options and other
17 contracts.
18 h. Drafting instruments releasing deeds of trust.
19 i. Drafting assignments of rent.
20 j. Drafting any formal legal document to be used in the discharge of the
21 corporate fiduciary's duty.
22 k. In matters involving estate and inheritance taxes, gift taxes, and
23 federal and State income taxes:
24 1. Preparing and filing protests or claims for refund, except
25 requests for a refund based on mathematical or clerical errors
26 in tax returns filed by it as a fiduciary.
27 2. Conferring with tax authorities regarding protests or claims
28 for refund, except those based on mathematical or clerical
29 errors in tax returns filed by it as a fiduciary.
30 3. Handling petitions to the tax court.
31 l. Performing legal services in insolvency proceedings or before a
32 referee in bankruptcy or in court.
33 m. In connection with the administration of an estate or trust:
34 1. Making application for letters testamentary or letters of
35 administration.
36 2. Abstracting or passing upon title to property.
37 3. Handling litigation relating to claims by or against the estate
38 or trust.
39 4. Handling foreclosure proceedings of deeds of trust or other
40 security instruments which are in default.
41 (3) When any of the following acts are to be performed in connection with the
42 fiduciary activities of such a corporation, the corporation shall comply with
43 the following:
44 a. The initial opening and inventorying of safe deposit boxes in
45 connection with the administration of an estate for which the
46 corporation is executor or administrator shall be handled by, or with
47 the advice of, an attorney, not a salaried employee of the corporation,
48 retained by the corporation to perform legal services required in
49 connection with that particular estate.

- 1 b. The furnishing of a beneficiary with applicable portions of a testator's
2 will relating to such beneficiary shall, if accompanied by any legal
3 advice or opinion, be handled by, or with the advice of, an attorney,
4 not a salaried employee of the corporation, retained by the
5 corporation to perform legal services required in connection with that
6 particular estate or matter.
- 7 c. In matters involving estate and inheritance taxes and federal and
8 State income taxes, the corporation shall not execute waivers of
9 statutes of limitations without the advice of an attorney, not a salaried
10 employee of the corporation, retained by the corporation to perform
11 legal services in connection with that particular estate or matter.
- 12 d. An attorney, not a salaried employee of the corporation, retained by
13 the corporation to perform legal services required in connection with
14 an estate or trust shall be furnished copies of inventories and
15 accounts proposed for filing with any court and proposed federal
16 estate and North Carolina inheritance tax returns and, on request,
17 copies of proposed income and intangibles tax returns, and shall be
18 afforded an opportunity to advise and counsel the corporate fiduciary
19 concerning them prior to filing."

20 **SECTION 3.6.** G.S. 95-25.3(d) reads as rewritten:

21 "(d) The Commissioner, in order to prevent curtailment of opportunities for employment
22 of the economically disadvantaged and the unemployed, may, by regulation, establish a wage
23 rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect
24 under subsection (a) which shall apply to all persons (i) who have been unemployed for at least
25 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are,
26 receiving Work First Family Assistance or who are receiving supplemental security benefits
27 under Title XVI of the Social Security Act.

28 Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for
29 such subminimum wage shall be issued by the ~~Employment Security Commission~~ Division of
30 Employment Security.

31 The regulation issued by the Commissioner shall not permit employment at the
32 subminimum rate for a period in excess of 52 weeks."

33 **SECTION 3.7.** G.S. 94-144(b) reads as rewritten:

34 "(b) A listing of employment by area and industry of employers who have an assigned
35 account number by the ~~Employment Security Commission~~ Department of Commerce, Division
36 of Employment Security (DES), shall be supplied annually to the Commissioner by the
37 ~~Employment Security Commission of this State~~ DES. The listing of employment by area and
38 industry shall contain at least the following: employer name; ~~Employment Security~~
39 ~~Commission~~ DES account number; indication of whether multiple or a single report unit;
40 number of reporting units; average employment; establishment size code; geographical area;
41 any four-digit code; and any other information deemed necessary by the ~~Commissioner~~
42 Division to meet federal reporting requirements."

43 **SECTION 3.8.** G.S. 105-129.4(b) reads as rewritten:

44 "(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an
45 enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average
46 wage of the jobs for which the credit is claimed meets the wage standard and the average wage
47 of all jobs at the location with respect to which the credit is claimed meets the wage standard.
48 No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the
49 credit for investing in machinery and equipment, the credit for research and development, or
50 the credit for investing in real property for a central office or aircraft facility in a tier three,

1 four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for
2 the credit, the average wage of all jobs at the location with respect to which the credit is
3 claimed meets the wage standard. In making the wage calculation, the taxpayer must include
4 any positions that were filled for at least 1,600 hours during the calendar year the taxpayer
5 engages in the activity that qualifies for the credit even if those positions are not filled at the
6 time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar
7 year, the taxpayer must use the wage standard for the calendar year in which the taxable year
8 begins. No wage standard applies to credits for activities in an enterprise tier one or two area.
9 For the purposes of this subsection, for a fiber, yarn, or thread mill that uses a sequential
10 manufacturing process in which separate parts of the sequential manufacturing process are
11 performed in different facilities within the same county, the term "location" may mean either
12 the specific establishment or all facilities in the county in which parts of the process are
13 performed.

14 Part-time jobs for which the taxpayer provides health insurance as provided in subsection
15 (b2) of this section are considered to have an average weekly wage at least equal to the
16 applicable percentage times the applicable average weekly wage for the county in which the
17 jobs will be located. There may be a period of up to 100 days between the time at which an
18 employee begins a part-time job and the time at which the taxpayer begins to provide health
19 insurance for that employee.

20 Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one
21 hundred ten percent (110%) of the applicable average weekly wage for the county in which the
22 jobs will be located, as computed by the Secretary of Commerce from data compiled by the
23 ~~Employment Security Commission~~ Division of Employment Security for the most recent
24 period for which data are available. The applicable average weekly wage is the lowest of the
25 following: (i) the average wage for all insured private employers in the county, (ii) the average
26 wage for all insured private employers in the State, and (iii) the average wage for all insured
27 private employers in the county multiplied by the county income/wage adjustment factor. The
28 county income/wage adjustment factor is the county income/wage ratio divided by the State
29 income/wage ratio. The county income/wage ratio is average per capita income in the county
30 divided by the annualized average wage for all insured private employers in the county. The
31 State income/wage ratio is the average per capita income in the State divided by the annualized
32 average wage for all insured private employers in the State. The Department of Commerce
33 must annually publish the wage standard for each county."

34 **SECTION 3.9.** G.S. 105-259(b)(9) and (9a) read as rewritten:

35 "(9) To furnish to the ~~Employment Security Commission~~ Division of
36 Employment Security the name, address, and account and identification
37 numbers of a taxpayer when the information is requested by the ~~Commission~~
38 Division in order to fulfill a duty imposed under Article 2 of Chapter 96 of
39 the General Statutes.

40 (9a) To furnish information to the ~~Employment Security Commission~~ Division of
41 Employment Security to the extent required for its NC WORKS study of the
42 working poor pursuant to G.S. 108A-29(r). The ~~Employment Security~~
43 Commission Division of Employment Security shall use information
44 furnished to it under this subdivision only in a nonidentifying form for
45 statistical and analytical purposes related to its NC WORKS study. The
46 information that may be furnished under this subdivision is the following
47 with respect to individual income taxpayers, as shown on the North Carolina
48 income tax forms:

49 a. Name, social security number, spouse's name, spouse's social
50 security number, and county of residence.

- 1 b. Filing status and federal personal exemptions.
 2 c. Federal taxable income, additions to federal taxable income, and total
 3 of federal taxable income plus additional income.
 4 d. Income while a North Carolina resident, total income from North
 5 Carolina sources while a nonresident, and total income from all
 6 sources.
 7 e. Exemption for children, nonresidents' and part-year residents'
 8 exemption for children, and credit for children.
 9 f. Expenses for child and dependent care, portion of expenses paid
 10 while a resident of North Carolina, portion of expenses paid while a
 11 resident of North Carolina that was incurred for dependents who
 12 were under the age of seven and dependents who were physically or
 13 mentally incapable of caring for themselves, credit for child and
 14 dependent care expenses, other qualifying expenses, credit for other
 15 qualifying expenses, total credit for child and dependent care
 16 expenses."

17 **SECTION 3.10.** G.S. 105A-8(b) reads as rewritten:

18 "(b) Hearing. – A hearing on a contested claim of a State agency, except a constituent
 19 institution of The University of North Carolina or the ~~Employment Security Commission,~~
 20 Division of Employment Security, must be conducted in accordance with Article 3 of Chapter
 21 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The
 22 University of North Carolina must be conducted in accordance with administrative procedures
 23 approved by the Attorney General. A hearing on a contested claim of the ~~Employment Security~~
 24 ~~Commission~~ Division of Employment Security must be conducted in accordance with rules
 25 adopted by that ~~Commission~~ Division. A request for a hearing on a contested claim of any
 26 State agency must be filed within 30 days after the State agency mails the debtor notice of the
 27 proposed setoff. A request for a hearing is considered to be filed when it is delivered for
 28 mailing with postage prepaid and properly addressed. In a hearing under this section, an issue
 29 that has previously been litigated in a court proceeding cannot be considered.

30 If a debtor owes a debt to a State agency and the net proceeds credited to the State agency
 31 for the debt exceed the amount of the debt, the State agency must send the balance to the
 32 debtor. No part of the collection assistance fee retained by the Department may be returned
 33 when a debt is owed but it is less than the amount set off.

34 Interest accrues on the amount of a refund returned to a taxpayer under this subsection in
 35 accordance with G.S. 105-241.21. A State agency that returns a refund to a taxpayer under this
 36 subsection must pay from the State agency's funds any interest that has accrued since the fifth
 37 day after the Department mailed the notice of setoff to the taxpayer."

38 **SECTION 3.11.** G.S. 105A-9 reads as rewritten:

39 "**§ 105A-9. Appeals from hearings.**

40 Appeals from hearings allowed under this Chapter, other than those conducted by the
 41 ~~Employment Security Commission,~~ Division of Employment Security, shall be in accordance
 42 with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act,
 43 except that the place of initial judicial review shall be the superior court for the county in which
 44 the debtor resides. Appeals from hearings allowed under this Chapter that are conducted by the
 45 ~~Employment Security Commission of North Carolina~~ Division of Employment Security shall
 46 be in accordance with the provisions of Chapter 96 of the General Statutes."

47 **SECTION 3.12.** G.S. 108A-29 reads as rewritten:

48 "**§ 108A-29. Priority for employment services.**

- 49 (a) Repealed by Session Laws 2009-489, s. 12, effective August 26, 2009.

1 (b) Individuals seeking to apply or reapply for Work First Program assistance and who
2 are not exempt from work requirements shall register with the ~~Employment Security~~
3 ~~Commission~~ Division of Employment Security for employment services. The point of
4 registration shall be at an office of the ~~Employment Security Commission~~ Division in the
5 county in which the individual resides or at another location designated in a Memorandum of
6 Understanding between the ~~Employment Security Commission~~ Division and the local
7 department of social services.

8 ...

9 (f) Each county department of social services shall enter into a cooperative agreement
10 with the local ~~Employment Security Commission~~ Division to operate the Job Search
11 component on behalf of Work First Program registrants. The cooperative agreement shall
12 include a provision for payment to the ~~Employment Security Commission~~ Division by the
13 county department of social services for the cost of providing those services, not otherwise
14 available to all clients of the ~~Employment Security Commission~~ Division, described in this
15 subsection as the same are reflected as a component of the County Plan payable from fund
16 allocations in the county block grant. The county department of social services may also enter
17 into a cooperative agreement with the community college system or any other entity to operate
18 the Job Preparedness component. This cooperative agreement shall include a provision for
19 payment to that entity by the county department of social services for the cost of providing
20 those services, not otherwise available to all clients of the ~~Employment Security Commission~~,
21 Division, described in this subsection as the same are reflected as a component of the County
22 Plan payable from fund allocations in the county block grant.

23 (g) The ~~Employment Security Commission~~ Division shall further assist registrants
24 through job search, job placement, or referral to community service, if contracted to do so.

25 (h) An individual placed in the Job Search component of the ~~Employment Security~~
26 ~~Commission~~ Division or other agency providing Job Search services shall look for work and
27 shall accept any suitable employment. If contracted, the ~~Employment Security Commission~~
28 Division shall refer individuals to current job openings and shall make job development
29 contacts for individuals. Individuals so referred shall be required to keep a record of their job
30 search activities on a job search record form provided by the ~~Commission~~, Division, and the
31 ~~Employment Security Commission~~ Division will monitor these activities. A "job search record"
32 means a written list of dates, times, places, addresses, telephone numbers, names, and
33 circumstances of job interviews. The Job Search component shall include at least one weekly
34 contact with the ~~Employment Security Commission~~ Division. The ~~Employment Security~~
35 ~~Commission~~ Division shall adopt rules to accomplish this subsection.

36 (i) The ~~Employment Security Commission~~ Division of Employment Security shall
37 notify all employers in the State of the "Exclusive No-Fault" Referral Service available through
38 the ~~Employment Security Commission~~ Division of Employment Security to employers who
39 hire personnel through Job Service referrals.

40 (j) All individuals referred to jobs through the ~~Employment Security Commission~~
41 Division of Employment Security shall be instructed in the procedures for applying for the
42 Federal Earned Income Credit (FEIC). All individuals referred to jobs through the ~~Employment~~
43 ~~Security Commission~~ Division who qualify for the FEIC shall apply for the FEIC by filing a
44 W-5 form with their employers.

45 ...

46 (l) The ~~Employment Security Commission~~ Division of Employment Security shall
47 work with the Department of Labor to develop a relationship with these private employment
48 agencies to utilize their services and make referrals of individuals registered with the
49 ~~Employment Security Commission~~ Division of Employment Security.

50 ...

1 (n) If after evaluation of an individual the ~~Employment Security Commission-Division~~
2 of Employment Security believes it necessary, the ~~Employment Security Commission-Division~~
3 or the county department of social services also may refer an individual to a Job Preparedness
4 provider. The local community college should include General Education Development, Adult
5 Basic Education, or Human Resources Development programs that are already in existence as a
6 part of the Job Preparedness component. Additionally, the ~~Commission-Division~~ or the county
7 department of social services may refer an individual to a literacy council. Through a
8 Memorandum of Understanding between the ~~Employment Security Commission, Division of~~
9 Employment Security, the local department of social services, and other contracted entities, a
10 system shall be established to monitor an individual's progress through close communications
11 with the agencies assisting the individual. The ~~Employment Security Commission-Division of~~
12 Employment Security or Job Preparedness provider shall adopt rules to accomplish this
13 subsection.

14 ...

15 (p) The ~~Employment Security Commission-Division~~ shall expand its Labor Market
16 Information System. The expansion shall at least include: statistical information on
17 unemployment rates and other labor trends by county; and publications dealing with licensing
18 requirements, economic development, and career projections, and information technology
19 systems which can be used to track participants through the employment and training process.

20"

21 **SECTION 3.13.** G.S. 110-129.2(g)(1) reads as rewritten:

22 "(g) Other Uses of Directory Information. – The following agencies may access information
23 entered into the Directory from employer reports for the purposes stated:

24 (1) The ~~Employment Security Commission-Division of Employment Security~~
25 for the purpose of administering employment security programs."

26 **SECTION 3.14.** G.S. 110-136.2 reads as rewritten:

27 "**§ 110-136.2. Use of unemployment compensation benefits for child support.**

28 ...

29 (b) Upon notification of a voluntary assignment by the Department of Health and
30 Human Services, the ~~Employment Security Commission-Division of Employment Security~~
31 shall deduct and withhold the amount assigned by the responsible parent as provided in
32 G.S. 96-17.

33 (c) Any amount deducted and withheld shall be paid by the ~~Employment Security~~
34 ~~Commission-Division of Employment Security~~ to the Department of Health and Human
35 Services for distribution as required by federal law.

36 (d) Voluntary assignment of unemployment compensation benefits shall remain
37 effective until the ~~Employment Security Commission-Division of Employment Security~~
38 receives notification from the Department of Health and Human Services of an express written
39 revocation by the responsible parent.

40 ...

41 (f) In the absence of a voluntary assignment of unemployment compensation benefits,
42 the Department of Health and Human Services shall implement income withholding as
43 provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five
44 percent (25%) of the unemployment compensation benefits. Notice of the requirement to
45 withhold shall be served upon the ~~Employment Security Commission-Division~~ and payment
46 shall be made by the ~~Employment Security Commission-Division~~ directly to the Department of
47 Health and Human Services pursuant to G.S. 96-17 or to another state under G.S. 52C-5-501.
48 Except for the requirement to withhold from unemployment compensation benefits and the
49 forwarding of withheld funds to the Department of Health and Human Services or to another

1 state under G.S. 52C-5-501, the ~~Employment Security Commission-Division~~ is exempt from
2 the provisions of G.S. 110-136.8."

3 SECTION 3.15. G.S. 113-276(j) reads as rewritten:

4 "(j) A migrant farm worker who has in his possession a temporary certification of his
5 status as such by the Rural Employment Service of the ~~North Carolina Employment Security~~
6 ~~Commission-Division of Employment Security~~ on a form provided by the Wildlife Resources
7 Commission is entitled to the privileges of a resident of the State and of the county indicated on
8 such certification during the term thereof for the purposes of purchasing and using the resident
9 fishing licenses provided by G.S. 113-271(d)(2), (4), and (6)a."

10 SECTION 3.16. G.S. 132-3(c) reads as rewritten:

11 "(c) ~~Employment Security Commission-Records.~~ – Notwithstanding subsection (a) of
12 this section and G.S. 121-5, when a record of the ~~Employment Security Commission-Division~~
13 ~~of Employment Security~~ has been copied in any manner, the original record may be destroyed
14 upon the order of the ~~Chairman of the Employment Security Commission-Division.~~ If a record
15 of the ~~Commission-that Division~~ has not been copied, the original record shall be preserved for
16 at least three years. After three years the original record may be destroyed upon the order of the
17 ~~Chairman of the Employment Security Commission-Assistant Secretary of Commerce."~~

18 SECTION 3.17. G.S. 135-16 reads as rewritten:

19 "§ 135-16. **Employees transferred to North Carolina State Employment Service by act of**
20 **Congress.**

21 Notwithstanding any provision contained in this Chapter, any employee of the United
22 States Employment Service who was transferred to and became employed by the State of North
23 Carolina, or any of its agencies, on November 16, 1946, by virtue of Public Laws 549, 79th
24 Congress, Chapter 672, 2nd Session, and who was employed by the War Manpower
25 Commission or the United States Employment Service between January 1, 1942, and
26 November 15, 1946, shall be deemed to have been engaged in membership service as defined
27 by this Chapter for any payroll period or periods between such dates: Provided, that any such
28 employee or member on or before January 1, 1948, pays to the Board of Trustees for the
29 benefit of the proper fund or account an amount equal to the accumulated contributions, with
30 interest thereon, that such employee or member would have made during such period if he had
31 been a member of the Retirement System with earnable compensation based on the salary
32 received for such period and as limited by this Chapter: Provided, further that funds are made
33 available by the United States Employment Service, or other federal agency, to the
34 ~~Employment Security Commission-Division of Employment Security~~ for the payment of and
35 the ~~Employment Security Commission-Division of Employment Security~~ pays to the Board of
36 Trustees for the benefit of the proper fund a sum equal to the employer's contributions that
37 would have been paid for such period for members or employees who pay the accumulated
38 contributions provided in this section.

39 The Board of Trustees is authorized to adopt and issue all necessary rules and regulations
40 for the purpose of administering and enforcing the provisions of this section."

41 SECTION 3.18. G.S. 138A-24(14)c. reads as rewritten:

42 "c. A covered person serving on, or a prospective appointee to, one of
43 the following panels or boards:

- 44 1. Alcoholic Beverage Control Commission.
- 45 2. Coastal Resources Commission.
- 46 3. State Board of Education.
- 47 4. State Board of Elections.
- 48 5. ~~Employment Security Commission-Division of Employment~~
49 ~~Security.~~
- 50 6. Environmental Management Commission.

7. Industrial Commission.
8. State Personnel Commission.
9. Rules Review Commission.
10. Board of Transportation.
11. Board of Governors of the University of North Carolina.
12. Utilities Commission.
13. Wildlife Resources Commission."

SECTION 3.19. G.S. 143B-181 reads as rewritten:

"§ 143B-181. Governor's Advisory Council on Aging – members; selection; quorum; compensation.

The Governor's Advisory Council on Aging of the Department of Health and Human Services shall consist of 33 members, 29 members to be appointed by the Governor, two members to be appointed by the President Pro Tempore of the Senate, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; one representative of the ~~Employment Security Commission; Division of Employment Security;~~ one representative of the Teachers' and State Employees' Retirement System; one representative of the Commissioner of Labor; one representative of the Department of Public Instruction; one representative of the Department of Environment and Natural Resources; one representative of the Department of Insurance; one representative of the Department of Crime Control and Public Safety; one representative of the Department of Community Colleges; one representative of the School of Public Health of The University of North Carolina; one representative of the School of Social Work of The University of North Carolina; one representative of the Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large. The at large members shall be citizens who are knowledgeable about services supported through the Older Americans Act of 1965, as amended, and shall include persons with greatest economic or social need, minority older persons, and participants in programs under the Older Americans Act of 1965, as amended. The Governor shall appoint 15 members at large who meet these qualifications and are 60 years of age or older. The four remaining members at large, two of whom shall be appointed by the President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special concerns of older persons. At least one of each of the at-large appointments of the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be 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:

1 (a) The State Commission of Indian Affairs shall consist of two persons appointed by
 2 the General Assembly, the Secretary of Health and Human Services, the ~~Director of the~~
 3 ~~Employment Security Commission, Assistant Secretary of Commerce in charge of the Division~~
 4 ~~of Employment Security~~; the Secretary of Administration, the Secretary of Environment and
 5 Natural Resources, the Commissioner of Labor or their designees and 21 representatives of the
 6 Indian community. These Indian members shall be selected by tribal or community consent
 7 from the Indian groups that are recognized by the State of North Carolina and are principally
 8 geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern
 9 Band of Cherokees; the Haliwa Saponi of Halifax, Warren, and adjoining counties; the
 10 Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the
 11 Waccamaw-Siouan from Columbus and Bladen Counties; the Sappony; the Occaneechi Band
 12 of the Saponi Nation of Alamance and Orange Counties, and the Native Americans located in
 13 Cumberland, Guilford, Johnston, Mecklenburg, Orange, and Wake Counties. The Coharie shall
 14 have two members; the Eastern Band of Cherokees, two; the Haliwa Saponi, two; the Lumbees,
 15 three; the Meherrin, one; the Waccamaw-Siouan, two; the Sappony, one; the Cumberland
 16 County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina
 17 Native Americans, two; the Occaneechi Band of the Saponi Nation, one, the Triangle Native
 18 American Society, one. Of the two appointments made by the General Assembly, one shall be
 19 made upon the recommendation of the Speaker, and one shall be made upon recommendation
 20 of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be
 21 made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with
 22 G.S. 120-122."

23 **SECTION 3.21.** G.S. 143B-417(1)bb. reads as rewritten:

24 (1) To determine the number of student interns to be allocated to each of the
 25 following offices or departments:

26 ...

27 bb. ~~Employment Security Commission~~Division of Employment Security

28 "

29 **SECTION 3.22.** G.S. 143B-426.25(b)(7) reads as rewritten:

30 (b) The North Carolina Farmworker Council shall consist of 13 members as follows:

31 ...

32 (7) ~~The Chairman of the Employment Security Commission~~Assistant Secretary
 33 of Commerce in charge of the Division of Employment Security or ~~his~~that
 34 officer's designee shall serve ex officio.

35 "

36 **SECTION 3.23.** G.S. 147-86.1 reads as rewritten:

37 "**§ 147-86.1. Pool account for local government unemployment compensation.**

38 (a) The State Treasurer is authorized to establish a pool account, in accordance with
 39 rules ~~and regulations~~ of the ~~Employment Security Commission, Division of Employment~~
 40 Security (DES), in cooperation with any one or more units of local government, for the purpose
 41 of reimbursing the ~~Employment Security Commission~~DES for unemployment benefits paid by
 42 the ~~Commission~~DES and chargeable to each local unit of government participating in the pool
 43 account. In the pool account established pursuant to this section, the funds contributed by a unit
 44 of local government shall remain the funds of the particular unit, and interest or other
 45 investment income earned by the pool account shall be prorated and credited to the various
 46 contributing local units on the basis of the amounts thereof contributed, figured according to an
 47 average periodic balance or some other sound accounting principle.

48 (b) The State Treasurer shall pay to the ~~Employment Security Commission, Division of~~
 49 Employment Security, within 25 days from receipt of a list thereof, all unemployment benefits
 50 charged by the ~~Commission~~DES to each unit of local government participating in the pool

1 account from the funds in the pool account belonging to each such unit, to the extent that said
2 funds are sufficient to do so.

3 (c) Notwithstanding the participation by a unit of local government in the pool account
4 authorized by this section, such unit shall remain liable to the ~~Employment Security~~
5 ~~Commission-Division of Employment Security~~ for any benefits duly charged by the
6 ~~Commission-Division~~ to the unit which are not paid by the State Treasurer from funds in the
7 pool account belonging to the unit. Notwithstanding its participation in the pool account, each
8 unit of local government shall continue to maintain an individual account with the ~~Employment~~
9 ~~Security Commission-DES~~.

10 (d) The Director of the Budget shall be authorized to transfer from the interest earned
11 on the pool account, to the State Treasurer's departmental budget, such funds as may be
12 necessary to defray the Treasurer's cost of administering the pool account."

13 **SECTION 3.24.** G.S. 158-7.1(d2)(1) reads as rewritten:

14 "(d2) In arriving at the amount of consideration that it receives, the Board may take into
15 account prospective tax revenues from improvements to be constructed on the property,
16 prospective sales tax revenues to be generated in the area, as well as any other prospective tax
17 revenues or income coming to the county or city over the next 10 years as a result of the
18 conveyance or lease provided the following conditions are met:

19 (1) The governing board of the county or city shall determine that the
20 conveyance of the property will stimulate the local economy, promote
21 business, and result in the creation of a substantial number of jobs in the
22 county or city that pay at or above the median average wage in the county or,
23 for a city, in the county where the city is located. A city that spans more than
24 one county is considered to be located in the county where the greatest
25 population of the city resides. For the purpose of this subdivision, the
26 median average wage in a county is the median average wage for all insured
27 industries in the county as computed by the ~~Employment Security~~
28 ~~Commission-Department of Commerce, Division of Employment Security~~,
29 for the most recent period for which data is available."

30 **SECTION 3.25.** G.S. 165-10 reads as rewritten:

31 "**§ 165-10. Transfer of veterans' activities.**

32 The Governor may transfer to the Department such funds, facilities, properties and
33 activities now being held or administered by the State for the benefit of veterans, their families
34 and dependents, as he may deem proper; provided, that the provisions of this section shall not
35 apply to the activities of the ~~North Carolina Employment Security Commission-Department of~~
36 ~~Commerce, Division of Employment Security~~, in respect to veterans."

37 38 **PART IV. REPORTING; OTHER MATTERS**

39 **SECTION 4.1.** By November 15, 2011, the Board of Review established by this
40 act shall be appointed and the Department of Commerce shall assign staff to the Board.

41 **SECTION 4.2.** By June 30, 2012, the Secretary of the Department of Commerce
42 shall make a detailed written report to the Joint Legislative Program Evaluation Oversight
43 Committee, the Joint Legislative Commission on Governmental Operations, and the Fiscal
44 Research Division on the consolidation of the Employment Security Commission into the
45 Department of Commerce and on any changes the Secretary recommends to maintain the
46 solvency of the Employment Security Fund.

47 48 **PART V. AUTHORITY OF THE REVISOR**

49 **SECTION 5.1.** Deletion of references. – The Revisor of Statutes may delete any
50 reference in the General Statutes to the Employment Security Commission, or any derivative

1 thereof, and substitute references to the Division of Employment Security (DES) of the
2 Department of Commerce created by this act wherever conforming changes are necessary. The
3 Revisor of Statutes may delete any reference in the General Statutes to the Chairman of the
4 Employment Security Commission, or any derivative thereof, and substitute references to the
5 Secretary of Commerce, as appropriate.
6

7 **PART VI. EFFECTIVE DATE**

8 **SECTION 6.1.** Except as otherwise provided, this act becomes effective November
9 1, 2011.



SENATE BILL 532: ESC/Jobs Reform

2011-2012 General Assembly

Committee:	House Finance	Date:	June 14, 2011
Introduced by:	Sens. Clary, Rucho	Prepared by:	Heather Fennell
Analysis of:	PCS to Third Edition S532-CSTD-55		Committee Counsel

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 PCS makes a clarifying change to benefit eligibility and adds back changes to the definition of "discharge for misconduct with the work" that were removed from the Senate Bill on the Senate Floor, but were in the House companion bill as that bill passed the House.*

[As introduced, this bill was identical to H813, as introduced by Reps. Howard, Starnes, which is currently in Senate Program Evaluation.]

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 January 1, 2012, 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 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

Senate PCS 532

Page 2

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. *The PCS clarifies that the individuals that are in a county jail for a weekend, but are otherwise available for work are eligible.*
- 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.

The following changes were in H813 as it passed the House on June 2, 2011, and S352 as introduced. SB 532 was amended to remove the following changes on the Senate floor. This PCS adds these changes back to the bill. 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.

Senate PCS 532

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 November 1, 2011.

Karen Cochrane-Brown, counsel to House Commerce, contributed to this summary.

S532-SMTD-98(CSTD-55) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 6.14.11

S. B. No. 532

Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE

Rep. Howard

1 moves to amend the bill on page 01, line 5 2-4

2 () WHICH CHANGES THE TITLE

3 by re writing the lines to read:

4 "involving violence, sex crimes, ~~independence~~ or
5 illegal drugs; any physical violence whatsoever
6 related to an employee's work"

- 7 _____
- 8 _____
- 9 _____
- 10 _____
- 11 _____
- 12 _____
- 13 _____
- 14 _____
- 15 _____
- 16 _____
- 17 _____
- 18 _____
- 19 _____

SIGNED _____

ADOPTED FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 237*
Finance Committee Substitute Adopted 6/2/11

Short Title: Incorporate Castle Hayne. (Local)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF CASTLE HAYNE, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Castle Hayne is enacted to read:

"CHARTER OF THE TOWN OF CASTLE HAYNE.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Castle Hayne are a body corporate and politic under the name "Town of Castle Hayne." The Town shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Castle Hayne are as follows:

BEGINNING at a point in the centerline of N.C. Highway No. 133 at the Northern New Hanover County boundary line; thence in a westerly direction; thence northerly, along the New Hanover County boundary line to a point intersecting the southern boundary line of PIN #3232-19-5017.000; thence westward of said parcel along the southern boundary to PIN #3212-83-7918.000; thence west along the southern boundary line; thence south along the eastern boundary line; thence east to intersect Prince George Creek; thence joining the southern bank of Prince George Creek; thence west along the southern bank to intersect with the eastern boundary lines of PIN #3221-28-5577.000; thence south along the eastern side to PIN #3221-36-7616.000 northern tip; thence north along the western side; thence east of said parcel along the northern boundary line; thence south of said parcel along the eastern boundary line to the centerline point of Sondey Rd; thence east along the centerline of said road to the intersection of the centerline of N.C. Highway No. 133; thence north on centerline of said road to the intersection of the centerline of Parmele Rd; thence east on the centerline line of said road to the centerline of N.C. Highway No. 132; thence south on the centerline to southern tip of PIN #3231-63-0919.000; thence east along the southern boundary line to PIN #3231-63-2909.000; thence south along the western boundary line to PIN #3231-63-2886.000; thence south along the western boundary line to the eastern boundary line of PIN #3231-64-6255.000; thence north along the western boundary line; thence east along the northern boundary line to PIN #3231-74-0048.000; thence east along the northern boundary line to PIN #3231-83-1775.000; thence north along the eastern boundary line to PIN #3231-84-5481; thence east along the southern boundary line to the centerline point of Blue Clay Rd; thence north of said road to the point of intersection at the right-of-way of Interstate 40; thence crossing said interstate in a line connecting to the continuation of the centerline of



1 Blue Clay Rd on the northern boundary of the interstate right-of-way at the centerline of Blue
2 Clay Rd; thence north on said road to PIN #3241-06-4363.000; thence east along said parcel
3 along the southern boundary line to PIN #3241-06-6234.000; thence east along the southern
4 boundary line to PIN #3241-05-7293.000; thence east along the northern boundary line to PIN
5 #3241-15-4490.000; thence east along the northern boundary line to PIN #3241-26-3164.000;
6 thence east along the western boundary line north to PIN #3241-26-4528.000; thence east along
7 the southern boundary line; thence north along the eastern boundary line to PIN
8 #3241-26-9929; thence east of said parcel along the southern boundary line to PIN
9 #3241-88-1225.000; thence north of said parcel along the western boundary line; thence west;
10 thence north along the centerline at Blue Clay Rd; thence east along the northern boundary line
11 to PIN #3251-63-1678.000; thence north of said parcel along the western boundary line to the
12 centerline point at Holly Shelter Rd; thence east along of said road centerline to New Hanover
13 County boundary line; thence north along the county line to the New Hanover County
14 boundary line at the North East Cape Fear River; thence west along the northern boundary of
15 the New Hanover County line to the starting point at centerline of N.C. Highway No. 133 at the
16 Northern New Hanover County boundary line.

17 "ARTICLE III. GOVERNING BODY.

18 "Section 3.1. **Structure of Governing Body; Number of Members.** The governing body
19 of the Town of Castle Hayne is the Mayor and the Town Council, which shall have four
20 members.

21 "Section 3.2. **Manner of Electing Town Council; Terms; Vacancies.** The qualified voters
22 of the entire Town shall elect the members of the Town Council and, except as provided in this
23 section, they shall serve four-year terms. In 2011, the two candidates receiving the highest
24 numbers of votes shall be elected to four-year terms, and the two candidates receiving the next
25 highest numbers of votes shall be elected to two-year terms. In 2013, and quadrennially
26 thereafter, two members shall be elected to four-year terms. In 2015, and quadrennially
27 thereafter, two members shall be elected to four-year terms. Vacancies on the Town Council
28 shall be filled as provided in G.S. 160A-63.

29 "Section 3.3. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of
30 the entire Town shall elect the Mayor. In 2011, and biennially thereafter, the Mayor shall be
31 elected for a term of two years. The Mayor shall attend and preside over meetings of the Town
32 Council, shall advise the Town Council from time to time as to matters involving the Town of
33 Castle Hayne, and shall have the right to vote as a member of the Town Council on all matters
34 before the Town Council, but shall have no right to break a tie vote in which the Mayor has
35 participated. Vacancies in the office of Mayor shall be filled as provided in G.S. 160A-63.

36 "Section 3.4. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The
37 Mayor Pro Tempore shall be elected from among the members of the Town Council at the
38 organizational meeting after the initial election in November 2011 and shall serve for a term of
39 two years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the
40 Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the
41 members of the Town Council present may elect a temporary chair to preside in the absence
42 from amongst the members of the Council. The Mayor Pro Tempore shall have the right to vote
43 on all matters before the Town Council and shall be considered a member of the Town Council
44 for all purposes.

45 "Section 3.5. **Residency Requirement.** Members of the governing body of the Town of
46 Castle Hayne, whether elected or appointed, must be qualified voters who reside within the
47 corporate limits of the Town in order to qualify to take, hold, and continue in office.

48 "Section 3.6. **Compensation of Mayor and Town Council.** The Mayor of the Town of
49 Castle Hayne shall be paid an annual sum of one thousand five hundred dollars (\$1,500) as
50 compensation for his or her services, and each member of the Town Council shall be paid an
51 annual sum of one thousand dollars (\$1,000) as compensation for his or her services. In

1 addition, the Mayor and the members of the Town Council shall be entitled to reimbursement
2 for ordinary and necessary travel, training, or other expenses incurred in the course of
3 performing their official duties, subject to adopted Town Council policies. The Town Council
4 may, from time to time, establish rates and amounts of reimbursement which shall not be
5 exceeded without prior approval of the Town Council.

6 "ARTICLE IV. ELECTIONS.

7 "Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan
8 basis and the results determined by a plurality as provided in G.S. 163-292.

9 "Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter
10 163 of the General Statutes, with the first regular municipal election to be held on November 8,
11 2011.

12 "Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be
13 held only as provided by the general law of North Carolina, local acts of the General Assembly,
14 or as provided for in this Charter.

15 "ARTICLE V. ADMINISTRATION.

16 "Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town shall operate
17 under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter
18 160A of the General Statutes.

19 "Section 5.2. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed
20 to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the
21 Town, advise Town officials, and perform other duties required by law or as the Town Council
22 may direct.

23 "Section 5.3. **Town Clerk.** The Town Council shall appoint a Town Clerk to keep a journal
24 of the proceedings of the Town Council, to maintain official records and documents, to give
25 notice of meetings, and to perform such other duties required by law or as the Town Council
26 may direct.

27 "Section 5.4. **Other Administrative Officers and Employees.** The Town Council may
28 authorize other offices and positions and appoint persons to fill the offices and positions. The
29 Town Council may organize the Town government as deemed appropriate, subject to the
30 requirements of general law.

31 "Section 5.5. **Advisory Groups and Boards.** The Town Council may create one or more
32 advisory groups or boards to assist or advise the Town Council on matters related to the Town,
33 unless otherwise prohibited by general law. The Town Council may appoint members to serve
34 on an advisory group or board authorized by this section, subject to the requirements of general
35 law.

36 "Section 5.6. **Consolidation of Functions.** Where positions are not incompatible, the Town
37 Council may combine in one person the powers and duties of two or more officers created or
38 authorized by this Charter.

39 "ARTICLE VI. TAXES AND BUDGET ORDINANCE.

40 "Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and
41 fees authorized by general law. An affirmative vote equal to a majority of all the members of
42 the Town Council shall be required to change the ad valorem tax rate from the rate established
43 during the prior fiscal year.

44 "Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2011, the citizens
45 and property in the Town of Castle Hayne shall be subject to municipal taxes levied for the
46 year beginning July 1, 2011, and for that purpose, the Town shall obtain from New Hanover
47 County a record of property in the area herein incorporated which was listed for property taxes
48 as of January 1, 2011.

49 "Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2011-2012
50 without following the timetable in the Local Government Budget and Fiscal Control Act, but
51 shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year

1 2011-2012, ad valorem taxes may be paid at par or face amount within 90 days of adoption of
2 the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the
3 taxes had been due and payable on September 1, 2011.

4 "ARTICLE VII. ORDINANCES.

5 "Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of Castle
6 Hayne is authorized to adopt such ordinances as the Town Council deems necessary for the
7 governance of the Town.

8 "Section 7.2. **Zoning Restriction.** Notwithstanding any other provisions of this Charter or
9 the provisions of general law, including the provisions of Article 19 of Chapter 160A of the
10 General Statutes, the Town shall not, prior to December 31, 2016, adopt an ordinance
11 regulating or restricting the subdivision, zoning, or use of land within the corporate limits of the
12 Town or within the Town's extraterritorial jurisdiction.

13 "ARTICLE VIII. MISCELLANEOUS.

14 "Section 8.1. **Conflicts of Interest.** No person, or a member of the person's immediate
15 family, who is employed by or is an official of the Town of Castle Hayne, shall do business
16 with the Town unless the activity is approved by the Town Council. All appointed officials of
17 the Town shall inform the Town Council of any conflicts of interest, and the failure to so
18 inform shall constitute grounds for immediate dismissal for cause. No official of the Town may
19 accept any gratuity from any business, person, or other official if the gratuity is related to his or
20 her official duties.

21 "Section 8.2. **Enlargement or Reduction of Town Council.** (a) The Town Council may
22 enlarge or reduce the size of the Town Council by two offices upon an affirmative vote of
23 three-fourths of the members of the Town Council. A vote to enlarge or reduce the size of the
24 Town Council may be had at any time, but shall not occur more often than every two years.
25 The Town Charter shall be amended to reflect an affirmative vote to enlarge or reduce the size
26 of the Town Council as provided in G.S. 160A-102.

27 (b) The qualified voters of the Town of Castle Hayne may seek to enlarge or reduce the
28 number of members of the Town Council by submitting a petition to that effect signed by
29 twenty percent (20%) of the qualified voters. Upon passage of a resolution as provided in
30 G.S. 160A-102 or upon receipt of a valid petition, the Town Council shall immediately take
31 steps as provided in Part 4 of Article 5 of Chapter 160A of the General Statutes to determine by
32 referendum whether the number of members of the Town Council should be increased or
33 reduced. If a majority of the votes cast in the referendum are in the affirmative to enlarge the
34 number of members of the Town Council, a special election shall be held at the earliest
35 possible date to elect the additional members required to enlarge the Town Council to the
36 number set forth in the referendum.

37 "Section 8.3. **Amendments to Charter.** The Town Council may propose and enact
38 amendments to this Charter in accordance with Part 4 of Article 5 of Chapter 160A of the
39 General Statutes. No amendment to this Charter shall become effective until public notice is
40 given and a public hearing is held to receive comments on the proposed Charter amendment.
41 Notwithstanding G.S. 160A-103, upon receipt of a referendum petition bearing the signatures
42 and residence addresses of twenty percent (20%) of the qualified voters of the Town, the Town
43 Council shall submit ordinances adopted under G.S. 160A-102 to a vote of the people.

44 "Section 8.4. **Provision of Services and Administration of Functions.** The Town Council
45 may enter into agreements with other governmental bodies and private enterprises for the
46 provision of services and the administration of corporate functions in order to provide the
47 services and administer the functions in the most efficient and cost-effective manner.

48 "ARTICLE IX. SPECIAL PROVISIONS.

49 "Section 9.1. **Fire Protection.** The Town of Castle Hayne may contract with either or both
50 the New Hanover County Fire Services or the Castle Hayne Volunteer Fire Department, or any
51 other capable fire services provider, to provide fire protection for the Town. The contract terms

1 and the amount paid by the Town of Castle Hayne to any fire services provider shall be
2 mutually agreed upon and annually renewed by the Town Council and the fire services
3 provider.

4 "Section 9.2. **Law Enforcement.** The Town of Castle Hayne may contract with the New
5 Hanover County Sheriff's Department, or any other capable law enforcement services provider,
6 to provide law enforcement services for the Town. The contract terms and amount paid by the
7 Town of Castle Hayne to the New Hanover County Sheriff's Department or any other capable
8 law enforcement services provider shall be mutually agreed upon and annually renewed by the
9 Town Council and the New Hanover County Board of Commissioners, or other capable law
10 enforcement services provider.

11 "Section 9.3. **Zoning, Planning, and Inspections.** The Town of Castle Hayne may contract
12 with the New Hanover County Planning, Zoning, and Inspections Department, or any other
13 capable planning, zoning, and inspections service provider, to provide planning, zoning, and
14 inspections services for the Town. The contract terms and amount paid by the Town of Castle
15 Hayne to the New Hanover County Planning, Zoning, and Inspections Department, or any other
16 capable planning, zoning, and inspections service provider, shall be mutually agreed upon and
17 annually renewed by the Town Council and the New Hanover County Board of
18 Commissioners, or other capable planning, zoning, and inspections service provider."

19 **SECTION 2.** The New Hanover County Board of Elections shall conduct an
20 election on November 8, 2011; for the purpose of submission to the qualified voters for the area
21 described in Section 2.1 of the Charter of the Town of Castle Hayne the question of whether or
22 not the area shall be incorporated as the Town of Castle Hayne. Registration for the election
23 shall be conducted in accordance with G.S. 163-288.2.

24 **SECTION 3.** In the election, the question on the ballot shall be:

25 FOR AGAINST

26 Incorporation of the Town of Castle Hayne."

27 **SECTION 4.** In the election, if a majority of the votes are cast "FOR Incorporation
28 of the Town of Castle Hayne," Section 1 of this act shall become effective on the date that the
29 New Hanover County Board of Elections certifies the results of the election. Otherwise,
30 Section 1 of this act shall have no force and effect.

31 **SECTION 5.** At the same time as the election held under Section 2 of this act, the
32 New Hanover County Board of Elections shall hold an election for the initial Town Council as
33 provided in Articles III and IV of the proposed Charter of the Town of Castle Hayne. If the
34 majority of votes is not cast "FOR Incorporation of the Town of Castle Hayne," the election of
35 officers is null and void. The filing period for candidacies is the same as provided by
36 G.S. 163-294.

37 **SECTION 6.** This act is effective when it becomes law.



SENATE BILL 237: Incorporate Castle Hayne

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Goolsby
Analysis of: Second Edition

Date: June 13, 2011
Prepared by: Cindy Avrette
Committee Counsel

SUMMARY: *Senate Bill 237 would incorporate the Town of Castle Hayne, subject to a referendum on November 8, 2011. In its Report to the General Assembly dated May 23, 2011, the Joint Legislative Commission on Municipal Corporations found that the proposed Town of Castle Hayne meets the standards required by Article 20 of Chapter 120 of the General Statutes and recommended incorporation of the area as the Town of Castle Hayne.*

CURRENT LAW: Article VII of the North Carolina Constitution provides that the General Assembly may create cities and towns. The General Assembly created the Joint Legislative Commission on Municipal Incorporations in 1986 to conduct an independent review and evaluation of proposed municipal incorporations. The evaluation is conducted in accordance with a statutory set of objective criteria found in Article 20 of Chapter 120 of the General Statutes. The statutory criteria include a review of community support, population, land development, nearness to other urban areas, and ability to provide municipal services at a reasonable rate. Chapter 160A of the General Statutes provides the general laws applicable to the administration, powers, and duties of municipalities. Municipalities may share in the following revenue sources: local sales tax distributions, Powell Bill allocations, franchise tax revenues on electricity, beer and wine excise taxes, piped natural gas excise tax revenues, and telecommunications and video programming sales tax revenues.¹

BILL ANALYSIS: Senate Bill 237 would incorporate the Town of Castle Hayne, subject to a referendum scheduled to be held on November 8, 2011. The Town would be governed by a four-member town council and a mayor. The Joint Legislative Commission on Municipal Incorporations found that the proposed incorporation met the standards required for incorporation under Article 20 of Chapter 120 of the General Statutes.

- The Town of Castle Hayne would be located in New Hanover County. The other cities and towns in New Hanover County include the City of Wilmington, the Town of Wrightsville Beach, the Town of Carolina Beach, and the Town of Kure Beach. None of these municipalities are located within five miles of the proposed town and no other municipality located outside New Hanover County is located within five miles of the proposed town.
- The estimated population of the Town would be 3,355. The estimated area to be incorporated is 12.85 square miles. The population density is 261 persons per square mile. The estimated assessed property tax valuation would be \$338,603,057.
- The Town plans to offer the following services: police protection provided by the New Hanover County Sheriff's Office, fire protection provided by New Hanover County; street lighting; and planning and zoning service provided by the New Hanover County Planning Office. However, Section 7.2 of the Charter, added in the Senate Finance Committee,

¹ A municipality must have a property tax rate greater than \$0.05/\$100 valuation and provide at least four services to receive the following shared revenues: local sales and use tax, beer and wine excise taxes, sales tax on telecommunications and video programming, and Powell Bill allocations.

Senate Bill 237

Page 2

restricts the ability of the Town to adopt an ordinance regulating or restricting the subdivision, zoning, or use of land for five years.

- The Town would be entitled to the following estimated amounts of revenue from shared tax revenue sources: \$80,000 of local sales tax; \$5,000 of franchise tax; \$3,000 of beer and wine excise taxes; \$45,000 of sales tax on telecommunications; \$50,000 of sales tax on video programming; \$160,000 of excise tax on piped natural gas; and \$70,000 of Powell Bill allocations. The Town is proposing a property tax rate of \$0.10/\$100 valuation for estimated property tax revenue of a little more than \$262,387.

EFFECTIVE DATE: SB 237 would become effective when it becomes law, and is subject to voter referendum.

S237-SMRB-98(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 345
PROPOSED HOUSE COMMITTEE SUBSTITUTE S345-CSR-66 [v.5]

6/13/2011 10:52:57 PM

Short Title: Encourage Invest to Retain Art 3A Installment.

(Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT TO RETAIN AND ENCOURAGE INVESTMENT IN ECONOMICALLY
DISTRESSED TIMES TO REMAIN ELIGIBLE TO TAKE AN INSTALLMENT OF A
CREDIT EARNED UNDER THE BILL LEE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.12A(c) reads as rewritten:

"(c) Expiration. - The amount of an installment of a credit may be forfeited or reduced as provided in this subsection. In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

(1) Use of property. - If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires and the taxpayer may not take any remaining installment of the credit. ~~If, in one of the seven years in which the installment of a credit accrues,~~ If part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If,

(2) Employment. - If, in one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200, the credit expires and the taxpayer may not take any remaining installment of the credit. the installment of the credit is reduced for that year or expires in accordance with this subdivision.

a. Expiration. - If the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 100, the credit expires and the taxpayer may not take any remaining installment of the credit.

b. Reduction. - A remaining installment shall be reduced as follows:
1. By twenty-five percent (25%) if the total number of employees the taxpayer employs at the property during the taxable year in which the installment accrues is at least 150.





SENATE BILL 345: Encourage Invest to Retain Art 3A Installment

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sens. Garrou, Allran
Analysis of: PCS to First Edition
S345-CSRbx-66

Date: June 14, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *The PCS for Senate Bill 345 would require a reduction of the tax credit for substantial investment in other property if the requisite number of people employed at the location falls below the statutory requirement of 200 employees.*

CURRENT LAW: In 2001, the General Assembly created a tax credit under the Bill Lee Act for substantial investment in other real property. To claim the credit for substantial investment in other property, the Secretary of Commerce must make a written determination that the taxpayer is expected to invest at least \$10 million in real property at a location within a three-year period and that the location will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. The taxpayer may begin to claim the credit once the property is first used in an eligible business. A taxpayer may not claim both the credit for substantial investment in other property and the credit for investing in central office or aircraft facility property with respect to the same property.

The amount of the credit for substantial investment in other property is equal to 30% of the eligible investment amount and must be taken in installments over a seven-year period. There is no ceiling on the amount of the credit. Any unused credit may be carryforward for 20 years, as opposed to the more standard carryforward period of five years. The Bill Lee tax credits expired for business activities occurring on or after January 1, 2007.

The credit for substantial investment in other property expires if the number of people employed at the location falls below 200. In this case, the taxpayer may not take any remaining installments of the credit but the taxpayer may take the portion of an installment that accrued in a previous year and was carried forward.

BILL ANALYSIS: Senate Bill 345 would create an exception for which a taxpayer may continue to take the remaining installments of the credit for substantial investment in other property, but at a reduced amount, when the number of employees the taxpayer employs at the property falls below 200.

Under the bill, an installment of the credit would be reduced by 25% if the total number of employees the taxpayer employs at the property during the taxable year in which the installment accrues is at least 150. The credit would be reduced by 50% if the number of employees is below 150 and at least 100. If the number of employees falls below 100, the credit would expire and the taxpayer may not take any remaining installment of the credit.

EFFECTIVE DATE: The bill is effective retroactively for taxable years beginning on or after January 1, 2009.

Cindy Avrette, counsel to Senate Finance, substantially contributed to this summary.

S345-SMSV-83(CSRbx-66) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 345 (First Edition)

SHORT TITLE: Encourage Invest to Retain Art 3A Installment.

SPONSOR(S): Senators Garrou and Allran

FISCAL IMPACT (\$millions)					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>
REVENUES:					
General Fund	-0.4	-0.4	-0.4	-0.4	-0.4
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue					
EFFECTIVE DATE: Taxable years beginning on or after January 1, 2009					

BILL SUMMARY: The William Lee Act is a package of tax credits designed to benefit new and expanding businesses. It includes a tax credit for "substantial investment in other property" that is available to taxpayers that meet certain eligibility requirements. One of these requirements is that a taxpayer has to create 200 jobs within two years of the time the qualifying property is placed in service. Additionally, a taxpayer must invest at least \$10 million in real property within a three year period. The credit is equal to 30% of the real property investment. The credit is taken in seven equal installments beginning the year after the property is placed in service. If an installment cannot be used because it exceeds 50% of the taxpayer's tax liability for the year, each installment may be carried forward for 20 years.

The credit expires if during one of the seven years in which an installment accrues, the total number employed by the taxpayer falls below 200. Expiration means that the taxpayer cannot take any remaining installments of the credit. The taxpayer is not required to forfeit installments of credits that accrued in previous years. The proposal would modify the expiration provision. The taxpayer would not be required to maintain 200 employees to take remaining credit installments if the taxpayer makes an investment equal to or greater than twice the amount of the remaining installments at the facility within two years of the employment level falling below 200.

ASSUMPTIONS AND METHODOLOGY:

Fiscal Research is aware of one taxpayer that would be impacted by the legislation. The bill would allow the taxpayer to remain eligible to take five remaining credit installments of \$424,000 each. Without the bill, the taxpayer would become ineligible for the installments and their tax liability would increase. Although the amount of timing and amount of credits taken each year will vary depending on when returns are filed and tax liability, the fiscal impact is estimated to be approximately \$400,000 annually for five years beginning in FY 2010-11.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 3, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 409
Program Evaluation Committee Substitute Adopted 6/7/11
Third Edition Engrossed 6/8/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S409-CSSV-39 [v.1]

6/13/2011 7:09:38 PM

Short Title: Global TransPark Gov. Reform & Loan Repayment. (Public)

Sponsors:

Referred to:

March 24, 2011

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A BILL TO BE ENTITLED
AN ACT TO REFORM THE GOVERNANCE OF THE NORTH CAROLINA GLOBAL
TRANSPARK AND TO REPAY THE LOAN FROM THE ESCHEAT FUND TO THE
GLOBAL TRANSPARK.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 63A-3(a) reads as rewritten:

"(a) Creation. The North Carolina Global TransPark Authority is created as a body corporate and politic having the powers and jurisdiction as provided under this Chapter or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority shall be located within the Department of ~~Transportation, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Transportation and, notwithstanding any other provision of law, Transportation and~~ shall be subject to the direction and supervision of the ~~Secretary only with respect to the management functions of coordinating and reporting.~~ Secretary."

SECTION 1.(b) G.S. 63A-3(b) reads as rewritten:

"(b) Board of Directors. The Authority shall be governed by a Board of Directors. The Board shall consist of at least the following 20 members:

(1) ~~Seven~~ Six members appointed by the Governor. One member shall be representative of the economic development industry, two members shall be representative of commercial real estate development industry, two members shall be representative of the banking and finance industry, and one member shall be representative of environmental interests. Of the Governor's six appointments, at least one member shall come from each of the State's three regions: Western, Piedmont, and Eastern.

(2) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. One member shall be representative of the aerospace and aviation industry, one member shall be representative of advanced manufacturing industries, and one member shall be representative of the logistics and supply chain management industry.



- 1 (3) Three members appointed by the General Assembly upon the
 2 recommendation of the President Pro Tempore of the Senate in accordance
 3 with G.S. 120-121. One member shall be representative of the aerospace and
 4 aviation industry, one member shall be representative of the emergency
 5 response and disaster relief industries, and one member shall be
 6 representative of the defense and security industry.
- 7 (4) The State Treasurer, who shall serve as an ex officio nonvoting member.
- 8 (5) The President of the North Carolina System of Community Colleges,
 9 provided that the President of the North Carolina Community Colleges may
 10 instead appoint to the Board of Directors one member of the board of
 11 trustees of a community college or one president of a community college. If
 12 such an appointment is made, the appointee shall serve at the pleasure of the
 13 President.
- 14 (6) The President of The University of North Carolina, provided that the
 15 President of the University of North Carolina may instead appoint to the
 16 Board of Directors one member of the board of trustees of a constituent
 17 institution of The University of North Carolina, or one chancellor of a
 18 constituent institution of The University of North Carolina. If such an
 19 appointment is made, the appointee shall serve at the pleasure of the
 20 President.
- 21 (7) The Chairman of the State Ports Authority.
- 22 (8) One member appointed by the board of county commissioners of any county
 23 in which the cargo airport complex site is located.
- 24 (9) One member appointed by the city council of the city which is a county seat
 25 of any county in which the cargo airport complex site is located.
- 26 (10) The Commissioner of Agriculture.
- 27 (11) The Secretary of the Department of Commerce.

28 Within 90 days after the Authority acquires land, either by purchase or condemnation, for
 29 development as part of a cargo airport complex site, the board of county commissioners in any
 30 county in which a portion of the land is located and the city council of the city which is the
 31 county seat of the county shall, by resolution, each appoint a person to serve as a member of the
 32 Board. If the board of commissioners or the city council appoints one of its own members to
 33 the Board, the county commissioner or the member of the city council who is appointed is
 34 considered to be serving on the Board as an ex officio voting member as part of the duties of
 35 the office of county commissioner or the office of city council member, in accordance with
 36 G.S. 128-1.2, and is not considered to be serving in a separate office. Notwithstanding
 37 G.S. 116-31(h), a member of the board of trustees of a constituent institution of The University
 38 of North Carolina appointed to the Board of Directors under subdivision (6) of this subsection
 39 may concurrently serve on the board of trustees and the Board of Directors. Notwithstanding
 40 any other provision of law, the Governor may serve on the Board of Directors by his own
 41 appointment on or after July 16, 1991, under subdivision (1) of this subsection.

42 As the holder of an office, each member of the Board shall take the oath required by Article
 43 VI, § 7 of the North Carolina Constitution before assuming the duties of a Board member."

44 SECTION 1.(c) G.S. 63A-3(c) is repealed.

45 SECTION 1.(d) G.S. 63A-3 is amended by adding a new subsection to read as
 46 follows:

47 "(d1) Notwithstanding the terms of board members appointed by the General Assembly as
 48 specified in subsection (d) of this section, terms of board members appointed by the General
 49 Assembly shall end June 30, 2011. After June 30, 2011, the six members appointed by the
 50 General Assembly shall be divided into two classes. The first class shall consist of three

1 persons, two of whom shall be appointed upon recommendation of the Speaker of the House of
 2 Representatives and one of whom shall be appointed upon recommendation of the President
 3 Pro Tempore of the Senate, to serve an initial term expiring June 30, 2013, with subsequent
 4 terms expiring each fourth June 30th thereafter. The second class shall consist of three persons,
 5 two of whom shall be appointed upon recommendation of the President Pro Tempore of the
 6 Senate and one of whom shall be appointed upon recommendation of the Speaker of the House
 7 of Representatives, to serve an initial term expiring June 30, 2015, with subsequent terms
 8 expiring each fourth June 30th thereafter."

9 SECTION 1.(e) G.S. 63A-24(3) reads as rewritten:

10 "(3) Except for G.S. 146-29.1, 146-79, and 146-80, Chapter 146 of the General
 11 Statutes does not apply to the Authority. Notwithstanding this exemption
 12 from Chapter 146 of the General Statutes, the Secretary of Transportation
 13 may designate employees of the Authority as subject to Chapter 146 of the
 14 General Statutes."

15 SECTION 2.(a) There is appropriated to Statewide Reserves the sum of
 16 seventeen million five hundred thousand dollars (\$17,500,000) for payment to the Escheat
 17 Fund. The Office of State Budget and Management shall remit to the Escheat Fund the sum of
 18 seventeen million five hundred thousand dollars (\$17,500,000) as payment on the outstanding
 19 loan from the Escheat Fund to the Global TransPark Authority authorized under
 20 G.S. 63A-4(a)(22) and G.S. 147-69.2(b)(11).

21 SECTION 2.(b) If House Bill 200 of the 2011 Regular Session becomes law, then
 22 Section 9.8(a) of that act reads as rewritten:

23 "SECTION 9.8.(a) There is appropriated from the Escheat Fund income to the Board of
 24 Governors of The University of North Carolina the sum of ~~thirty-two million one hundred~~
 25 ~~twenty-two thousand two hundred forty-two dollars (\$32,122,242)~~ forty-nine million six
 26 hundred twenty-two thousand two hundred forty-two dollars (\$49,622,242) for the 2011-2012
 27 fiscal year and the sum of thirty-two million one hundred twenty-two thousand two hundred
 28 forty-two dollars (\$32,122,242) for the 2012-2013 fiscal year to be used for The University of
 29 North Carolina Need-Based Financial Aid Program."

30 SECTION 2.(c) If House Bill 200 of the 2011 Regular Session becomes law, then
 31 Section 2.1 of that act reads as rewritten:

32 "SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of
 33 the State departments, institutions, and agencies, and for other purposes as enumerated, are
 34 made for the fiscal biennium ending June 30, 2013, according to the following schedule:

36 Current Operations – General Fund	2011-2012	2012-2013
37 EDUCATION		
38 Community Colleges System Office	\$ 985,000,000	\$ 985,000,000
39 Department of Public Instruction	7,464,492,057	7,450,000,000
40 University of North Carolina – Board of Governors		
41 Appalachian State University	145,563,319	145,680,676
42 East Carolina University		
43 Academic Affairs	247,397,807	247,397,807
44 Health Affairs	65,196,439	65,196,439
45 Elizabeth City State University	38,226,042	38,398,361
46 Fayetteville State University	56,925,951	56,925,951
47 NC A&T State University	105,355,805	105,794,754
48 NC Central University	94,342,683	94,342,683

1	NC State University		
2	Academic Affairs	434,563,241	434,677,423
3	Agricultural Research	59,239,461	59,239,461
4	Agricultural Extension	43,539,609	43,539,609
5	UNC-Asheville	42,004,444	42,004,444
6	UNC-Chapel Hill		
7	Academic Affairs	309,481,584	312,843,120
8	Health Affairs	219,507,009	222,570,732
9	AHEC	49,747,851	49,747,851
10	UNC-Charlotte	216,455,073	217,471,216
11	UNC-Greensboro	173,180,926	173,180,926
12	UNC-Pembroke	61,534,005	62,277,254
13	UNC-School of the Arts	27,796,473	27,796,473
14	UNC-Wilmington	105,943,181	107,138,757
15	Western Carolina University	90,591,556	91,070,460
16	Winston-Salem State University	76,496,951	76,496,950
17	General Administration	38,186,863	27,628,722
18	University Institution Programs	(375,153,400)	(383,808,914)
19	Related Educational Programs	85,679,060 68,179,060	115,272,420
20	UNC Financial Aid Private Colleges	91,635,664	86,534,065
21	NC School of Science & Math	18,937,535	18,937,535
22	UNC Hospitals	18,000,000	18,000,000
23	Total University of North Carolina --		
24	Board of Governors	\$ 2,540,375,132	\$ 2,551,672,698

HEALTH AND HUMAN SERVICES

28	Department of Health and Human Services		
29	Division of Central Management and Support	\$ 50,177,377	\$ 44,577,987
30	Division of Aging and Adult Services	37,019,667	37,019,667
31	Division of Services for Blind/Deaf/Hard of Hearing	8,389,110	8,372,886
32	Division of Child Development	266,102,933	266,102,933
33	Division of Health Service Regulation	16,133,031	16,133,031
34	Division of Medical Assistance	2,958,388,184	2,907,276,302
35	Division of Mental Health,		
36	Developmental Disabilities, and		
37	Substance Abuse Services	665,712,232	710,712,232
38	NC Health Choice	79,452,317	83,717,865
39	Division of Public Health	190,443,245	157,538,834
40	Division of Social Services	186,183,068	186,183,068
41	Division of Vocational Rehabilitation	37,125,788	37,528,128
42	Total Health and Human Services	\$ 4,495,126,952	\$ 4,455,162,933

NATURAL AND ECONOMIC RESOURCES

46	Department of Agriculture and Consumer Services	\$ 65,460,864	\$ 62,198,634
48	Department of Commerce		
49	Commerce	50,852,340	33,250,463
50	Commerce State-Aid	32,851,025	30,151,984
51	NC Biotechnology Center	17,551,710	17,551,710
52	Rural Economic Development Center	25,376,729	25,376,729
54	Department of Environment and Natural Resources	165,784,887	148,148,105
56	DENR Clean Water Management Trust Fund	11,250,000	11,250,000

1	Department of Labor	15,836,887	15,836,887
2			
3	Wildlife Resources Commission	18,000,000	17,221,179
4			
5	JUSTICE AND PUBLIC SAFETY		
6			
7	Department of Correction	\$ 1,337,816,346	\$ 1,348,410,793
8			
9	Department of Crime Control and Public Safety	225,258,795	215,164,518
10			
11	Judicial Department	438,920,048	435,141,107
12	Judicial Department – Indigent Defense	110,091,526	112,748,733
13			
14	Department of Justice	80,704,013	80,864,138
15			
16	Department of Juvenile Justice and Delinquency Prevention	135,593,692	131,140,565
17			
18	GENERAL GOVERNMENT		
19	Department of Administration	\$ 63,607,330	\$ 65,511,460
20			
21	Department of State Auditor	11,857,574	10,676,035
22			
23	Office of State Controller	28,368,957	28,368,957
24			
25	Department of Cultural Resources		
26	Cultural Resources	63,524,857	61,697,001
27	Roanoke Island Commission	1,805,236	1,203,491
28			
29	State Board of Elections	5,186,603	5,126,603
30			
31	General Assembly	53,259,495	50,104,208
32			
33	Office of the Governor		
34	Office of the Governor	4,741,157	4,741,157
35	Office of State Budget and Management	5,848,663	5,848,663
36	OSBM – Reserve for Special Appropriations	1,940,612	440,612
37	Housing Finance Agency	9,673,051	9,673,051
38			
39	Department of Insurance		
40	Insurance	36,393,921	36,393,921
41	Insurance – Volunteer Safety Workers' Compensation	2,294,000	2,623,654
42			
43	Office of Lieutenant Governor	695,324	695,324
44			
45	Office of Administrative Hearings	4,983,871	4,983,871
46			
47	Department of Revenue	78,199,538	78,199,538
48			
49	Department of Secretary of State	10,654,563	10,654,563
50			
51	Department of State Treasurer		
52	State Treasurer	6,657,031	6,621,750
53	State Treasurer –		
54	Retirement for Fire and Rescue Squad Workers	17,812,114	17,812,114
55			
56	RESERVES, ADJUSTMENTS, AND DEBT SERVICE		
57			

1	Contingency and Emergency Fund	\$ 5,000,000	\$ 5,000,000
2			
3	State Retirement System Contribution	248,100,000	336,000,000
4			
5	Judicial Retirement System Contribution	6,800,000	7,800,000
6			
7	Firemen's & Rescue Squad Workers' Pension Fund	4,318,042	5,366,928
8			
9	State Health Plan	7,119,541	102,151,104
10			
11	Information Technology Fund	4,458,142	6,158,142
12			
13	Reserve for Job Development Investment Grants (JDIG)	15,400,000	27,400,000
14			
15	Continuation Review Reserve	0	35,576,758
16			
17	Comprehensive Review of Compensation Plans	2,000,000	0
18			
19	Compensation Adjustment and Performance Pay Reserve	0	121,105,840
20			
21	Severance Expenditure Reserve	69,000,000	0
22			
23	Automated Fraud Detection Development	1,000,000	7,000,000
24			
25	Controller – Fraud Detection Development	500,000	500,000
26			
27	Debt Service		
28	General Debt Service	688,957,188	759,984,974
29	Federal Reimbursement	1,616,380	1,616,380
30			
31	<u>Payment to Escheat Fund</u>	<u>17,500,000</u>	
32			
33	TOTAL CURRENT OPERATIONS –		
34	 GENERAL FUND	\$ 19,678,116,193	\$ 19,943,327,275".
35			

36 **SECTION 3.** Any monies received from a grant made on or after July 1, 2011, by
37 The Golden Leaf (Long-Term Economic Advancement Foundation), Inc., to the Global
38 TransPark Authority shall be first applied to the payment of any outstanding loan from the
39 Escheat Fund to the Global TransPark Authority authorized under G.S. 63A-4(a)(22) and
40 G.S. 147-69.2(b)(11).

41 **SECTION 4.(a)** If House Bill 200 of the 2011 Regular Session becomes law, then
42 Section 6.10 of that act is repealed.

43 **SECTION 4.(b)** G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144,
44 Section 2 of S.L. 2005-201, Section 28.17 of S.L. 2005-276, Section 27.7 of S.L. 2007-323,
45 and Section 25.2 of S.L. 2009-451, reads as rewritten:

46 "(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated
47 in subsection (a) of this section in excess of the amount required to meet the current needs and
48 demands on such funds, selecting from among the following:

- 49 ...
- 50 (11) With respect to assets of the Escheat Fund, obligations of the North Carolina
51 Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed
52 twenty-five million dollars (\$25,000,000), that have a final maturity not later
53 than October 1, ~~2011-2012~~. The obligations shall bear interest at the rate set
54 by the State Treasurer. No commitment to purchase obligations may be

1 made pursuant to this subdivision after September 1, 1993, and no
2 obligations may be purchased after September 1, 1994. In the event of a loss
3 to the Escheat Fund by reason of an investment made pursuant to this
4 subdivision, it is the intention of the General Assembly to hold the Escheat
5 Fund harmless from the loss by appropriating to the Escheat Fund funds
6 equivalent to the loss.

7 If any part of the property owned by the North Carolina Global
8 TransPark Authority now or in the future is divested, proceeds of the
9 divestment shall be used to fulfill any unmet obligations on an investment
10 made pursuant to this subdivision."

11 **SECTION 5.** This act becomes effective July 1, 2011.



SENATE BILL 409: Global TransPark Gov. Reform & Loan Repayment

2011-2012 General Assembly

Committee:	House Finance	Date:	June 14, 2011
Introduced by:	Sens. Hartsell, Clary, Clodfelter	Prepared by:	Trina Griffin
Analysis of:	PCS to Third Edition S409-CSSV-39		Committee Counsel

SUMMARY: *The PCS for Senate Bill 409¹ (i) modifies the governance structure of the North Carolina Global TransPark Authority (GTP), placing the GTP under the supervision of the Secretary of Transportation and amending the appointments process for the GTP board, and (ii) provides for a one-time payment of \$17.5 M on the Escheats Fund loan to the GTP and provides that any grant money from the Golden LEAF to the Global TransPark shall first be applied to the Escheats Fund loan.*

CURRENT LAW: The North Carolina Global TransPark Authority (GTP) is administratively located within the Department of Transportation, but exercises most of its powers independently from the Secretary of Transportation. In making appointments to the GTP board, the Governor and General Assembly are directed to consider the geographical representation of the State. Four of the Governor's seven appointees are to be representative of certain industries and interests. Additionally, the GTP has an outstanding loan from the Escheat Fund in excess of \$40 million, which includes \$22.5 million in principal and which the GTP cannot repay based on current operations.

Section 1 of the bill deals with governance issues. **Section 1(a)** changes the relationship between the GTP and the Department of Transportation by deleting the GTP's authority to exercise its powers independently of the Secretary of Transportation, leaving the GTP "subject to the direction and supervision of the Secretary." **Section 1(b)** would require all of the GTP board appointments of the Governor and General Assembly to come from specific categories of representation. Categories include the economic development industry, the real estate development industry, environmental interests, the logistics industry, the aviation industry, defense and security industry, and others. **Section 1(c)** deletes the current appointment categories and guidelines, which are less prescriptive. **Section 1(d)** removes the current General Assembly appointees and establishes new staggered four year terms. **Section 1(e)** allows the Secretary of Transportation to designate GTP employees as subject to State Personnel Act.

Section 2 makes a one-time transfer on July 1, 2011, from the Statewide Reserves to the Escheats Fund in the amount of \$17.5 million as a payment on the loan to the GTP from the Escheats Fund. This payment is paid for by reducing funding from the General Fund to the UNC Need-Based Financial Aid Program for fiscal year 2011-2012 (as provided in H200, as ratified). To maintain the same level of funding for the UNC Need-Based Financial Aid Program, however, funding for that program is increased in that same year from the Escheats Fund.

Section 3 provides that any grants from the Golden L.E.A.F. to the Global TransPark shall be first applied to the payment of the outstanding Escheats Fund loan.

Section 4(a) repeals provisions of H200 that would require reporting by and study of the GTP on topics covered in this bill. **Section 4(b)** moves the maturity date of the loan back to October 1, 2012.

EFFECTIVE DATE: This act becomes effective July 1, 2011.

Ryan Blackledge, staff attorney, substantially contributed to this summary.

S409-SMSV-79(CSSV-39) v1

¹This PCS is identical to H841, as introduced by Rep. Howard, which is currently in the Senate.



#19

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 409

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S409-AME-122 [v.1]

Page 1 of 1

Comm. Sub. [YES]
Amends Title [NO]
S409-CSSV-39 v.1

Date 6.14, 2011

Representative Howard

1 moves to amend the bill on page 3, line 8, by inserting after that line the following:
2

3 "SECTION 1.(e) G.S. 63A-23 reads as rewritten:

4 '§ 63A-23. Annual and quarterly reports.

5 The Authority shall, promptly following the close of each fiscal year, submit an annual
6 written report of its activities for the preceding year to the Governor, the General Assembly,
7 and the Local Government Commission. Each report shall be accompanied by an audit of its
8 books and ~~accounts.~~ accounts, as well as quarterly and annual financial statements. The audit
9 shall be conducted by the State Auditor. The costs of all audits shall be paid from funds of the
10 Authority.

11 As part of the report, the Authority shall include the following performance measures of the
12 private sector jobs within the Global TransPark:

- 13 (1) The number, type, and wage level of jobs created or retained.
- 14 (2) The actual full-time equivalent jobs employed, as well as the median and
15 average salaries for those jobs.

16 The Authority shall submit ~~quarterly reports~~ its annual report to the General Assembly to
17 both the Joint Legislative Commission on Governmental Operations. Operations and the
18 Program Evaluation Division. ~~The reports shall summarize the Authority's activities during the~~
19 ~~quarter and contain~~ Authority shall also submit any information about the Authority's activities
20 that is requested by the Commission.

21 The Authority shall also provide a copy of its annual report on its public website."; and
22

23 on line 9, by deleting "SECTION 1.(e)" and substituting "SECTION 1.(f)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____





North Carolina General Assembly
House Committee on Finance

Minutes

June 14, 2011

The House Committee on Finance met on Tuesday, June 14, 2011 at 3:00 pm in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chairs Lewis and McComas; and Representatives Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Earl Coker and Champ Claris. Staff persons present included Cindy Avrette, Rodney Bizzell, Judy Collier, Dan Etefagh, Trina Griffin, Sandra Johnson, Greg Roney, and Brian Slivka, Jonathan Tart. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Setzer called the meeting to order at 3:09 pm and recognized the four (4) pages present (1) Ashley Silver of Nash County sponsored by Representative Bryant; (2) Jacob Iler of Iredell County sponsored by Representative Iler; (3) Katie Hester of Bladen County sponsored by Representative Brisson; and (4) Courtney Sheets of Mecklenburg County sponsored by Representative Brisson.

The first bill to be heard by the Committee was **SB 345 Encourage Invest to Retain Art 3A Installment** (see **attachment 3**). This bill was back before the Committee after being temporarily displaced at the 8:00 am meeting. Chairman Setzer recognized Representative Starnes who moved for an unfavorable report to the bill. The motion carried.

The next bill before the Committee was **SB 415 Eliminate Cost/Reduced-Price Sch Breakfast** (see **attachment 4**). The Chair recognized Representative Howard to explain the bill. Chairman Setzer recognized Representative Ross who moved that SB 415 be given a favorable report. The motion carried.

The next bill before the Committee was **HB 368 State Historic Sites Special Fund** (see **attachment 5**). The Chair recognized Representative Luebke who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair recognized Representative Ross to explain the proposed committee substitute. Chairman Setzer recognized Melanie Soles, Assistant Secretary for the North Carolina Department of Cultural Resources who spoke in favor of the bill and answered questions from members. The Chair temporarily displaced the bill while staff performed requested research.

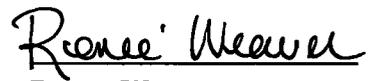
The next bill considered by the Committee was **HB 911 Increase Criminal Court Costs/Victim's Comp.** (see attachment 6). The Chair recognized Representative Jordan who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Setzer then recognized Representative LaRoque to explain the proposed committee substitute. Staff member Doug Holbrook assisted in answering member's questions. Chairman Setzer recognized Representative Moffitt who moved that HB 911 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill before the Committee was **SB 340 State Historic Sites Special Fund** (see attachment 7). The Chair recognized Representative Howard who moved that the proposed committee substitute for HB 340 be removed and the original bill be considered. The motion carried. Chairman Setzer recognized Representative Carney who moved that SB 340 be given a favorable report. The motion carried.

There being no further business presently before the Committee, Chairman Setzer adjourned the meeting at 2:48 pm.

Respectfully submitted,


Representative Mitchell Setzer
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 911 A BILL TO BE ENTITLED AN ACT TO INCREASE CRIMINAL COURT COSTS IN DISTRICT AND SUPERIOR COURT TO PROVIDE ADDITIONAL FUNDING FOR THE VICTIMS COMPENSATION FUND.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 340 A BILL TO BE ENTITLED AN ACT ESTABLISHING THE STATE HISTORIC SITES FUND IN THE DIVISION OF STATE HISTORIC SITES.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 345 A BILL TO BE ENTITLED AN ACT TO RETAIN AND ENCOURAGE
INVESTMENT IN ECONOMICALLY DISTRESSED TIMES TO REMAIN ELIGIBLE TO TAKE AN
INSTALLMENT OF A CREDIT EARNED UNDER THE BILL LEE ACT.

With a unfavorable 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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 415 A BILL TO BE ENTITLED AN ACT TO PROVIDE SCHOOL BREAKFASTS AT NO COST FOR SCHOOL CHILDREN WHO QUALIFY FOR REDUCED-PRICE MEALS AT SCHOOLS PARTICIPATING IN THE NATIONAL SCHOOL BREAKFAST PROGRAM; AND TO REQUIRE THE STATE BOARD OF EDUCATION TO REPORT ON THE PUBLIC SCHOOL NUTRITION PROGRAMS OPERATED BY THE LOCAL SCHOOL ADMINISTRATIVE UNITS UNDER THE JURISDICTION OF CHILD NUTRITION SERVICES OF THE DEPARTMENT OF PUBLIC INSTRUCTION; AND TO DIRECT THE STATE AUDITOR TO AUDIT CHILD NUTRITION SERVICES OF THE DEPARTMENT OF PUBLIC INSTRUCTION.

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 _____.

AGENDA
House Finance Committee

Tuesday, June 14, 2011
3:00 pm
Room 544 LOB
Chaired by: Representative Mitchell Setzer

Call to Order

Introduction of Pages

Bills:

HB 368 State Historic Sites Special Fund

Representatives Johnson, Daughtry

HB 911 Increase Criminal Court Costs/Victim's Comp.

Representative LaRoque

SB 340 State Historic Sites Special Fund > PCS entitled Forced Combinations

Senator Hartsell

SB 345 Encourage Invest to Retain Art 3A Installment

Senators Garrou, Allran

SB 415 Eliminate Cost/Reduced-Price Sch Breakfast

Senator Purcell

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: JUNE 14, 2011 Room: 544

*Name: Ashley Silver

County: Nash

Sponsor: Angela Bryant

*Name: Jacob Iler

County: Iredell

Sponsor: Frank Iler

*Name: Katie Hester

County: Bladen

Sponsor: Brisson

*Name: Courtney Sheets

County: Mecklenburg

Sponsor: Brisson

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: CARLTON ADAMS

2. Name: JOHN BRANDON

5. Name: _____

3. Name: REGINALD SILLS

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

June 14, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jane Carrichael	Dictino Comp / CCPS
A.A. "Dad" Adams	Victim Advocate
Kari Larsson	DENR
Pat Harris	DENR/ DSWC
David Hemen	NC Center for Nonprofits
Jim Johnson	BSA
Lennie Collins	NC DOR
Canaan Huie	NC DOR
John Meredith	MWC LLC
Mike De	Victim Advocate
Erin Schwab	UNC-CH

VISITOR REGISTRATION SHEET

House Finance

June 14, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jamie Carmichael	Victims' Comp - CCF
A.A. Adams	Victim Advocate
Whitney Christensen	Jordan Price
Sam Loh	NClea
Paul H. Johnson	T. Johnson
Bill Lowe	NC Justice Center
Michael Houser	NC DOR
Cameron McCormick	Office of the Governor
Edvin McLoughan	NC Justice Center
KEN WADSWORTH	GNU
Susan T. Mintz	GNU, Goldsboro,

VISITOR REGISTRATION SHEET

State Personnel
Name of Committee

June 8, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LOTTA CRABTREE	State Health Plan
JACK WALKER	" " "
Monr Mon	SHP
Carol Durcell	SHP
Jacquelyn	SHP
Chuck	SEANC
Matt Overby	Rep. Aila
Bradford	Gov. Office
Chad Lowry	" "
Nicole Sullivan	DOC
Carl Dean	OSP

VISITOR REGISTRATION SHEET

House Finance

June 14, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Michael Luthy	Speaker's Ofc
John McAlister	NC Chamber
Len Ebert	NC Chamber
Gene Arnsworth	A & A
Jake Cashion	NC Chamber
David McManam	NC Realtors
Jessie Hayes	NCTBA
Will Pungert	NCTFA
Lachelle Pulliam	Dmd Wainwright's Office
Matthew Eistey	Smith Anderson
Tim Kent	NC Beer & Wine Wholesalers

VISITOR REGISTRATION SHEET

House Finance

June 14, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ballard Everett	Locksmiths Assoc.
Darlene Robinson	Marshall Locksmith
Barden Culbreth	NCLB
Whitney Christensen	Jordan Price
Jack Coltrane	DMV
Johanna Reese	DMV
Joey Gardner	DMV
Andrew Cagle	NC Sheriffs' Assn.
McDaniel	NCICU
KEITH CRUSHAW	ECC
Philip S. Lee	A. Club & Assoc.

VISITOR REGISTRATION SHEET

House Finance

June 14, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Mitch Leonard	SEANC
Larry Beasley	NCGIC
Mark Peters	NCGIC
Dick Carter	AMU
Chris Aguir	DOA
Emily Grimm	MUC
Henry Jones	Attorney Raleigh
James Andrews	NC State AFL-CIO
Matthew McGee	Carolina's Healthcare
Scott Finney	Carolina's Health Care
Meredith Swindell	The Policy Group

VISITOR REGISTRATION SHEET

House Finance

June 14, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John Havelin	MFS
Frances Lentz	MFS
Larry Beverly	GIC
Andy Eller	NEMA
Paul Sho	NEMA
BUSBY	WM
Betty Doster	UNC Charlotte
Alma Wiest	LA - John

VISITOR REGISTRATION SHEET

House Finance

June 14, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathryn Westcott	ACEC/NC
Betsy Bailey	PENK
BERRY Jenkins	CAGC
Emily Doyle	NCPAPA
John T. Link	SubVits
Gene Casby	NCSCA
Meredith Swindell	The Policy Group
Michael Leonard	SEANC
Wendy Kelly	Policy Group
Matt Harrell	NCSBA
Bob Heath	McQuinn Wood
Chris Killian	Nelson Mullins

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 345
PROPOSED HOUSE COMMITTEE SUBSTITUTE S345-CSR-66 [v.5]

6/13/2011 10:52:57 PM

Short Title: Encourage Invest to Retain Art 3A Installment.

(Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT TO RETAIN AND ENCOURAGE INVESTMENT IN ECONOMICALLY
DISTRESSED TIMES TO REMAIN ELIGIBLE TO TAKE AN INSTALLMENT OF A
CREDIT EARNED UNDER THE BILL LEE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.12A(c) reads as rewritten:

"(c) Expiration. - The amount of an installment of a credit may be forfeited or reduced as provided in this subsection. In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

(1) Use of property. - If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires and the taxpayer may not take any remaining installment of the credit. ~~If, in one of the seven years in which the installment of a credit accrues,~~ If part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If,

(2) Employment. - If, in one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200, ~~the credit expires and the taxpayer may not take any remaining installment of the credit.~~ the installment of the credit is reduced for that year or expires in accordance with this subdivision.

a. Expiration. - If the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 100, the credit expires and the taxpayer may not take any remaining installment of the credit.

b. Reduction. - A remaining installment shall be reduced as follows:

1. By twenty-five percent (25%) if the total number of employees the taxpayer employs at the property during the taxable year in which the installment accrues is at least 150.



* S 3 4 5 - C S R B - 6 6 - V - 5 *

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 345 (First Edition)

SHORT TITLE: Encourage Invest to Retain Art 3A Installment.

SPONSOR(S): Senators Garrou and Allran

FISCAL IMPACT (\$millions)					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>
REVENUES:					
General Fund	-0.4	-0.4	-0.4	-0.4	-0.4
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue					
EFFECTIVE DATE: Taxable years beginning on or after January 1, 2009					

BILL SUMMARY: The William Lee Act is a package of tax credits designed to benefit new and expanding businesses. It includes a tax credit for "substantial investment in other property" that is available to taxpayers that meet certain eligibility requirements. One of these requirements is that a taxpayer has to create 200 jobs within two years of the time the qualifying property is placed in service. Additionally, a taxpayer must invest at least \$10 million in real property within a three year period. The credit is equal to 30% of the real property investment. The credit is taken in seven equal installments beginning the year after the property is placed in service. If an installment cannot be used because it exceeds 50% of the taxpayer's tax liability for the year, each installment may be carried forward for 20 years.

The credit expires if during one of the seven years in which an installment accrues, the total number employed by the taxpayer falls below 200. Expiration means that the taxpayer cannot take any remaining installments of the credit. The taxpayer is not required to forfeit installments of credits that accrued in previous years. The proposal would modify the expiration provision. The taxpayer would not be required to maintain 200 employees to take remaining credit installments if the taxpayer makes an investment equal to or greater than twice the amount of the remaining installments at the facility within two years of the employment level falling below 200.

ASSUMPTIONS AND METHODOLOGY:

Fiscal Research is aware of one taxpayer that would be impacted by the legislation. The bill would allow the taxpayer to remain eligible to take five remaining credit installments of \$424,000 each. Without the bill, the taxpayer would become ineligible for the installments and their tax liability would increase. Although the amount of timing and amount of credits taken each year will vary depending on when returns are filed and tax liability, the fiscal impact is estimated to be approximately \$400,000 annually for five years beginning in FY 2010-11.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 3, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 345: Encourage Invest to Retain Art 3A Installment

2011-2012 General Assembly

Committee: House Finance	Date: June 14, 2011
Introduced by: Sens. Garrou, Allran	Prepared by: Trina Griffin
Analysis of: PCS to First Edition S345-CSRbx-66	Committee Counsel

SUMMARY: *The PCS for Senate Bill 345 would require a reduction of the tax credit for substantial investment in other property if the requisite number of people employed at the location falls below the statutory requirement of 200 employees.*

CURRENT LAW: In 2001, the General Assembly created a tax credit under the Bill Lee Act for substantial investment in other real property. To claim the credit for substantial investment in other property, the Secretary of Commerce must make a written determination that the taxpayer is expected to invest at least \$10 million in real property at a location within a three-year period and that the location will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. The taxpayer may begin to claim the credit once the property is first used in an eligible business. A taxpayer may not claim both the credit for substantial investment in other property and the credit for investing in central office or aircraft facility property with respect to the same property.

The amount of the credit for substantial investment in other property is equal to 30% of the eligible investment amount and must be taken in installments over a seven-year period. There is no ceiling on the amount of the credit. Any unused credit may be carryforward for 20 years, as opposed to the more standard carryforward period of five years. The Bill Lee tax credits expired for business activities occurring on or after January 1, 2007.

The credit for substantial investment in other property expires if the number of people employed at the location falls below 200. In this case, the taxpayer may not take any remaining installments of the credit but the taxpayer may take the portion of an installment that accrued in a previous year and was carried forward.

BILL ANALYSIS: Senate Bill 345 would create an exception for which a taxpayer may continue to take the remaining installments of the credit for substantial investment in other property, but at a reduced amount, when the number of employees the taxpayer employs at the property falls below 200.

Under the bill, an installment of the credit would be reduced by 25% if the total number of employees the taxpayer employs at the property during the taxable year in which the installment accrues is at least 150. The credit would be reduced by 50% if the number of employees is below 150 and at least 100. If the number of employees falls below 100, the credit would expire and the taxpayer may not take any remaining installment of the credit.

EFFECTIVE DATE: The bill is effective retroactively for taxable years beginning on or after January 1, 2009.

Cindy Avrette, counsel to Senate Finance, substantially contributed to this summary.

S345-SMSV-83(CSRbx-66) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 415
Education/Higher Education Committee Substitute Adopted 6/8/11

Short Title: Eliminate Cost/Reduced-Price Sch Breakfast. (Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE SCHOOL BREAKFASTS AT NO COST FOR SCHOOL
2 CHILDREN WHO QUALIFY FOR REDUCED-PRICE MEALS AT SCHOOLS
3 PARTICIPATING IN THE NATIONAL SCHOOL BREAKFAST PROGRAM; AND TO
4 REQUIRE THE STATE BOARD OF EDUCATION TO REPORT ON THE PUBLIC
5 SCHOOL NUTRITION PROGRAMS OPERATED BY THE LOCAL SCHOOL
6 ADMINISTRATIVE UNITS UNDER THE JURISDICTION OF CHILD NUTRITION
7 SERVICES OF THE DEPARTMENT OF PUBLIC INSTRUCTION; AND TO DIRECT
8 THE STATE AUDITOR TO AUDIT CHILD NUTRITION SERVICES OF THE
9 DEPARTMENT OF PUBLIC INSTRUCTION.
10

11 The General Assembly of North Carolina enacts:

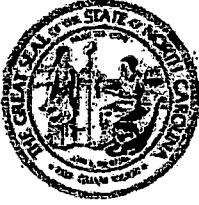
12 SECTION 1. Notwithstanding Section 8.26 of S.L. 1999-237, funds appropriated
13 for the school breakfast program shall be used to provide school breakfasts at no cost to
14 students of all grade levels qualifying for reduced-price meals in all schools participating in the
15 National School Breakfast Program. If appropriated funds are insufficient to provide school
16 breakfasts at no cost to students qualifying for reduced-price meals, local child nutrition
17 programs shall charge the students qualifying for reduced-price meals the allowable amount for
18 a reduced-price breakfast under the guidelines of the National School Breakfast Program.

19 SECTION 2. The State Board of Education shall report by November 15, 2011, to
20 the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on
21 Governmental Operations on an overview of the federally supported food service programs.
22 The report shall include the procedure for participation in the programs, including the numbers
23 of students who apply, are accepted, and are rejected for free and reduced-price meals as a part
24 of the programs or automatically qualify for the programs as required by the United States
25 Department of Agriculture.

26 SECTION 3. The State Auditor shall audit the Division of School Support, Child
27 Nutrition Services of the Department of Public Instruction by December 15, 2011, and report to
28 the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on
29 Governmental Operations. In its report, the State Auditor shall determine whether the local
30 school administrative units' participation in the federally supported food service programs
31 effectively serve the intent of the General Assembly and comply with federal and State law and
32 regulations.

33 SECTION 4. This act becomes effective July 1, 2011.





SENATE BILL 415: Eliminate Cost/Reduced-Price Sch Breakfast

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Purcell
Analysis of: Second Edition

Date: June 14, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *Senate Bill 415 would require that State funds appropriated for the school breakfast program be used to provide school breakfasts at no cost for children who qualify for reduced price meals at schools participating in the National School Breakfast Program. Senate Bill 415 would also require reports by the State Board of Education and the State Auditor of food service programs.*

CURRENT LAW: Section 8.26 of S.L. 1999-237 directed the State Board of Education (SBE) to expand the school breakfast program to all students in kindergarten prior to the beginning of the 2000-2001 school year. Any school that served kindergarten students was eligible to receive funds under the program for the 1999-2000 year for those students with the participating schools providing breakfast without charge to all kindergarten students. If the funds were not adequate to expand the program to all students in schools that elected to participate in the program, then priority was to be given schools with a high concentration of children who qualified for free or reduced price lunches. The North Carolina Kindergarten Breakfast Program continues to provide free breakfast to all kindergarten students in participating schools.

BILL ANALYSIS: Senate Bill 415 would require funds appropriated for the school breakfast program to be used to provide school breakfasts at no cost to students of all grade levels qualifying for reduced-price meals in all of the schools that participate in the National School Breakfast Program. If the appropriated funds are insufficient to provide school breakfasts at no cost to students qualifying for reduced-price meals, then the local child nutrition programs would be directed to charge students qualifying for reduced-price meals the allowable amount for a reduced-price breakfast under the guidelines of the National School Breakfast Program.

Senate Bill 415 also requires two reports be made to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations: (1) the SBE must report, by November 15, 2011, an overview of the federally supported food service programs and (2) the State Auditor must report, by December 15, 2011, the results of an audit of the Division of School Support, Child Nutrition Services of the Department of Public Instruction.

EFFECTIVE DATE: The bill would become effective July 1, 2011.

Drupti Chauhan, counsel to Senate Education, substantially contributed to this summary.

S415-SMTM-47(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 368*
PROPOSED COMMITTEE SUBSTITUTE H368-CSSV-41 [v.2]

6/14/2011 2:49:45 PM

Short Title: State Historic Sites Special Fund.

(Public)

Sponsors:

Referred to:

March 16, 2011

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE STATE HISTORIC SITES FUND IN THE DIVISION OF
3 STATE HISTORIC SITES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 1 of Chapter 121 of the General Statutes is amended by
6 adding a new section to read:

7 "§ 121-7.6. State Historic Sites special fund.

8 (a) Fund. – The State Historic Sites Fund is created as a special, interest-bearing
9 revenue fund in the Division of State Historic Sites. The Fund consists of all receipts derived
10 from the lease or rental of property or facilities, disposition of structures or products of the
11 land, and admissions and fees collected at the State Historic Sites. The revenues in the Fund
12 may be used only for the operation, interpretation, maintenance, preservation, development,
13 and expansion of the individual State Historic Site where the receipts are generated. The
14 Division and the staff from each State Historic Site will determine how the funds will be used
15 at that Historic Site.

16 (b) Application. – This section applies to the individual State Historic Sites owned by or
17 under the control of the Division of State Historic Sites, with the exception of the Bentonville
18 Battlefield State Historic Site. The Bentonville Battlefield State Historic Site is subject to
19 G.S. 121-7.5.

20 (c) Reports. – The Department of Cultural Resources must submit to the Joint
21 Legislative Commission on Governmental Operations, the House of Representatives and
22 Senate Appropriations Subcommittees on General Government, and the Fiscal Research
23 Division by September 30 of each year a report on the Fund that includes the source and
24 amounts of all funds credited to the Fund and the purpose and amount of all expenditures from
25 the Fund during the prior fiscal year."

26 SECTION 2. This act becomes effective July 1, 2011.



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 911
PROPOSED COMMITTEE SUBSTITUTE H911-CSSVf-29 [v.2]

6/7/2011 12:35:58 PM

Short Title: Increase Criminal Court Costs/Victims Comp. (Public)

Sponsors:

Referred to:

May 5, 2011

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A BILL TO BE ENTITLED

AN ACT TO INCREASE CRIMINAL COURT COSTS IN DISTRICT AND SUPERIOR COURT TO PROVIDE ADDITIONAL FUNDING FOR THE CRIME VICTIMS COMPENSATION FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(3c) For support of the Crime Victims Compensation Fund, the sum of ten dollars (\$10.00) in all cases, including cases before a magistrate, to be credited to the Crime Victims Compensation Fund established in G.S. 15B-23."

SECTION 2. This act becomes effective August 1, 2011, and applies to costs assessed or collected on or after this date. However, in misdemeanor cases or infractions disposed of on or after the effective date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), and within the time limit imposed by G.S. 7A-304(a)(6), in which the citation or other criminal process was issued before the effective date, the costs or fees shall be the lesser of those specified in this section as amended, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs or fees are specified in that notice.



GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 911 (First Edition)

SHORT TITLE: Increase Criminal Court Costs/Victims Comp.

SPONSOR(S): Representative LaRoque

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
Victim's Comp. Fund					Estimated \$9,886,960 annually .
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch					
EFFECTIVE DATE: July 1, 2011					

BILL SUMMARY:

The proposed legislation amends G.S. 7A-304(a) by adding a new subdivision which will increase the court costs for district court, including cases before a magistrate, and superior court by ten dollars, which is to be credited to the Victims Compensation Fund established in G.S. 15B-23. The bill becomes effective July 1, 2011.

SOURCE: BILL DIGEST H.B. 911 (05/04/0201)

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

The Administrative Office of the Courts (AOC) estimates that, annually, fees will be collected in 2,697 superior court criminal cases and 985,999 district court criminal cases (including criminal cases heard by a magistrate). Thus, it is estimated that this bill may generate up to \$9,886,960 (2,697 cases times \$10 plus 985,999 cases times \$10) for the Victim's Compensation Fund. It is possible, however, that with any fee increase the percent of cases achieving full payment may subsequently decline. AOC has no data upon which to estimate the potential drop in payment compliance due to this fee increase.

SOURCES OF DATA: Judicial Branch

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Sarah Poteat Stone and Douglas Holbrook

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: June 7, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 911: Increase Criminal Court Costs/Victims Comp

2011-2012 General Assembly

Committee: House Finance	Date: June 8, 2011
Introduced by: Rep. LaRoque	Prepared by: Trina Griffin
Analysis of: PCS to First Edition H911-CSSVf-29	Committee Counsel

SUMMARY: House Bill 911 would increase court costs by \$10 for all district and superior criminal cases that result in a conviction with the proceeds credited to the Crime Victims Compensation Fund. The PCS changes the effective date to allow AOC adequate time to change their system.

CURRENT LAW: The standard court costs are \$128 for criminal district court and \$148 for criminal superior court. There are additional fees that are offense-specific or relate to certain services that may not be provided in every case. The Appropriations Act of 2011 (HB 200), which has been ratified and presented to the Governor, would increase costs in criminal cases by \$52 in superior court and \$29 in district court. There would also be an additional \$18 facility fee if HB 642 (Justice Reinvestment Act) is enacted.

The Crime Victims Compensation Fund (Fund) reimburses citizens who suffer medical expenses and lost wages as a result of being a victim of a crime committed in North Carolina.¹ The Fund is funded by appropriations from the General Assembly, by federal reimbursement of 60% of State dollars paid out the prior year, and by a portion of funds earned by inmates while in the prison system. Specifically, once the operating budget for the Correction Inmate Welfare Fund has been met, an amount equal to the funds allocated to each prison unit on a per inmate, per year basis is credited to the Fund. Compensation is available only to the extent the General Assembly appropriates funds; if a claim cannot be paid due to insufficient funds, payment is delayed until sufficient funds are available.

BILL ANALYSIS: House Bill 911 would increase by \$10 the court costs imposed on defendants convicted in all cases in district and superior courts. The proceeds would be credited to the Crime Victims Compensation Fund, which is a nonreverting fund.

EFFECTIVE DATE: The PCS would become effective August 1, 2011, and applies to costs assessed or collected on or after this date. However, in misdemeanor cases or infractions disposed of on or after the effective date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility, and within the time limit imposed by G.S. 7A-304(a)(6), in which the citation or other criminal process was issued before the effective date, the costs or fees shall be the lesser of those specified in this section as amended, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs or fees are specified in that notice.

H911-SMSV-64(CSSVf-29) v2

¹ The program does not compensate victims for damaged or stolen property or for pain and suffering.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 340*
Finance Committee Substitute Adopted 3/29/11

Short Title: State Historic Sites Special Fund.

(Public)

Sponsors:

Referred to:

March 15, 2011

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE STATE HISTORIC SITES FUND IN THE DIVISION OF
3 STATE HISTORIC SITES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 1 of Chapter 121 of the General Statutes is amended by
6 adding a new section to read:

7 "§ 121-7.6. State Historic Sites special fund.

8 (a) Fund. – The State Historic Sites Fund is created as a special, interest-bearing
9 revenue fund in the Division of State Historic Sites. The Fund consists of all receipts derived
10 from the lease or rental of property or facilities, disposition of structures or products of the
11 land, and admissions and fees collected at the State Historic Sites. The revenues in the Fund
12 may be used only for the operation, interpretation, maintenance, preservation, development,
13 and expansion of the individual State Historic Site where the receipts are generated. The
14 Division and the staff from each State Historic Site will determine how the funds will be used
15 at that Historic Site.

16 (b) Application. – This section applies to the individual State Historic Sites owned by or
17 under the control of the Division of State Historic Sites, with the exception of the Bentonville
18 Battlefield State Historic Site. The Bentonville Battlefield State Historic Site is subject to
19 G.S. 121-7.5.

20 (c) Reports. – The Department of Cultural Resources must submit to the Joint
21 Legislative Commission on Governmental Operations, the House of Representatives and
22 Senate Appropriations Subcommittees on General Government, and the Fiscal Research
23 Division by September 30 of each year a report on the Fund that includes the source and
24 amounts of all funds credited to the Fund and the purpose and amount of all expenditures from
25 the Fund during the prior fiscal year."

26 SECTION 2. This act becomes effective July 1, 2011.





North Carolina General Assembly
House Committee on Finance

Minutes

June 15, 2011

The House Committee on Finance met on Wednesday, June 15, 2011 at 6:00 pm in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chairs Lewis and Wainwright; and Representatives Brandon, Brawley, Carney, Collins, Hackney, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Carlton Adams and Ken Kirby. Staff persons present included Judy Collier, Dan Ettefagh, Trina Griffin, Sandra Johnson, Sean Parker, Greg Roney, and Brian Slivka, Jonathan Tart. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Starnes called the meeting to order at 6:01 pm.

The first bill to be heard by the Committee was **SB 407 Trusts and Estate Planning Changes** (see **attachment 3**). Chairman Starnes recognized Senator Hartsell to explain the bill. The Chair then recognized Representative Jordan who moved that SB 407 be given favorable report. The motion carried.

The next bill before the Committee was **SB 432 Revise Probate Code** (see **attachment 4**). The Chair recognized Senator Hartsell to explain the bill. Chairman Starnes recognized Representative McGee who moved that SB 432 be given a favorable report. The motion carried.

The next bill before the Committee was **SB 436 Extend Sunsets** (see **attachment 5**). The Chair recognized Senator Hartsell to explain the bill. Staff member Trina Griffin assisted in answering member's questions. Chairman Starnes recognized Representative Setzer who moved that SB 436 be given a favorable report. The Chair called for a show of hands on the motion. The vote being 4 affirmative and 11 against. The motion failed.

The next bill considered by the Committee was **SB 670 Revise Membership/Hearing Aid Fitters Board** (see **attachment 6**). The Chair recognized Senator Hartsell to explain the bill. Staff member Sean Parker assisted in answering member's questions. Chairman Starnes recognized Representative Hackney who moved that SB 670 be given a favorable report. The motion carried.

Chairman Starnes recognized Representative Stam who moved to reconsider the vote for which the proposed committee substitute for SB 436 failed. The motion carried. Representative Stam was again recognized to send forth amendment 1 which moved to amend the bill on page 1, lines 2 and 3 (see **attachment 7**). Representative Stam moved to adopt the amendment. The motion carried. The Chair

then recognized Representative Jordan who moved that SB 436 be given a favorable report as amended and rolled into a committee substitute, unfavorable report to the original bill. The motion carried.

The next bill before the Committee was **HB 882 ATV & Motorcycles Off-Road Fund** (see attachment 8). The Chair recognized Representative Brawley who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. Chairman Starnes then recognized Representative Crawford to explain the bill. Chairman Starnes recognized Representative Weiss who moved that HB 882 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The next bill before the Committee was **SB 743 Encourage Volunteer Health Care Providers** (see attachment 9). The Chair recognized Representative Hollo to explain the bill. Chairman Starnes recognized Representative Howard who moved that SB 743 be given a favorable report. The motion carried.

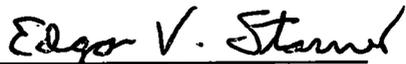
Next before the Committee was **SB 556 Public Disclosure Charitable Solicitations** (see attachment 10). The Chair recognized Senator McKissick to explain the bill. Chairman Starnes recognized Representative Womble who moved that SB 556 be given a favorable report. The motion carried.

SB 267 Rev Laws Tech, Clarify, & Admin Chngs was the next bill considered by the Committee. The Chair recognized Representative Howard to explain the bill. Chairman Starnes recognized Representative Setzer who moved that SB 267 be given a favorable report. The motion carried. The Committee was informed that the wrong version of the bill was before the Committee.

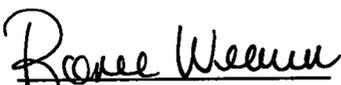
The final bill before the Committee was **SB 94 Allocation of Renewable Energy Tax Credit** (see attachment 11). The Chair recognized Senator Rucho to explain the bill. Staff member Barry Boardman assisted in answering member's questions. Chairman Starnes recognized Representative Collins who moved that SB 94 be given a favorable report. The motion carried.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 6:51 pm.

Respectfully submitted,



Representative Edgar Starnes
Presiding Chair



Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 1 for

HB 882 A BILL TO BE ENTITLED AN ACT TO REQUIRE ALL-TERRAIN VEHICLES AND MOTORCYCLES MEETING CERTAIN CRITERIA TO BE REGISTERED WITH THE WILDLIFE RESOURCES COMMISSION, AND TO CHARGE A REGISTRATION FEE FOR ALL-TERRAIN VEHICLES OR MOTORCYCLES REGISTERED FOR OFF-ROAD USE.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 94 A BILL TO BE ENTITLED AN ACT TO ALLOW THE RENEWABLE ENERGY TAX CREDIT TO BE ALLOCATED BY A PASS-THROUGH ENTITY TO ITS OWNERS AND TO CHANGE THE DEFINITION OF COST.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 407 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS GOVERNING
TRUSTS, ESTATE PLANNING, AND TRUST COMPANIES.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 432 A BILL TO BE ENTITLED AN ACT TO AMEND THE JURISDICTIONAL AND PROCEDURAL PROVISIONS OF THE PROBATE CODE AND RELATED STATUTES TO PROVIDE UNIFORMITY IN ESTATE MATTERS, TO DEFINE THE JURISDICTION OF THE CLERK OF SUPERIOR COURT CONSISTENT WITH THE PROVISIONS OF THE UNIFORM TRUST CODE, TO RECODIFY CERTAIN PROVISIONS RELATING TO THE PROBATE OF WILLS, AND TO UPDATE AND AMEND THE PROCEDURE FOR CLAIMING SPOUSAL AND CHILDREN'S ALLOWANCES.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 436 A BILL TO BE ENTITLED AN ACT TO EXTEND THE QUALIFIED BUSINESS VENTURE TAX CREDIT SUNSET AND TO EXTEND THE SALES TAX REFUND ALLOWED TO A JOINT GOVERNMENTAL AGENCY CREATED TO OPERATE A CABLE TELEVISION SYSTEM FOR ONE YEAR.

With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 556 A BILL TO BE ENTITLED AN ACT TO AMEND THE CHARITABLE
SOLICITATIONS ACT TO ENSURE PUBLIC DISCLOSURE ON COLLECTION RECEPTACLES.

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 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 743 A BILL TO BE ENTITLED AN ACT TO ENCOURAGE THE PROVISION OF MEDICAL SERVICES TO INDIGENT PERSONS BY PROVIDING FOR A RETIRED LIMITED VOLUNTEER LICENSE AND BY BROADENING THE APPLICABILITY OF A LIMITED VOLUNTEER LICENSE AND BY LIMITING LIABILITY FOR NONPROFIT COMMUNITY HEALTH REFERRAL SERVICES.

With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 670 A BILL TO BE ENTITLED AN ACT RELATING TO HEARING AID FITTING AND DISPENSING BY CERTAIN LICENSED AUDIOLOGISTS AND REVISING THE MEMBERSHIP ON THE NORTH CAROLINA STATE HEARING AID DEALERS AND FITTERS BOARD.

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 _____.

AGENDA
House Finance Committee

Wednesday, June 15, 2011
6:00 pm
Room 544 LOB
Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 882 ATV & Motorcycles Off-Road Fund
Representative Crawford

SB 94 Allocation of Renewable Energy Tax Credit
Senators Hartsell, Tillman, Newton

SB 267 Rev Laws Tech, Clarify., & Admin. Chngs.
Senators Clodfelter, Hartsell

SB 407 Trusts and Estate Planning Changes
Senator Hartsell

SB 432 Revise Probate Code
Senator Hartsell

SB 436 Extend Sunsets
Senator Hartsell

SB 556 Public Disclosure Charitable Solicitations
Senator McKissick

SB 670 Revise Membership/Hearing Aid Fitters Board
Senator Hartsell

SB 743 Encourage Volunteer Health Care Providers
Senator Goolsby

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: JUNE 15, 2011 Room: 544

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: KEN KIRBY

2. Name: JOHN BRANDON

5. Name: _____

3. Name: CARLTON ADAMS

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

June 15, 2011

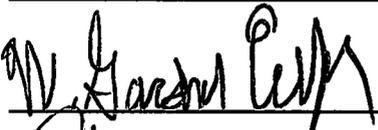
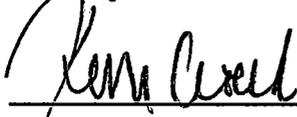
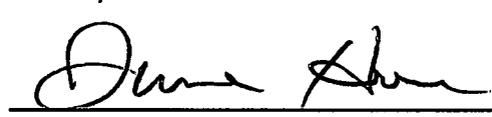
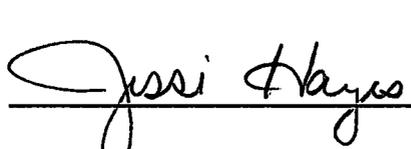
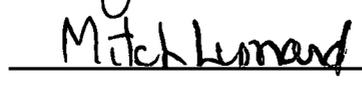
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

	DLC of Assoc
	NCBA
	
	DENTR
	SA
	NC HBA
	SEANC

VISITOR REGISTRATION SHEET

House Finance

June 15, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Paula Hopper	NCAHF
Heanne Winnu	School Bd utssoc
Kevin Leonard	NCACC
Rebecca Trenton	NCACC
Jake Cashion	NCCHEM
Samuel Jones	NCAA
David McJannet	Housing Mafia
Cailey Ruff	NCHC

VISITOR REGISTRATION SHEET

House Finance

June 15, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Al Shuler	NC WildDoc
PGP	NC FPB
Bill Swoboda	TSR
Gene Ainsworth	A & A
Katherine Ross	PPARs
Jame King	NCEL
Erin M Robinson	NCRMA
Gordon Myers	NCWRC
Chris Dillon	NCWRC
Whitney Christensen	Jordan Price
Allison Walter	Nelson Mullins

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 407
Judiciary I Committee Substitute Adopted 4/11/11

Short Title: Trusts and Estate Planning Changes. (Public)

Sponsors:

Referred to:

March 24, 2011

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A BILL TO BE ENTITLED
AN ACT TO AMEND THE LAWS GOVERNING TRUSTS, ESTATE PLANNING, AND TRUST COMPANIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 32-55 reads as rewritten:

"§ 32-55. Notice.

(a) If the terms of the trust do not specify the trustee's compensation, the trustee may, in the trustee's discretion, give written notice to all qualified beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year. ~~The notice shall contain a statement that the qualified beneficiaries have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.~~

(b) In lieu of giving written notice of each proposed payment of compensation under subsection (a) of this section, the trustee may give written notice to all qualified beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis or of the method of computation of the compensation. The trustee shall not be required to give additional notice to the qualified beneficiaries unless the amount to be paid to the trustee on a periodic basis or the method of computation of the compensation changes.

(c) If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the beneficiary. If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15) a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(c1) The notice provided for in this section shall contain a statement that the qualified beneficiaries or their representatives to whom the notice is given have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(d) The provisions of G.S. 36C-1-109 regarding notices to persons under Chapter 36C of the General Statutes shall apply for purposes of notices under this Article."

SECTION 2. G.S. 36C-5-505 is amended by adding a new subsection to read:

"(c) Subject to Article 3A of Chapter 39 of the General Statutes, for purposes of this section, if the settlor is a beneficiary of the following trusts after the death of the settlor's



1 spouse, the property of the trusts shall, after the death of the settlor's spouse, be deemed to have
 2 been contributed by the settlor's spouse and not by the settlor:

- 3 (1) An irrevocable intervivos marital trust that is treated as a general power of
 4 appointment trust described in section 2523(e) of the Internal Revenue Code.
 5 (2) An irrevocable intervivos marital trust that is treated as qualified terminable
 6 interest property under section 2523(f) of the Internal Revenue Code.
 7 (3) An irrevocable intervivos trust of which the settlor's spouse is the sole
 8 beneficiary during the lifetime of the settlor's spouse but which does not
 9 qualify for the federal gift tax marital deduction.
 10 (4) Another trust, to the extent that the property of the other trust is attributable
 11 to property passing from a trust described in subdivision (1), (2), or (3) of
 12 this subsection.

13 For purposes of this subsection, the settlor is a beneficiary whether so named under the
 14 initial trust instrument or through the exercise of a limited or general power of appointment."

15 **SECTION 3. G.S. 36C-7-704 reads as rewritten:**

16 **"§ 36C-7-704. Vacancy in trusteeship; appointment of successor.**

17 (a) A vacancy in a trusteeship occurs if:

- 18 (1) A person designated as trustee rejects the trusteeship;
 19 (2) A person designated as trustee cannot be identified or does not exist;
 20 (3) A trustee resigns;
 21 (4) A trustee is disqualified or removed;
 22 (5) A trustee dies; or
 23 (6) A general guardian, guardian of the estate, or guardian of the person is
 24 appointed for an individual serving as trustee.

25 (b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be
 26 filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

27 (c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must
 28 be filled in the following order of priority:

- 29 (1) By a person designated in the terms of the trust or appointed under the terms
 30 of the trust to act as successor trustee;
 31 (2) By a person appointed by unanimous agreement of the qualified
 32 beneficiaries; or
 33 (3) By a person appointed by the court.

34 (d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be
 35 filled in the following order of priority:

- 36 (1) By a person designated in the terms of the trust or appointed under the terms
 37 of the trust to act as successor trustee;
 38 (2) By a person selected by majority agreement of the qualified beneficiaries, if
 39 the trust is a split-interest charitable trust;
 40 (2a) By a person selected by majority agreement of the charitable organizations
 41 expressly designated to receive distributions under the terms of the trust; or
 42 (3) By a person appointed by the court.

43 (e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court
 44 may appoint an additional trustee or special fiduciary whenever the court considers the
 45 appointment necessary for the administration of the trust.

46 (f) A successor trustee shall succeed to all the rights, powers, and privileges, and is
 47 subject to all the duties, liabilities, and responsibilities that were imposed upon the original
 48 trustee, unless a contrary intent appears from the governing instrument or unless the order
 49 appointing the successor trustee provides otherwise. A successor trustee shall be vested with
 50 the title to property of the former trustee."

51 **SECTION 4. G.S. 36C-8-816 reads as rewritten:**

1 **"§ 36C-8-816. Specific powers of trustee.**

2 Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

3 ...

- 4 (26) On termination of the trust, exercise ~~the~~ all of the powers otherwise
5 exercisable by the trustee during the administration of the trust, including,
6 without limitation, the trustee's investment powers, the power to sell assets,
7 and the powers set forth in subdivision (22) of this section, and exercise the
8 additional powers appropriate to wind up the administration of the trust and
9 distribute the trust property to the persons entitled to it;

10"

11 **SECTION 5.** G.S. 28A-8-1(b) reads as rewritten:

12 "(b) No bond shall be required of:

13 ...

- 14 (5) A personal representative that is a ~~national banking association having its~~
15 ~~principal place of business in this State or a State bank acting pursuant to~~
16 ~~trust institution licensed under G.S. 53-159;~~

17"

18 **SECTION 6.** G.S. 53-43 reads as rewritten:

19 **"§ 53-43. General powers.**

20 In addition to the powers conferred by law upon private corporations, banks shall have the
21 power:

22 ...

- 23 (6) ~~Maintain~~ To maintain separate departments and deposit in its commercial
24 department to the credit of its trust department all uninvested fiduciary funds
25 of cash and secure, under rules and regulations of the State Banking
26 Commission, all such deposits in the name of the trust department whether
27 in consolidated deposits or for separate fiduciary accounts, by segregating
28 and delivering to the trust department such securities as ~~may be eligible for~~
29 ~~the investment of the sinking funds of the State of North Carolina, equal in~~
30 ~~market value to such deposited funds, or readily marketable commercial~~
31 ~~bonds having not less than a recognized "A" rating equal to one hundred and~~
32 ~~twenty five per centum (125%) of such deposits. are required by~~
33 G.S. 53-163.1 for such deposits. Such securities shall be held by the trust
34 department as security for the full payment or repayment of all such
35 deposits, and shall be kept separate and apart from other assets of the trust
36 department. Until all of such deposits shall have been accounted for to the
37 trust department or to the individual fiduciary accounts, no creditor of the
38 bank shall have any claim or right to such security. When fiduciary funds are
39 deposited by the trust department in the commercial department of the bank,
40 the deposit thereof shall not be deemed to constitute a use of such funds in
41 the general business of the bank and the bank in such instance shall not be
42 liable for interest on such funds. To the extent and in the amount such
43 deposits may be insured by the Federal Deposit Insurance Corporation, the
44 amount of security required for such deposits by this section may be
45 reduced.

46 The Banking Commission shall have power to make such rules and
47 regulations as it may deem necessary for the enforcement of the provisions
48 of the preceding paragraph, and such authority shall exist and is hereby
49 conferred under the general authority heretofore conferred upon said
50 Commission as well as by this paragraph.

51"

1 SECTION 7. Article 14 of Chapter 53 of the General Statutes reads as rewritten:

2 "Article 14.

3 "~~Banks~~ Trust Institutions Acting in a Fiduciary Capacity.

4 "Part 1. General Provisions.

5 "§ 53-158.10. Definitions.

6 For purposes of this Article, the following definitions apply:

7 (1) "Depository institution" has the same meaning as set forth in the Federal
8 Deposit Insurance Act, 12 U.S.C. §§ 1811, et seq.

9 (2) "Hazardous condition" has the same meaning as set forth in
10 G.S. 53-301(a)(23).

11 (3) "Trust institution" has the same meaning as set forth in G.S. 53-301(a)(52).

12 "§ 53-159. ~~Bank~~Trust institution may act as fiduciary.

13 Any ~~bank~~ trust institution licensed by the Commissioner of Banks, where such powers or
14 privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or
15 administrator or act in another fiduciary capacity in this State without giving any bond; and the
16 clerks of the superior courts, or other officers charged with the duty or clothed with the power
17 of making such appointments, are authorized to appoint such ~~bank~~ trust institution to any such
18 office.

19 "§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing
20 corporation.

21 Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary
22 capacity, any ~~bank or trust company~~ trust institution holding securities in a fiduciary capacity
23 or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities in
24 ~~a clearing corporation~~ with a securities intermediary as defined in G.S. 25-8-102. When such
25 securities are so deposited, certificates representing securities of the same class of the same
26 issuer may be merged and held in bulk in the name of the nominee of such ~~clearing corporation~~
27 securities intermediary with any other such securities deposited in such ~~clearing corporation~~
28 securities intermediary by any person regardless of the ownership of such securities, and
29 certificates of small denomination may be merged into one or more certificates of larger
30 denomination. The records of such fiduciary and the records of such ~~bank or trust company~~
31 trust institution acting as a fiduciary or as a custodian or managing agent shall at all times show
32 the name of the party for whose account the securities are so deposited. Title to such securities
33 may be transferred by bookkeeping entry on the books of such ~~clearing corporation~~ securities
34 intermediary without physical delivery of certificates representing such securities. A ~~bank or~~
35 ~~trust company~~ trust institution so depositing securities pursuant to this section shall be subject
36 to such rules as, in the case of State-chartered institutions, the State Banking Commission and,
37 in the case of ~~national banking associations, the Comptroller of the Currency~~ other institutions,
38 their regulators may from time to time issue. A ~~bank or trust company~~ trust institution acting as
39 custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the
40 fiduciary the securities so deposited by such ~~bank or trust company~~ trust institution in such
41 ~~clearing corporation~~ securities intermediary for the account of such fiduciary. A fiduciary shall,
42 on demand by any party to a judicial proceeding for the settlement of such fiduciary's account
43 or on demand by the attorney for such party, certify in writing to such party the securities
44 deposited by such fiduciary in such ~~clearing corporation~~ securities intermediary for its account
45 as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary
46 capacity, and to any ~~bank or trust company~~ trust institution holding securities as a fiduciary or
47 as a custodian or managing agent acting on May 15, 1973, or who thereafter may act regardless
48 of the date of the agreement, instrument or court order by which it is appointed and regardless
49 of whether or not such fiduciary, custodian or agent owns capital stock of such ~~clearing~~
50 ~~corporation~~ securities intermediary. The fiduciary shall personally be liable for any loss to the
51 trust resulting from an act of such nominee in connection with such securities so deposited.

1 **"§ 53-160. License to do business.**

2 Before any such ~~bank or trust company~~ trust institution is authorized to act in any fiduciary
3 capacity without bond, it must be licensed by the Commissioner of Banks of the State. For such
4 license the licensee, for the purpose of defraying necessary expenses of the Commissioner of
5 Banks and the Commissioner's ~~agents in supervising and examining the licensee,~~ agents, shall
6 pay to the Commissioner of Banks an annual license fee ~~not to exceed of~~ five hundred dollars
7 ~~(\$500.00).~~ ~~(\$500.00) as required by rule of the State Banking Commission.~~ A national bank
8 which has been granted trust powers by the Comptroller of the Currency or his duly authorized
9 agent shall be annually licensed as required in this section and shall be granted a certificate of
10 solvency which will meet the provisions of G.S. 53-162 without examination by the
11 Commissioner of Banks as required in G.S. 53-161.

12 **"§ 53-161. Examination in connection with license as to solvency.**

13 The Commissioner of Banks shall ~~examine into the solvency of such bank,~~ and shall, if he
14 deem it necessary, may, at the expense of the bank, trust institution, make or cause to be made
15 an examination ~~at its home office of its assets and liabilities.~~ Examinations of trust institutions
16 other than banks shall be as provided in Article 24 of this Chapter. of any trust institution, other
17 than a federally chartered trust institution, that applies for or is licensed by the Commissioner
18 of Banks. The Commissioner of Banks may refuse to issue a license to a trust institution that it
19 finds to be in a hazardous condition.

20 ~~"§ 53-162. Certificate of solvency.~~

21 After any bank has been licensed by the Commissioner of Banks, a certificate issued by the
22 Commissioner of Banks, showing the bank to be solvent to an amount not less than one
23 hundred thousand dollars (\$100,000), shall authorize such bank to act in a fiduciary capacity
24 without bond. There shall be no charge for the seal of this certificate.

25 **"§ 53-163. Clerk of superior court notified of license and revocation.**

26 The Commissioner of Banks, upon granting license to any ~~such bank or trust company,~~ trust
27 institution, shall immediately notify the clerk of the superior court of each county in the State
28 that the ~~bank or trust company~~ trust institution has been licensed under this Article, and,
29 whenever the Commissioner of Banks is satisfied that any ~~bank or trust company~~trust
30 institution licensed by the Commissioner ~~has become insolvent, or is in imminent danger of~~
31 ~~insolvency,~~ is in a hazardous condition, the Commissioner shall revoke the license granted to
32 that ~~bank~~ trust institution and notify the clerk of the superior court of each county in the State
33 of the revocation. ~~After such notification, the right of any such bank or trust company to act in~~
34 ~~a fiduciary capacity shall cease.~~

35 **"§ 53-163.1. Funds held by a corporation exercising fiduciary powers trust institution**
36 **awaiting investment or distribution.**

37 (a) Funds held in a fiduciary capacity by a ~~bank, trust company, savings and loan~~
38 ~~association, or other corporation authorized to exercise the powers of a fiduciary,~~ trust
39 institution awaiting investment or distribution shall not be held uninvested or undistributed any
40 longer than is reasonable for the proper management of the account. A ~~corporation acting in a~~
41 ~~fiduciary capacity~~ trust institution has complied with this requirement if such funds awaiting
42 investment or distribution in excess of one thousand dollars (\$1,000) are invested or distributed
43 within 30 days of receipt or accumulation thereof.

44 (b) Funds held in a fiduciary capacity by a ~~bank,~~ depository institution, awaiting
45 investment or distribution may, unless prohibited by the instrument creating the fiduciary
46 relationship, be deposited in the commercial or savings or other department of the ~~bank,~~
47 depository institution, provided that it shall first set aside under control of the trust department
48 as collateral security, ~~such securities as may be found~~ the classes of securities listed in
49 G.S. 142-34 G.S. 159-30(c) as being eligible for the investment ~~of the sinking funds of the~~
50 ~~State of North Carolina~~ of funds by local governments and public authorities equal in market
51 value of such deposited funds, or readily marketable commercial bonds having not less than a

1 recognized "A" rating equal to one hundred and twenty-five percent (125%) of the funds so
2 deposited.

3 The securities so deposited or securities substituted therefor as collateral in the trust
4 department by the commercial or savings or other department (as well as the deposit of cash in
5 the commercial or savings or other department by the trust department) shall be held pursuant
6 to the provisions of G.S. 53-43(6).

7 If such funds are deposited in a ~~bank~~ depository institution insured under the provisions of
8 the Federal Deposit Insurance ~~Corporation, Act,~~ the above collateral security will be required
9 only for that portion of uninvested balances of each trust which are not fully insured under the
10 provisions of that ~~corporation-act.~~

11 (c) Funds held in a fiduciary capacity by a ~~corporate-fiduciary trust institution~~ awaiting
12 investment or distribution may, unless prohibited by the instrument creating the fiduciary
13 relationship, be invested in short-term, trust-quality investment vehicles, through the medium
14 of a collective investment fund or otherwise.

15 (d) In addition to any other compensation to which it may be entitled under
16 ~~G.S. 28A-23-3, 34-12, 35A-1269,~~ statutes governing the compensation of personal
17 representatives, guardians, or other fiduciaries, or under any other authority, a ~~corporation~~
18 ~~acting in a fiduciary capacity~~ trust institution shall be allowed to charge a fee for the temporary
19 investment of funds held awaiting investment or distribution, which fee may be calculated upon
20 the amount of such funds actually invested and upon the income produced thereby. The fee
21 authorized by this subsection shall not exceed twelve percent (12%) of the income produced by
22 such investment. A ~~corporation acting in a fiduciary capacity~~ trust institution has complied with
23 its duty to disclose fees and practices in connection with the investment of fiduciary funds
24 awaiting investment or distribution if the ~~corporation's~~ trust institution's periodic account
25 statements set forth the method of computing such fees.

26 **"§ 53-163.2. Investments in securities by ~~banks or trust companies,~~ trust institutions.**

27 Unless the governing instrument, court order, or a statute specifically directs otherwise, a
28 ~~bank or trust company~~ trust institution serving as trustee, guardian, agent, or in any other
29 fiduciary capacity may invest in any security authorized by this Chapter even if such fiduciary
30 or an affiliate thereof participates or has participated as a member of a syndicate underwriting
31 such security, if:

- 32 (1) The fiduciary does not purchase the security from itself or its affiliate; and
- 33 (2) The fiduciary does not purchase the security from another syndicate member
34 or an affiliate, pursuant to an implied or express agreement between the
35 fiduciary or its affiliate and a selling member or its affiliate, to purchase all
36 or part of each other's underwriting commitments.

37 "Part 2. Uniform Common Trust Fund Act.

38 **"§ 53-163.5. Establishment of common trust funds.**

39 (a) Any ~~bank or trust company~~ trust institution duly authorized to act as a fiduciary in
40 this State may establish and maintain one or more common trust funds for the collective
41 investment of funds held in a fiduciary capacity by such ~~bank or trust company~~ trust institution
42 hereafter referred to as the "maintaining ~~bank~~ institution." The maintaining ~~bank~~ institution
43 may include for the purposes of collective investment in such common trust fund or funds
44 established and maintained by it, funds held in a fiduciary capacity by any other ~~bank or trust~~
45 ~~company~~ trust institution duly authorized to act as a ~~fiduciary,~~ fiduciary with which it is
46 affiliated, wherever located, which other ~~bank or trust company~~ trust institution is hereinafter
47 referred to as the "participating ~~bank~~ institution."

48 ~~Provided, however, that the relationship between the maintaining bank and the participating~~
49 ~~bank is (i) the maintaining bank owns, controls or is affiliated with the participating bank or (ii)~~
50 ~~a bank holding company owns, controls or is affiliated with both the maintaining bank and the~~
51 ~~participating bank.~~

1 (b) For the purposes of this section, a ~~bank or trust company~~ maintaining institution
2 shall be considered to be ~~owned, controlled or affiliated if twenty five percent (25%) or more~~
3 ~~of any class of its voting stock is owned by a bank or bank holding company or if twenty five~~
4 ~~percent (25%) or more of any class of its voting stock is owned by one person or no more than~~
5 ~~10 persons who are the same person or persons who own twenty five percent (25%) or more of~~
6 ~~any class of the voting stock of the maintaining bank.~~ with a participating institution if it
7 controls, is controlled by, or is under common control with the participating institution, as
8 control is determined under the federal Bank Holding Company Act of 1956 or by rule, order,
9 or declaratory ruling of the Commissioner of Banks.

10 (c) Such common trust funds may include a fund composed solely of funds held under
11 an agency agreement in which the ~~bank or trust company~~ trust institution assumes investment
12 discretion and assumes fiduciary responsibility.

13 (d) Such ~~bank or trust company~~ trust institution may invest the funds held by it in any
14 fiduciary capacity in one or more common trust funds, provided that (i) such investment is not
15 prohibited by the instrument, judgment, decree or order creating such fiduciary relationship or
16 amendment thereof, and (ii) the ~~bank~~ trust institution has no interest in the assets of the
17 common trust fund other than as a fiduciary.

18 **"§ 53-163.6. Court accountings.**

19 Unless ordered by a court of competent jurisdiction the ~~bank or trust company~~ trust
20 institution operating such common trust fund or funds shall not be required to render a court
21 accounting with regard to such fund or funds; but it may, by application to the superior court,
22 secure approval of such an accounting on such conditions as the court may establish. This
23 section shall not affect the duties of the trustees of the participating trusts under the common
24 trust fund to render accounts of their several trusts.

25 **"§ 53-163.7. Supervision by State Banking Commission.**

26 All common trust funds established under the provisions of this Part shall be subject to the
27 rules and regulations of the State Banking Commission.

28 **"§ 53-163.8. Uniformity of interpretation.**

29 This Part shall be so interpreted and construed as to effectuate its general purpose to make
30 uniform the law of those states which enact it.

31 **"§ 53-163.9. Short title.**

32 This Part may be cited as the Uniform Common Trust Fund Act."

33 **SECTION 8.** G.S. 53-301(a) reads as rewritten:

34 "(a) Except as otherwise provided in this Article, or when the context clearly indicates
35 that a different meaning is intended, the following definitions shall apply throughout this
36 Article:

37 ...
38 (6a) "Board of directors" means the governing body of a company.

39 ...
40 (15a) "Director" means a member of the board of directors.

41 ...
42 (45) "State trust company" means a ~~corporation~~ company organized under the
43 provisions of this Article and a trust company previously organized under
44 other provisions of Chapter 53 of the General Statutes to operate only as a
45 trust company and not as a commercial bank."

46 **SECTION 9.** G.S. 53-331(a) reads as rewritten:

47 "(a) Subject to the other provisions of this Part, one or more persons may organize and
48 charter a State trust company, which may be ~~incorporated~~ established in the manner described
49 in this Part and in no other way."

50 **SECTION 10.** G.S. 53-332 reads as rewritten:

51 **"§ 53-332. Articles of incorporation of State trust company.**

1 (a) The articles of incorporation of a State trust company shall be signed and
2 acknowledged by or on behalf of each organizer and shall contain:

- 3 (1) The information required to be set forth in G.S. 55-2-02(a) and, except for
4 telephone information, G.S. 53-311(c); and
5 (2) Any provision consistent with G.S. 55-2-02(b) and other applicable law that
6 the organizers elect to set forth in the articles of incorporation for the
7 regulation of the internal affairs of the State trust company.

8 (b) The Commissioner may allow a State trust company to be organized as a company
9 other than a corporation, and, in such case, references in this Article to provisions of Chapter
10 55 of the General Statutes shall refer to analogous provisions of law governing the formation
11 and operation of that State trust company."

12 SECTION 11. G.S. 53-335(b) reads as rewritten:

13 "(b) If the Commissioner orders that the proposed State trust company may be formed,
14 the Commissioner shall issue a State trust company charter and a certification to the Secretary
15 of State permitting the ~~incorporation~~ establishment of the State trust company. The
16 Commissioner may make approval of any application conditional and shall include any
17 conditions in the order granting the charter."

18 SECTION 12. G.S. 53-352(a) reads as rewritten:

19 "(a) All corporate powers of a State trust company shall be exercised under the authority
20 of, and the business and affairs of a State trust company shall be managed under the direction
21 of, ~~its~~ a board of directors. Without the approval of the Commissioner, the board shall consist
22 of not less than five directors. ~~The shareholders of a State trust company, at any shareholders'~~
23 ~~meeting, may authorize not more than two additional directorships which may be left unfilled~~
24 ~~and to be filled in the discretion of the directors of the State trust company during the interval~~
25 ~~between shareholders' meetings.~~ Except as specifically provided otherwise in this section, the
26 number, election, term, and classification of the directors of a State trust company shall be
27 governed by the provisions of Chapter 55 of the General Statutes."

28 SECTION 13. G.S. 53-363(b) reads as rewritten:

29 "(b) A private trust company engaging in trust business in this State shall comply with
30 all provisions of this Article applicable to a State trust company unless expressly exempted
31 from a provision of this Article by the Commissioner pursuant to this section or prior to the
32 enactment of this Article. However, notwithstanding G.S. 53-352(a), the holders of the equity
33 securities of a private trust company may by unanimous agreement limit the authority of its
34 board of directors; restrict, enlarge, or modify the rights or duties of particular directors; or
35 allocate to an individual or group other than the board of directors some or all of the duties of a
36 board of directors. A private trust company shall notify the Commissioner of the adoption of
37 any agreement affecting the authority of the board of directors within 48 hours and shall
38 provide such information as the Commissioner requests about the agreement. To the extent that
39 an individual or group other than the board of directors is vested with the authority of the board
40 of directors under this section, that individual or group shall be deemed to be acting as the
41 board of directors in the exercise of that authority for all purposes of this Chapter."

42 SECTION 14. G.S. 53-363(c) reads as rewritten:

43 "(c) A private trust company or proposed private trust company may request in writing
44 that it be exempted from specified provisions of G.S. 53-333(b), 53-337(a), ~~53-339~~, 53-340,
45 53-341, 53-342, 53-345, 53-346, and 53-394(b). The Commissioner may grant the exemption
46 request in whole or in part. The Commissioner also may issue rules, orders, or declaratory
47 rulings granting exemptions to all private trust companies, or to private trust companies that
48 meet specified conditions."

49 SECTION 15. This act becomes effective October 1, 2011, and applies to all trusts
50 created before, on, or after that date.



SENATE BILL 407: Trusts and Estate Planning Changes

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Hartsell
Analysis of: Second Edition

Date: June 15, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *Senate Bill 407 amends the laws governing trusts, estate planning, and trust companies. The bill provides that the annual license fee for trust licenses is set by statute and is \$500.00. Previously, the fee was set by rule of the State Banking Commission in an amount not to exceed \$500.00.*

CURRENT LAW AND BACKGROUND: Article 36C of the North Carolina General Statutes is the North Carolina Uniform Trust Code, and Article 6 of Chapter 32 deals with compensation of trustees and other fiduciaries. Article 14 of Chapter 53 governs banks acting in fiduciary capacity.

BILL ANALYSIS:

Sections 1-4 of the bill clarify North Carolina statutes governing trustees and other fiduciaries.

Section 1 amends G.S. 32-55 to clarify the application of the requirement that the notice to the qualified beneficiaries contain a statement that the qualified beneficiaries have 20 days from the date notice is given to file a proceeding for review of the reasonableness of the trustee's compensation with the clerk of superior court. The purpose of the changes is to clarify that the notice applies to any notice under G.S. 32-55 and not just the written notice in subsection (a). The change also clarifies that this requirement applies to notices given to representatives of qualified beneficiaries under a disability.

Section 2 provides that, after the death of the settlor's spouse, certain trust property will be deemed to have been contributed by the settlor's spouse and not the settlor if the settlor is the beneficiary of any of the following trusts:

- An irrevocable intervivos marital trust that is treated as a general power of appointment trust.
- An irrevocable intervivos marital trust that is treated as qualified terminable interest property.
- An irrevocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which does not qualify for the federal gift tax marital deduction.
- Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described above.

For purposes of these provisions, the settlor is a beneficiary whether named in the initial trust instrument or through the exercise of a limited or general power of appointment.

Section 3 clarifies that a successor trustee will be vested with the title to property of the former trustee.

Section 4 provides that one of the specific powers of the trustee is, upon termination of the trust, to exercise all of the powers otherwise exercisable by the trustee during the administration of the trust.

Sections 5 through 14 revise statutes governing corporate trustees.

Section 5 clarifies that a bond is not required for a personal representative that is a licensed trust institution.

Section 6 defines acceptable collateral for a bank to post when the trust department invests in deposits of its own bank.

Senate Bill 407

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Section 7 makes a number of changes to Article 14 of Chapter 53, the older statute dealing with trust departments, to conform with Article 24 of Chapter 53.

- Enacts a new section (G.S. 53-158.10) to include definitions for "Depository institution," "Hazardous condition," and "Trust institution".
- Replaces "bank" with "trust institution" throughout the Article.
- Deletes the term "clearing corporation" and substitutes the term "securities intermediary."
- Sets a statutory fee for trust licenses at \$500.00. (G.S. 53-160).
- Deletes references to "solvency" and allows the Commissioner of Banks (Commissioner) to examine any trust institution, other than a federally chartered trust institution, that applies for or is licensed by the Commissioner; allows the Commissioner to refuse to issue a license to a trust institution in a "hazardous condition." (G.S. 53-160, 161).
- Deletes G.S. 53-162 which required that the Commissioner issue a "certificate of solvency" in connection with giving a trust institution a license to serve without bond.
- Amends G.S. 53-163.5 to clarify the description of affiliated institutions.

The remaining sections conform the statutes to current practice, allow the Commissioner of Banks to permit trust companies to be organized as LLCs, and allow the Commissioner to permit private trust companies to conform with IRS regulations.

Section 8 adds definitions for "Board of directors" and "Director."

Sections 9 and 10 delete the term "incorporated" and substitute the term "established" to facilitate organization as LLCs. Section 10 also authorizes the Commissioner to allow a State trust company to be organized as a company other than a corporation (such as an LLC).

Section 11 deletes the term "incorporation" and substitutes the term "establishment."

Section 12 deletes language which previously allowed shareholders of a State trust company to authorize not more than two additional directorships which could have been left unfilled and could have been filled in the discretion of the directors during the interval between shareholders' meetings.

Section 13 allows private trust companies, which operate for the benefit of one family, to comport with IRS private rulings requiring these companies to delegate governing authority to avoid unfavorable tax treatment. Section 13 provides that the holders of the equity securities of a private trust company may, by unanimous agreement, do all of the following:

- Limit the authority of the board of directors.
- Restrict, enlarge, or modify the rights or duties of particular directors.
- Allocate to an individual or group, other than the board of directors, some or all of the duties of a board of directors.

A private trust company must notify the Commissioner of the adoption of any agreement affecting the board of directors within 48 hours and must provide information that the Commissioner requests about the agreement. If an individual or group other than the board of directors is vested with authority of the board of directors, then that individual or group is deemed to be acting as the board when exercising that authority.

Section 14 allows the Commissioner to permit a private trust company to be exempted from general laws relating to business corporations.

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EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to all trusts created before, on, or after that date.

Brad Krehely and Heather Fennell, both with the Research Division, substantially contributed to this summary.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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2

SENATE BILL 432
Judiciary I Committee Substitute Adopted 5/2/11

Short Title: Revise Probate Code.

(Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE JURISDICTIONAL AND PROCEDURAL PROVISIONS OF THE PROBATE CODE AND RELATED STATUTES TO PROVIDE UNIFORMITY IN ESTATE MATTERS, TO DEFINE THE JURISDICTION OF THE CLERK OF SUPERIOR COURT CONSISTENT WITH THE PROVISIONS OF THE UNIFORM TRUST CODE, TO RECODIFY CERTAIN PROVISIONS RELATING TO THE PROBATE OF WILLS, AND TO UPDATE AND AMEND THE PROCEDURE FOR CLAIMING SPOUSAL AND CHILDREN'S ALLOWANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-301.3 reads as rewritten:

"§ 1-301.3. Appeal of trust and estate matters determined by clerk.

(a) Applicability. – This section applies to matters arising in the administration of testamentary trusts and of estates of decedents, incompetents, and minors. G.S. 1-301.2 applies in the conduct of a special proceeding when a special proceeding is required in a matter relating to the administration of an estate.

(b) Clerk to Decide Estate Matters. – In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.

(c) Appeal to Superior Court. – A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of entry of the order or judgment. judgment after service of the order on that party. The notice of appeal shall ~~specify~~ contain a short and plain statement of the basis for the appeal. Unless otherwise provided by law, a judge of the superior court or the clerk may issue a stay of the order or judgment upon the appellant's posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk retains authority to enter orders affecting the administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

(d) Duty of Judge on Appeal. – Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

- (1) Whether the findings of fact are supported by the evidence.
- (2) Whether the conclusions of law are supported by the findings of facts.
- (3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge, in the judge's discretion, shall either remand the matter to the clerk for a subsequent hearing or resolve the



1 matter on the basis of the record. If the record is insufficient, the judge may receive additional
2 evidence on the ~~evidentiary~~ factual issue in question. The judge may continue the case if
3 necessary to allow the parties time to prepare for a hearing to receive additional evidence.

4 (e) Remand After Disposition of Issue on Appeal. – The judge, upon determining the
5 matter appealed from the clerk, shall remand the case to the clerk for such further action as is
6 necessary to administer the estate.

7 (f) Recording of Estate Matters. – In the discretion of the clerk or upon request by a
8 party, all hearings and other matters covered by this section shall be recorded by an electronic
9 recording device. A transcript of the proceedings may be ordered by a party, by the clerk, or by
10 the presiding judge. If a recordation is not made, the clerk shall submit to the superior court a
11 summary of the evidence presented to the clerk."

12 **SECTION 2.** G.S. 7A-307(a) reads as rewritten:

13 **"§ 7A-307. Costs in administration of estates.**

14 (a) In the administration of the estates of decedents, minors, incompetents, of missing
15 persons, and of trusts under wills and under powers of attorney, in trust proceedings under
16 G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, and in collections of personal
17 property by affidavit, the following costs shall be assessed:

18 (1) For the use of the courtroom and related judicial facilities, the sum of ten
19 dollars (\$10.00), to be remitted to the county. Funds derived from the
20 facilities fees shall be used in the same manner, for the same purposes, and
21 subject to the same restrictions, as facilities fees assessed in criminal actions.

22 (1a) For the upgrade, maintenance, and operation of the judicial and county
23 courthouse phone systems, the sum of four dollars (\$4.00), to be credited to
24 the Court Information Technology Fund.

25 (2) For support of the General Court of Justice, the sum of seventy-five dollars
26 (\$75.00), plus an additional forty cents (40/Ao) per one hundred dollars
27 (\$100.00), or major fraction thereof, of the gross estate, not to exceed six
28 thousand dollars (\$6,000). Gross estate shall include the fair market value of
29 all personality when received, and all proceeds from the sale of realty
30 coming into the hands of the fiduciary, but shall not include the value of
31 realty. In collections of personal property by affidavit, the fee based on the
32 gross estate shall be computed from the information in the final affidavit of
33 collection made pursuant to G.S. 28A-25-3 and shall be paid when that
34 affidavit is filed. In all other cases, this fee shall be computed from the
35 information reported in the inventory and shall be paid when the inventory is
36 filed with the clerk. If additional gross estate, including income, comes into
37 the hands of the fiduciary after the filing of the inventory, the fee for such
38 additional value shall be assessed and paid upon the filing of any account or
39 report disclosing such additional value. For each filing the minimum fee
40 shall be fifteen dollars (\$15.00). Sums collected under this subdivision shall
41 be remitted to the State Treasurer. The State Treasurer shall remit the sum of
42 two dollars and five cents (\$2.05) of each seventy-five-dollar (\$75.00)
43 General Court of Justice fee collected under this subdivision to the North
44 Carolina State Bar for the provision of services described in G.S. 7A-474.4.

45 (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents
46 (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross
47 estate, not to exceed six thousand dollars (\$6,000), shall not be assessed on
48 personality received by a trust under a will when the estate of the decedent
49 was administered under Chapters 28 or 28A of the General Statutes. Instead,
50 a fee of twenty dollars (\$20.00) shall be assessed on the filing of each annual
51 and final account. However, the fee shall be assessed only on newly

contributed or acquired assets, all interest or other income that accrues or is earned on or with respect to any existing or newly contributed or acquired assets, and realized gains on the sale of any and all trust assets. Newly contributed or acquired assets do not include assets acquired by the sale, transfer, exchange, or otherwise of the amount of trust property on which fees were previously assessed.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under G.S. 36C-2-203 if there is no requirement in the trust that accountings be filed with the clerk.

(2d) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the qualification of a limited personal representative under G.S. 28A-29-1 shall be a fee of twenty dollars (\$20.00) to be assessed upon the filing of the petition.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twenty dollars (\$20.00).

(4) For the filing of a caveat to a will, the clerk shall assess for support of the General Court of Justice, the sum of two hundred dollars (\$200.00).

(5) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the reopening of an estate administration under G.S. 28A-23-5 shall be forty cents (40¢) per one hundred dollars (\$100.00), or major fraction, of any additional gross estate, including income, coming into the hands of the fiduciary after the estate is reopened; provided that the total cost assessed when added to the total cost assessed in all prior administrations of the estate shall not exceed six thousand dollars (\$6,000).

(b) In collections of personal property by affidavit, the facilities fee and thirty dollars (\$30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory. If the sole asset of the estate is a cause of action, these fees shall be paid at the time of the qualification of the fiduciary.

(b1) The clerk shall assess the following miscellaneous fees:

- (1) Filing and indexing a will with no probate
 - first page\$ 1.00
 - each additional page or fraction thereof25
- (2) Issuing letters to fiduciaries, per letter over five letters issued.....1.00
- (3) Inventory of safe deposits of a decedent, per box, per day.....15.00
- (4) Taking a deposition.....10.00
- (5) Docketing and indexing a will probated in another county in the State
 - first page6.00
 - each additional page or fraction thereof25
- (6) Hearing petition for year's allowance to surviving spouse or child, in cases not assigned to a magistrate, and allotting the same8.00

(c) The following additional expenses, when incurred, are also assessable or recoverable, as the case may be:

- (1) Witness fees, as provided by law.
- (2) Counsel fees, as provided by law.
- (3) Costs on appeal, of the original transcript of testimony, if any, insofar as essential to the appeal.
- (4) Fees for personal service of civil process, and other sheriff's fees, as provided by law.
- (5) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law.

(d) Costs assessed before the clerk shall be added to costs assessable on appeal to the judge or upon transfer to the civil issue docket.

(e) Nothing in this section shall affect the liability of the respective parties for costs, as provided by law."

SECTION 3. Article 5 of Chapter 31 of the General Statutes, G.S. 31-12 through G.S. 31-31.2, is recodified as Article 2A of Chapter 28A of the General Statutes, G.S. 28A-2A-1 through G.S. 28A-2A-23.

SECTION 4. Chapter 28A of the General Statutes, as amended by Section 3 of this act, reads as rewritten:

"Chapter 28A.

"Administration of Decedents' Estates.

"Article 1.

"Definitions and Other General Provisions.

"§ 28A-1-1. Definitions.

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

- (1) "Collector" means any person authorized to take possession, custody, or control of the personal property of the decedent for the purpose of executing the duties outlined in G.S. 28A-11-3.
- (1a) "Devisee" means any person entitled to take real or personal property under the provisions of a valid, probated will.
- (1b) "Estate proceeding" means a matter initiated by petition related to the administration, distribution, or settlement of an estate, other than a special proceeding. There may be more than one estate proceeding within the administration of a decedent's estate.
- (2) "Foreign personal representative" means a personal representative appointed in another jurisdiction, including a personal representative appointed in another country.
- (3) "Heir" means any person entitled to take real or personal property upon intestacy under the provisions of Chapter 29 of the General Statutes.
- (4) "Mortgage" includes a deed of trust.
- (4a) "Party," in the context of a contested or uncontested estate proceeding pursuant to G.S. 28A-2-6, means a party joined as a petitioner or respondent.
- (4b) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
- (5) "Personal representative" includes both an executor and an administrator, but does not include a collector.
- (6) ~~"Service" means delivery of the citation, summons, notice or other civil process to the person to be served by an officer authorized to serve process and, if such service cannot be obtained, then by the mailing of the citation;~~

1 ~~summons, notice or other civil process by certified mail, return receipt~~
2 ~~requested, to the last known address of the person to be served.~~

3 "Article 2.

4 "Jurisdiction for Probate of Wills and Administration of Estates of Decedents.

5 "§ 28A-2-1. Clerk of superior court.

6 The clerk of superior court of each county, ex officio judge of probate, shall have
7 jurisdiction of the administration, settlement, and distribution of estates of decedents including,
8 but not limited to, ~~the following: to,~~

9 (1) ~~Probate of wills;~~

10 (2) ~~Granting of letters testamentary and of administration, or other proper letters of~~
11 ~~authority for the administration of estates.~~ estate proceedings as provided in G.S. 28A-2-4.

12 "§ 28A-2-2. Assistant clerk of superior court.

13 An assistant clerk of superior court shall have jurisdiction as provided by G.S. 7A-102.

14 "§ 28A-2-3. Jurisdiction where clerk interested.

15 Whenever the clerk of superior court is a subscribing witness to a will offered for probate in
16 ~~his~~ the clerk's county or has an interest, direct or indirect, in an estate or trust within ~~his~~ the
17 clerk's jurisdiction, jurisdiction with respect thereto shall be vested in the senior resident
18 superior court judge of ~~his~~ the clerk's district, and shall extend to all things which the clerk of
19 superior court might have done in the administration of such estate.

20 "§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate
21 proceedings.

22 (a) The clerks of superior court of this State, as ex officio judges of probate, shall have
23 original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this
24 subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings
25 include, but are not limited to, the following:

26 (1) Probate of wills.

27 (2) Granting and revoking of letters testamentary and letters of administration,
28 or other proper letters of authority for the administration of estates.

29 (3) Determination of the elective share for a surviving spouse as provided in
30 G.S. 30-3.

31 (4) Proceedings to ascertain heirs or devisees, to approve family settlement
32 agreements pursuant to G.S. 28A-2-10, to determine questions of
33 construction of wills, to determine priority among creditors, to determine
34 whether a person is in possession of property belonging to an estate, to order
35 the recovery of property of the estate in possession of third parties, and to
36 determine the existence or nonexistence of any immunity, power, privilege,
37 duty, or right. Any party or the clerk of superior court may file a notice of
38 transfer of a proceeding pursuant to this subdivision to the Superior Court
39 Division of the General Court of Justice as provided in G.S. 28A-2-6(h). In
40 the absence of a transfer to superior court, Article 26 of Chapter 1 of the
41 General Statutes shall apply to a trust proceeding pending before the clerk of
42 superior court to the extent consistent with this Article.

43 (b) Nothing in this section shall affect the right of a person to file an action in the
44 Superior Court Division of the General Court of Justice for declaratory relief under Article 26
45 of Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in
46 an estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General
47 Statutes, either party may move for a transfer of the proceeding to the Superior Court Division
48 of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes.
49 In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes
50 shall apply to an estate proceeding to the extent consistent with this Article.

1 (c) Without otherwise limiting the jurisdiction of the Superior Court Division of the
2 General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection
3 (a) or (c) of this section of the following:

- 4 (1) Actions by or against creditors or debtors of an estate, except as provided in
5 Article 19 of this Chapter.
6 (2) Actions involving claims for monetary damages, including claims for breach
7 of fiduciary duty, fraud, and negligence.
8 (3) Caveats, except as provided under G.S. 31-36.
9 (4) Proceeding to determine proper county of venue as provided in
10 G.S. 28A-3-2.
11 (5) Recovery of property transferred or conveyed by a decedent with intent to
12 hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).

13 **"§ 28A-2-5. Subject matter jurisdiction of the clerk of superior court in special**
14 **proceedings.**

15 The clerk of superior court also shall have jurisdiction over special proceedings, including,
16 but not limited to, the following:

- 17 (1) Special proceedings to obtain possession, custody, or control of assets as
18 provided in G.S. 28A-13-3.
19 (2) Special proceedings relating to the sale, lease, or mortgage of real estate as
20 provided in G.S. 28A-15-1 and in G.S. 28A-17-1.
21 (3) Special proceedings against unknown heirs before distribution of estate as
22 provided in G.S. 28A-22-3.

23 Nothing in this section shall be deemed to limit the jurisdiction of the clerk of superior
24 court in special proceedings.

25 **"§ 28A-2-6. Commencement of estate proceedings, pleadings, consolidation, and joinder.**

26 (a) Contested Estate Proceedings. – Contested estate proceedings brought against
27 adverse parties shall be commenced by petition in the existing estate administration file. All
28 parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall
29 issue the estate proceeding summons to the respondents. The clerk of superior court may order
30 that additional persons be joined as respondents and shall issue the estate proceeding summons
31 to the additional persons. The estate proceeding summons shall notify a respondent to appear
32 and answer the petition within 20 days after its service upon the respondents. The estate
33 proceeding summons shall comply with the requirements set forth in G.S. 1-394 for a special
34 proceeding summons except that the summons shall be titled "ESTATE PROCEEDING
35 SUMMONS" and shall be served upon a respondent in accordance with G.S. 1A-1, Rule 4.
36 After the time for responding to the petition or complaint has expired, any party or the clerk of
37 superior court may give notice to all parties of a hearing.

38 (b) Uncontested Estate Proceedings. – Estate proceedings before the clerk of superior
39 court that are uncontested may be decided without hearing according to practice and procedure
40 provided by law and shall be commenced by the filing of a petition, setting forth the facts
41 entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the
42 clerk of superior court may hear and decide the petition summarily.

43 (c) Pleadings. – Any petition, response, or request for hearing in a contested estate
44 proceeding before the clerk of superior court shall contain a short and plain statement of the
45 claim that is sufficiently particular to give the court and the parties notice of the transactions,
46 occurrences, or series of transactions intended to be proved showing that the pleaders are
47 entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each
48 averment should be simple, concise, and direct. No technical forms of motions or responses are
49 required. A party may set forth two or more statements of a claim or defense alternatively or
50 hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or
51 party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best

1 of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry,
2 it is well grounded in fact and is warranted by existing law or a good faith argument for the
3 extension, modification, or reversal of existing law; and (iii) it is not interposed for any
4 improper purpose, such as to harass or to cause unnecessary delay or needless increase in the
5 cost of litigation. All motions, responses, and requests for hearing shall be so construed as to do
6 substantial justice.

7 (d) Extensions of Time. – The clerk of superior court, for cause shown at any time in
8 the clerk's discretion, with or without motion or notice, may enter an order enlarging the period
9 of time within which an act is required or permitted in an estate proceeding, by any applicable
10 rule of G.S. 1A-1, the Rules of Civil Procedure, or by order of the court, if the request is made
11 before the expiration of the period originally prescribed, but not to exceed 10 days, provided
12 that the court can enlarge the time for a period of more than 10 days for good cause shown, but
13 only to the extent that the court in its discretion determines that justice requires. Upon motion
14 made after the expiration of the specified period, the clerk of superior court may permit the act
15 where the failure to act was the result of excusable neglect. Notwithstanding any other
16 provision of this subsection, the parties to a proceeding may enter into binding stipulations,
17 without approval of the clerk of superior court, enlarging the time within which an act is
18 required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of
19 the court, not to exceed 30 days.

20 (e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs,
21 Rules 4.5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 56, and 65 of G.S. 1A-1, the Rules of Civil
22 Procedure, shall apply to estate proceedings. Upon motion of a party or the clerk of superior
23 court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure
24 shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires
25 the appointment of a guardian ad litem for a party represented except as provided in
26 G.S. 28A-2-7. In applying these Rules to an estate proceeding pending before the clerk of
27 superior court, the term "judge" shall mean "clerk of superior court."

28 (f) Consolidation. – When an estate proceeding pending before the clerk of superior
29 court and a civil action pending before the Superior Court Division of the General Court of
30 Justice involve a common question of law or fact, upon the court's motion or motion of a party
31 to either the estate proceeding or the civil action, a superior court judge may order a
32 consolidation of the estate proceeding and civil action, and the judge may make orders
33 concerning proceedings therein as may tend to avoid unnecessary cost or delay. Upon the entry
34 of an order consolidating an estate proceeding and civil action, the jurisdiction for all matters
35 pending in both the estate proceeding and the civil action shall be vested in the superior court.

36 (g) Joinder. – In any civil action pending before the Superior Court Division of the
37 General Court of Justice, the party asserting a claim for relief as an original claim,
38 counterclaim, crossclaim, or third-party claim may join, either as independent or alternative
39 claims, as many claims, legal or equitable, as the party may have against the opposing party,
40 notwithstanding the fact that such claims may otherwise be within the exclusive jurisdiction of
41 the clerk of superior court.

42 (h) Notice of Transfer. – A notice to transfer an estate proceeding brought pursuant to
43 G.S. 28A-2-4(a)(4) must be served within 30 days after the moving party is served with a copy
44 of the pleading requesting relief pursuant to G.S. 28A-2-4(a)(4), or in the case of the clerk of
45 superior court, prior to or at the first hearing duly noticed in such estate proceeding and prior to
46 the presentation of evidence by the parties, including a hearing at which an order of
47 continuance is entered. Failure to timely serve a notice of transfer of a trust proceeding is a
48 waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust
49 proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the
50 clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is

1 subject to the provisions of the General Statutes and to the rules that apply to actions initially
2 filed in the court to which the proceeding was transferred.

3 (i) Orders Upon Consolidation/Joinder/Transfer. – Upon the consolidation of an estate
4 proceeding in a civil action, joinder of claims under subsection (f) or (g) of this section, or
5 transfer to the Superior Court Division of the General Court of Justice pursuant to subsection
6 (h) of this section, the clerk of superior court or judge may make appropriate orders to protect
7 the interest of the parties and avoid unnecessary cost or delay. Notwithstanding the
8 consolidation or joinder of claims under subsection (f) or (g) of this section, where the estate
9 proceeding is transferred to the Superior Court Division of the General Court of Justice under
10 subsection (h) of this section, the clerk of superior court's exclusive jurisdiction as set forth in
11 G.S. 28A-2-4(a)(1) through (3) shall not be stayed unless so ordered by the court.

12 **"§ 28A-2-7. Representation of parties.**

13 (a) Notwithstanding any other applicable rule of the Rules of Civil Procedure or
14 provision of Chapter 1 of the General Statutes, in any contested or uncontested estate
15 proceeding or special proceeding, whether brought before the clerk of superior court or in the
16 Superior Court Division of the General Court of Justice, the parties shall be represented as
17 provided in Article 3 of Chapter 36C of the General Statutes.

18 (b) In the case of any party represented by another as provided in subsection (a) of this
19 section, service of process shall be made by serving such representative.

20 **"§ 28A-2-8. Waiver of notice.**

21 A party, or a representative of a party as provided in G.S. 28A-2-7, may waive notice by a
22 writing signed by the party, the representative, or the attorney of the party or the representative
23 and filed in the proceeding.

24 **"§ 28A-2-9. Appeals of estate proceedings and special proceedings.**

25 (a) With the exception of appeals of special proceedings heard by the clerk of superior
26 court, appeals in estate matters shall be as provided in G.S. 1-301.3.

27 (b) Appeals in special proceedings shall be as provided in G.S. 1-301.2.

28 (c) Any party may appeal from a decision of the clerk of superior court in an estate
29 proceeding or special proceeding to a superior court judge as provided for in G.S. 1-301.3;
30 provided that the appeals from orders of the clerk of superior court in special proceedings shall
31 be as provided in G.S. 1-301.2.

32 **"§ 28A-2-10. Approval of settlement agreements by the clerk.**

33 The clerk shall have the authority, in the clerk's discretion, to consider and approve
34 settlement agreements where the following apply:

35 (1) The controversy arises with respect to a matter over which the clerk has
36 jurisdiction.

37 (2) The controversy arose in good faith.

38 Nothing herein shall be construed as giving a clerk the authority to approve a settlement
39 agreement modifying the terms of a last will and testament or resolving a caveat of a last will
40 and testament."

41 "Article 2A.

42 "Probate of Will.

43 **"§ 28A-2A-1. Executor may apply for probate.**

44 Any executor named in a will may, at any time after the death of the testator, apply to the
45 clerk of the superior court, having jurisdiction, to have the same admitted to probate. Such will
46 shall not be valid or effective to pass real estate or personal property as against innocent
47 purchasers for value and without notice, unless it is probated or offered for probate within two
48 years after the death of the testator or devisor or prior to the time of approval of the final
49 account of a duly appointed administrator of the estate of the deceased, whichever time is
50 earlier. If such will is fraudulently suppressed, stolen or destroyed, or has been lost, and an
51 action or proceeding shall be commenced within two years from the death of the testator or

1 devisor to obtain said will or establish the same as provided by law, then the limitation herein
2 set out shall only begin to run from the termination of said action or proceeding, but not
3 otherwise.

4 **"§ 28A-2A-2. Executor failing, beneficiary may apply.**

5 If no executor ~~apply~~ applies to have the will proved within 60 days after the death of the
6 testator, any devisee or legatee named in the will, or any other person interested in the estate,
7 may make such application, upon 10 days' notice thereof to the executor. For good cause
8 shown, the clerk of superior court may shorten the initial 60-day period during which the
9 executor may apply to have the will proved.

10 **"§ 28A-2A-3. Clerk to notify legatees and devisees of probate of wills.**

11 The clerks of the superior court of the State are hereby required and directed to notify by
12 mail, all legatees and devisees whose addresses are known, designated in wills filed for probate
13 in their respective counties. All expense incident to such notification shall be deemed a proper
14 charge in the administration of the respective estates.

15 **"§ 28A-2A-4. Clerk may shall compel production of will.**

16 Every clerk of the superior court having jurisdiction, on application by affidavit setting
17 forth the facts, shall, by summons, compel any person in the State, having in possession the last
18 will of any decedent, to exhibit the same in his court for probate; and whoever being duly
19 summoned refuses, in contempt of the court, to produce such will, or (the same having been
20 parted with by him) refuses to inform the court on oath where such will is, or in what manner
21 he has disposed of it, shall, by order of the clerk of the superior court, be committed to the jail
22 of the county, there to remain without bail till such will be produced or accounted for, and due
23 submission made for the contempt.

24 **"§ 28A-2A-5. What shown on application for probate.**

25 On application to the clerk of the superior court, he must ascertain by affidavit of the
26 applicant –

- 27 (1) That such applicant is the executor, devisee or legatee named in the will, or
28 is some other person interested in the estate, and how so interested.
- 29 (2) The value and nature of the testator's property, as near as can be ascertained.
- 30 (3) The names and residences of all parties entitled to the testator's property, if
31 known, or that the same on diligent inquiry cannot be discovered; which of
32 the parties in interest are minors, and whether with or without guardians, and
33 the names and residences of such guardians, if known.

34 Such affidavit shall be recorded with the will and the certificate of probate thereof, if the
35 same is admitted to probate.

36 **"§ 28A-2A-6. Proof and examination in writing.**

37 Every clerk of the superior court shall take in writing the proofs and examinations of the
38 witnesses touching the execution of a will, and he shall embody the substance of such proofs
39 and examinations, in case the will is admitted to probate, in his certificate of the probate
40 thereof, which certificate must be recorded with the will. The proofs and examinations as taken
41 must be filed in the office.

42 **"§ 28A-2A-7. Probate in solemn form.**

43 (a) A person entitled to apply for probate of a will pursuant to G.S. 28A-2A-1 or
44 G.S. 28A-2A-2 may file a petition for probate of the will in solemn form, and the matter shall
45 proceed as an estate proceeding governed by Article 2 of Chapter 28A of the General Statutes.
46 The clerk of superior court shall issue a summons to all interested parties in the estate. The
47 clerk shall schedule a hearing at which the petitioner shall produce the evidence necessary to
48 probate the will.

49 (b) If an interested party contests the validity of the will, that person must file a caveat
50 before the hearing or raise an issue of devisavit vel non at the hearing. Upon the filing of a

1 caveat or raising of an issue of devisavit vel non, the clerk shall transfer the cause to the
2 superior court, and the matter shall be heard as a caveat proceeding.

3 (c) If no interested party contests the validity of the will, the probate shall be binding,
4 and no interested party who was properly served may file a caveat of the probated will.
5 Initiation of a probate in common form shall not preclude a person from applying for probate in
6 solemn form.

7 **"§ 28A-2A-8. Manner of probate of attested written will.**

8 (a) An attested written will, executed as provided by G.S. 31-3.3, may be probated in
9 the following manner:

10 (1) Upon the testimony of at least two of the attesting witnesses; or

11 (2) If the testimony of only one attesting witness is available, then

12 a. Upon the testimony of such witness, and

13 b. Upon proof of the handwriting of at least one of the attesting
14 witnesses who is dead or whose testimony is otherwise unavailable,
15 and

16 c. Upon proof of the handwriting of the testator, unless he signed by his
17 mark, and

18 d. Upon proof of such other circumstances as will satisfy the clerk of
19 the superior court as to the genuineness and due execution of the
20 will; or

21 (3) If the testimony of none of the attesting witnesses is available, then

22 a. Upon proof of the handwriting of at least two of the attesting
23 witnesses whose testimony is unavailable, and

24 b. Upon compliance with paragraphs ~~e and d~~ c. and d. of subsection
25 (a)(2) of this section; or

26 (4) Upon a showing that the will has been made self-proved in accordance with
27 the provisions of G.S. 31-11.6.

28 (b) Due execution of a will may be established, where the evidence required by
29 subsection (a) of this section is unavoidably lacking or inadequate, by testimony of other
30 competent witnesses as to the requisite facts.

31 (c) The testimony of a witness is unavailable within the meaning of this section when
32 the witness is dead, out of the State, not to be found within the State, ~~insane or otherwise~~
33 incompetent, physically unable to testify or refuses to testify.

34 **"§ 28A-2A-9. Manner of probate of holographic will.**

35 A holographic will may be probated only in the following manner:

36 (1) Upon the testimony of at least three competent witnesses that they believe
37 that the will is written entirely in the handwriting of the person whose will it
38 purports to be, and that the name of the testator as written in or on, or
39 subscribed to, the will is in the handwriting of the person whose will it
40 purports to be; and

41 (2) Upon the testimony of one witness who may, but need not be, one of the
42 witnesses referred to in subdivision (1) of this section to a statement of facts
43 showing that the will was found after the testator's death as required by
44 G.S. 31-3.4.

45 **"§ 28A-2A-10. Manner of probate of nuncupative will.**

46 (a) No nuncupative will may be probated later than six months from the time it was
47 made unless it was reduced to writing within 10 days after it was made.

48 (b) Before a nuncupative will may be probated

49 (1) Written notice must be given to the surviving spouse, if any, and to the next
50 of kin, by the clerk of the court in which it is to be probated, notifying them

1 that the will has been offered for probate and that they may, if they desire,
2 oppose the probate thereof, or

3 (2) When the surviving spouse or next of kin are not known or when for any
4 other reason such notice cannot be given, a notice to the same effect must be
5 published not less than once a week for four consecutive weeks in some
6 newspaper published in the county where the will is offered for probate, or if
7 no newspaper is published in the county, then in some newspaper having
8 general circulation therein.

9 (c) A nuncupative will may be probated only in the following manner:

10 (1) Upon the testimony of at least two competent witnesses who establish the
11 terms of such will and who state that they were simultaneously present at the
12 making thereof, that the testator declared he was then making his will, and
13 that they were then and there specially requested by him to bear witness
14 thereto; and

15 (2) Upon the testimony of one competent witness, who may but need not be one
16 of the witnesses referred to in subdivision (1) of this subsection, that the will
17 was made in the testator's last illness or while he was in imminent peril of
18 death, and that he did not survive such sickness or imminent peril, but it is
19 not necessary that all such facts be proved by the testimony of the same
20 witness.

21 **"§ 28A-2A-11. Probate of wills of members of the armed forces.**

22 In addition to the methods already provided in existing statutes therefor, a will executed by
23 a person while in the armed forces of the United States or the merchant marine, shall be
24 admitted to probate (whether there were subscribing witnesses thereto or not, if they, or either
25 of them, is out of the State at the time said will is offered for probate) upon the oath of at least
26 three credible witnesses that the signature to said will is in the handwriting of the person whose
27 will it purports to be. Such will so proven shall be effective to devise real property as well as to
28 bequeath personal estate of all kinds. This section shall not apply to cases pending in courts and
29 at issue on the date of its ratification.

30 **"§ 28A-2A-12. Probate conclusive until vacated; substitution of consolidated bank as
31 executor or trustee under will.**

32 Such record and probate is conclusive in evidence of the validity of the will, until it is
33 vacated on appeal or declared void by a competent tribunal. Provided, that whenever in a will
34 so probated or recorded a bank or trust company shall be named executor and/or trustee and
35 shall have at the time of such probate and recording become absorbed by or consolidated with
36 another bank or trust company or shall have sold and transferred all its assets and liabilities to
37 another bank or trust company doing business in North Carolina, such latter bank or trust
38 company shall be deemed substituted for and shall have all the rights and powers of the former
39 bank or trust company.

40 **"§ 28A-2A-13. Wills filed in clerk's office.**

41 All original wills shall remain in the clerk's office, among the records of the court where the
42 same shall be proved, and to such wills any person may have access, as to the other records. If
43 said will contains a devise of real estate, outside said county where said will is probated, then a
44 copy of the said will, together with the probate of the same, certified under the hand and seal of
45 the clerk of the superior court of said county may be recorded in the book of wills and filed in
46 the office of the clerk of the superior court of any county in the State in which said land is
47 situated with the same effect as to passing the title to said real estate as if said will had
48 originally been probated and filed in said county and the clerk of the superior court of said
49 last-mentioned county had had jurisdiction to probate the same.

50 **"§ 28A-2A-14. Validation of wills heretofore certified and recorded.**

1 All wills which have prior to March 9, 1921, been certified and recorded in the office of the
2 clerk of the superior court of any county, substantially following the provisions of ~~G.S. 31-20~~
3 G.S. 28A-2A-13, are hereby validated and approved as to the conveyance and transfer of any
4 title to real estate as contained therein, to the same extent as if said wills had originally been
5 probated and filed in said county, and the clerk of the superior court of said county had had
6 jurisdiction to probate the same, provided the probates and witnesses to the said wills are
7 sufficient and according to law.

8 **"§ 28A-2A-15. Certified copy of will proved in another state or country.**

9 When a will, made by a citizen of this State, is proved and allowed in some other state or
10 country, and the original will cannot be removed from its place of legal deposit in such other
11 state or country, for probate in this State, the clerk of the superior court of the county where the
12 testator had his last usual residence or has any property, upon a duly certified copy or
13 exemplification of such will being exhibited to him for probate, shall take every order and
14 proceeding for proving, allowing and recording such copy as by law might be taken upon the
15 production of the original.

16 **"§ 28A-2A-16. Examination of witnesses by affidavit.**

17 (a) The examination of witnesses to a will may be taken and subscribed in the form of
18 an affidavit before a notary public or other person who is authorized to administer oaths in the
19 jurisdiction where the examination is held.

20 (b) A photographic copy of the original will certified to be a true and exact copy thereof
21 by the clerk of superior court of the county in which the will is to be probated may be used in
22 the examination of the witnesses in the procedures set out in ~~subsection (a)~~; subsection (a) of
23 this section; provided, the said clerk has in his possession the original will at the time of
24 examination of the witnesses.

25 (c) Affidavits taken in accordance with subsection (a) of this section shall be
26 transmitted by the person taking the affidavit to the clerk of superior court of the county in
27 which the will is to be probated.

28 (d) Testimony submitted in accordance with subsection (a) of this section is competent
29 in regard to all requirements of G.S. 31-3.3 and to establish that a will was executed in
30 compliance with the requirements of G.S. 31-3.3.

31 (e) Nothing in this section is to limit or otherwise affect the authority of a clerk of
32 superior court in the exercise of his authority as judge of probate under G.S. 28A-2-1 to:

- 33 (1) ~~issue~~ Issue subpoenas under G.S. 7A-103; or
34 (2) ~~order~~ Order the taking of depositions of witnesses.

35 **"§ 28A-2A-17. Certified copy of will of nonresident recorded.**

36 (a) Subject to the provisions of ~~subsection (b)~~, subsection (b) of this section, if the will
37 of a citizen or subject of another state or country is probated in accordance with the laws of that
38 jurisdiction and a duly certified copy of the will and the probate proceedings are produced
39 before a clerk of superior court of any county wherein the testator had property, the copy of the
40 will shall be probated as if it were the original. If the jurisdiction is within the United States, the
41 copy of the will and the probate proceedings shall be certified by the clerk of the court wherein
42 the will was probated. If the jurisdiction is outside the United States, the copy of the will and
43 probate proceedings shall be certified by any ambassador, minister, consul or commercial agent
44 of the United States under his official seal.

45 (b) For a copy of a will probated under the provisions of subsection (a) of this section to
46 be valid to pass title to or otherwise dispose of real estate in this State, the execution of said
47 will according to the laws of this State must appear affirmatively, to the satisfaction of the clerk
48 of the superior court of the county in which such will is offered for probate, from the testimony
49 of a witness or witnesses to such will, or from findings of fact or recitals in the order of
50 probate, or otherwise in such certified copy of the will and probate proceedings.

1 (c) If the execution of the will in accordance with the laws of this State does not appear
2 as required by ~~subsection (b)~~, subsection (b) of this section, the clerk before whom the copy is
3 exhibited shall have power to take proof as prescribed in ~~G.S. 31-24~~, G.S. 28A-2A-16, and the
4 will may be adjudged duly proved, and if so proved, the will shall be recorded as herein
5 provided.

6 (d) Any copy of a will of a nonresident heretofore allowed, filed and recorded in this
7 State in compliance with the foregoing shall be valid to pass title to or otherwise dispose of real
8 estate in this State.

9 **"§ 28A-2A-18. Probates validated where proof taken by commissioner or another clerk.**

10 In all cases of the probate of any will made prior to March 8, 1899, in common form before
11 any clerk of the superior courts of this State, where the testimony of the subscribing witnesses
12 has been taken in the State or out of it by any commissioner appointed by said clerk or taken by
13 any other clerk of the superior court in any other county of this State, and the will admitted to
14 probate upon such testimony, the proceedings are validated.

15 **"§ 28A-2A-19. Probates in another state before 1860 validated.**

16 In all cases where any will devises land in this State, and the original will was duly
17 admitted to probate in some other state prior to the year 1860, and a certified copy of such will
18 and the probate thereof has been admitted to probate and record in any county in this State, and
19 it in any way appears from such recorded copy that there were two subscribing witnesses to
20 such will, and its execution was proved by the examination of such witnesses when the original
21 was admitted to probate, such will shall be held and considered, and is hereby declared to be,
22 good and valid for the purpose of passing title to the lands devised thereby, situated in this
23 State, as fully and completely as if the original will had been duly executed and admitted to
24 probate and recorded in this State in accordance with the laws of this State.

25 **"§ 28A-2A-20. Validation of wills recorded without probate by subscribing witnesses.**

26 In all cases where wills and testaments were executed prior to the first day of January,
27 1875, and which appear as recorded in the record of last wills and testaments to have had two
28 or more witnesses thereto, and such last wills and testaments were admitted to probate and
29 recorded in the record of wills in the proper county in this State prior to the first day of January,
30 1888, without having been duly proven as provided by law, and such wills were presented to
31 the clerk of the superior court in any county in this State where the makers of said wills owned
32 property, and where the makers of such wills lived and died, and were by such clerks recorded
33 in the record of wills for his county, said wills and testaments or exemplified copies or certified
34 true copies thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to
35 real or personal property, or both, therein devised and bequeathed, to the same extent and as
36 completely as if the execution thereof had been duly proven by the two subscribing witnesses
37 thereto in the manner provided by law of this State. Nothing herein shall be construed to
38 prevent such wills from being impeached for fraud.

39 **"§ 28A-2A-21. Validation of wills admitted on oath of one subscribing witness.**

40 In all cases where last wills and testaments which appear as recorded in the record of last
41 wills and testaments to have had two witnesses thereto and such last wills and testaments were
42 admitted to probate and recorded in the record of wills in the proper county in this State prior to
43 the first day of January, 1890, upon the oath and examination of one of the witnesses, such
44 proof being taken in writing and recorded, and the certificate of probate of the clerk of the court
45 states that such a will is proven by one of the subscribing witnesses thereto and the handwriting
46 of the other subscribing witness being a nonresident is proven under oath, and such a will and
47 certificate has been recorded in the record of wills of the proper county, such probate is hereby
48 validated as fully as if the proof of the handwriting of the nonresident witness had been taken in
49 regular form in writing and recorded.

50 **"§ 28A-2A-22. Validation of probates of wills when witnesses examined before notary
51 public; acts of deputy clerks validated.**

1 Whenever any last will and testament has been probated, based upon the examination of the
2 subscribing witness or the subscribing witnesses, taken before a notary public in the county in
3 which the will is probated, or taken before a notary public of any other county, it is hereby in
4 all respects validated and shall be sufficient to pass the title to all real and personal property
5 purported to be transferred thereby.

6 All acts heretofore performed by deputy clerks of the superior court in taking
7 acknowledgments, examining witnesses and probate of any wills, deeds and other instruments
8 required or permitted by law to be recorded, are hereby validated. Nothing herein contained
9 shall affect pending litigation.

10 **"§ 28A-2A-23. Validation of wills when recorded without order of probate or registration**
11 **upon oath and examination of subscribing witness or witnesses.**

12 Whenever any last will and testament has been duly presented to the clerk of the superior
13 court, and the said will together with the oath and examination of the subscribing witness or
14 witnesses thereto taken before a notary public in the county in which the will is probated, or
15 taken before a notary public of any other county, or before the clerk of the superior court of
16 said county, or any other county, is duly recorded in the office of the clerk of the superior court
17 of the said county, without a formal order of probate or registration, such will, if executed in
18 accordance with the laws of this State, is hereby validated with respect to the probate and
19 registration thereof and shall be sufficient to pass title to all real and personal property
20 purported to be transferred thereby to the same extent that the said will would have done so if
21 there had been a formal order of probate and registration. This section shall apply only to wills
22 presented to the clerk of the superior court and recorded prior to the first day of January, 1943.

23 "Article 3.

24 "Venue for Probate of Wills and Administration of Estates of Decedents.

25 **"§ 28A-3-1. Proper county.**

26 The venue for the probate of a will and for all proceedings relating to the administration of
27 the estate of a decedent shall be:

- 28 (1) In the county in this State where the decedent ~~had his domicile~~ was
29 domiciled at the time of ~~his~~ the decedent's death; or
- 30 (2) If the decedent had no domicile in this State at the time of death, then in any
31 county wherein the decedent left any property or assets or into which any
32 property or assets belonging to this estate may have come. If there be more
33 than one such county, that county in which proceedings are first commenced
34 shall have priority of venue; or
- 35 (3) If the decedent was a nonresident motorist who died in the State, then in any
36 county in the State.

37 **"§ 28A-3-2. Proceedings to determine venue.**

38 (a) If proceedings are commenced in more than one county or if upon commencement
39 of a proceeding a question arises as to the proper county of venue, or if for any other reason a
40 delay arises in determining venue, ~~then~~ the matter shall be referred by the clerk of superior
41 court ~~before whom the question arises~~ for a hearing ~~before~~ and determination by the senior
42 resident superior court judge or any judge assigned to hold the superior courts of the district
43 which includes the county where the proceedings were first commenced. ~~The~~ Upon the filing of
44 a motion or petition to determine venue, the judge shall determine which is the proper county
45 for administration of the estate and stay proceedings in all other counties. He The judge shall
46 make such orders as are necessary to transfer the entire proceedings to the proper county. The
47 clerk of superior court of each county in which proceedings are stayed shall retain a true copy
48 of the entire file and transmit the original to the clerk of superior court of such county as the
49 judge directs.

50 (a1) Any interested person may file a petition to determine proper venue within the time
51 prescribed by G.S. 28A-3-5. The matter shall be referred by the clerk of superior court by or

1 before whom the petition is filed for a hearing and determination by the senior resident superior
2 court judge or any judge assigned to hold the superior courts of the district that includes the
3 county where the proceedings were first commenced.

4 (b) A proceeding shall be deemed commenced by the offering of a will for probate or
5 by applying for letters of administration as provided by G.S. 28A-6-1 through 28A-6-5 or by
6 applying for letters of collection as provided by G.S. 28A-11-1 through 28A-11-4 and the
7 proceeding first legally commenced shall extend to all of the property or assets of the decedent
8 in this State.

9 **"§ 28A-3-3. Procedure after determination of improper appointment.**

10 Where a person has been improperly appointed, and a different person in another county is
11 determined under G.S. 28A-3-2(a) to be the properly appointed personal representative, such
12 improperly appointed personal representative shall surrender to the properly appointed
13 personal representative all assets of the estate under ~~his control.~~ control of the improperly
14 appointed personal representative. In addition such improperly appointed personal
15 representative shall file an accounting with the clerk of superior court in the proper county
16 according to the form prescribed for collectors by G.S. 28A-11-4.

17 **"§ 28A-3-4. Liability of personal representative appointed in improper county.**

18 When a personal representative has been appointed in an improper county, and a different
19 person in another county is determined under G.S. 28A-3-2(a) to be the properly appointed
20 personal representative, such improperly appointed personal representative shall not thereby
21 incur personal liability for administrative acts performed prior to the transfer except as
22 provided in G.S. 28A-13-10.

23 **"§ 28A-3-5. Waiver of venue.**

24 If questions as to priority of venue are not raised within three months after the issuance of
25 letters testamentary or letters of administration to the personal representative, the validity of
26 the proceeding shall not be affected by any error in venue.

27 "Article 4.

28 "Qualification and Disqualification for Letters Testamentary and Letters of Administration.

29 **"§ 28A-4-1. Order of persons qualified to serve.**

30 (a) Letters Testamentary. – Letters testamentary shall be granted to the executor or
31 executors named or designated in the will, or if no such person qualifies, to any substitute or
32 successor executor named or designated in the will. If no person so named or designated
33 qualifies, letters testamentary shall be granted to some other person nominated by a person
34 upon whom the will expressly confers the authority to make such nomination. If none of the
35 foregoing persons ~~qualifies or if the clerk of superior court upon hearing finds that none of the~~
36 ~~foregoing persons is qualified in accordance with G.S. 28A-4-2,~~ qualifies, the clerk shall grant
37 letters of administration in accordance with subsection ~~(b).~~ (b) of this section.

38 (b) Letters of Administration. Letters of administration shall be granted to persons who
39 are qualified to serve, in the following order, unless the clerk of superior court in ~~his~~ the
40 discretion of the clerk of superior court determines that the best interests of the estate otherwise
41 require:

- 42 (1) The surviving spouse of the decedent;
- 43 (2) Any devisee of the testator;
- 44 (3) Any heir of the decedent;
- 45 (3a) Any next of kin, with a person who is of a closer kinship as computed
46 pursuant to G.S. 104A-1 having priority;
- 47 (4) Any creditor to whom the decedent became obligated prior to ~~his~~ the
48 decedent's death;
- 49 (5) Any person of good character residing in the county who applies therefor;
50 and
- 51 (6) Any other person of good character not disqualified under G.S. 28A-4-2.

1 When applicants are equally entitled, letters shall be granted to the applicant who, in the
2 judgment of the clerk of superior court, is most likely to administer the estate advantageously,
3 or they may be granted to any two or more of such applicants.

4 (c) Any interested person may file a petition pursuant to Article 2 of this Chapter
5 alleging that all or any of the persons described in subsection (b) of this section is disqualified
6 in accordance with G.S. 28A-4-2.

7 **"§ 28A-4-2. Persons disqualified to serve as personal representative.**

8 No person is qualified to serve as a personal representative who:

- 9 (1) Is under 18 years of age;
- 10 (2) Has been adjudged incompetent in a formal proceeding and remains under
11 such disability;
- 12 (3) Is a convicted felon, under the laws either of the United States or of any state
13 or territory of the United States, or of the District of Columbia and whose
14 citizenship has not been restored;
- 15 (4) Is a nonresident of this State who has not appointed a resident agent to
16 accept service of process in all actions or proceedings with respect to the
17 estate, and caused such appointment to be filed with the court; or who is a
18 resident of this State who has, subsequent to appointment as a personal
19 representative, moved from this State without appointing such process agent;
- 20 (5) Is a corporation not authorized to act as a personal representative in this
21 State;
- 22 (6) Repealed by Session Laws 1999-133, s. 1.
- 23 (7) Has lost ~~his~~ that person's rights as provided by Chapter 31A;
- 24 (8) Is illiterate;
- 25 (9) Is a person whom the clerk of superior court finds otherwise unsuitable; or
- 26 (10) Is a person who has renounced either expressly or by implication as provided
27 in G.S. 28A-5-1 and 28A-5-2.

28 "Article 5.

29 "Renunciation by Personal Representative.

30 **"§ 28A-5-1. Renunciation by executor.**

31 (a) Express Renunciation by Executor. – Any person named or designated as executor
32 in a duly probated will may renounce the office by filing with the clerk of superior court a
33 writing signed by such person, and acknowledged or proved to the satisfaction of the clerk.

34 (b) Implied Renunciation by Executor. – If any person named or designated as executor
35 fails to qualify or to renounce within 30 days after the will had been admitted to probate, (i)
36 the clerk of superior court, on application of court may issue a notice to that person to qualify or
37 move for an extension of time to qualify within 15 days, or (ii) any other person named or
38 designated as executor in the will or of any interested person, shall, or on his own motion may,
39 issue a citation to the person who has failed to qualify or renounce to show cause why he
40 should not person may file a petition in accordance with Article 2 of this Chapter for an order
41 finding that person named or designated as executor to be deemed to have renounced. If, upon
42 service of the citation, he does not qualify or renounce or show cause within the time fixed in
43 the citation, such period to be not less than 10 nor more than 30 days, an order must be entered
44 by If that person does not file a response to the motion or petition within 15 days from the date
45 of service of the motion or petition, the clerk of superior court shall enter an order adjudging
46 that he has renounced. If cause be shown, the person has renounced. If the person files a
47 response within 15 days from the date of service of the motion or petition requesting an
48 extension of time within which to qualify or renounce, upon hearing, the clerk of superior court
49 may grant to such that person a reasonable extension of time within which to qualify or
50 renounce. renounce for cause shown. If that person qualifies within 15 days of the date of

1 service of the motion or petition, the clerk of superior court shall dismiss that motion or
2 petition, without prejudice, summarily and without hearing.

3 (c) Procedure upon Renunciation. – Upon renunciation by a person named or
4 designated as executor, letters shall be issued to some other person as provided in
5 G.S. 28A-4-1.

6 **"§ 28A-5-2. Renunciation of right to administer.**

7 (a) Express Renunciation. – Any person entitled to apply for letters of administration
8 may renounce the office by filing with the clerk of superior court a writing signed by such
9 person, and acknowledged or proved to the satisfaction of the clerk.

10 (b) Implied Renunciation. –

11 (1) If any person entitled to apply for letters of administration fails to apply
12 therefor within 30 days from the date of death of the intestate, (i) the clerk of
13 superior court, on application of court may issue a notice to the person to
14 qualify or move for an extension of time to qualify within 15 days, or (ii)
15 any interested person, shall, or on his own motion may, issue a citation to the
16 person entitled to apply for letters of administration requiring him to show
17 cause why he should not person may file a petition in accordance with
18 Article 2 of this Chapter for an order finding that person to be deemed to
19 have renounced. If, upon service of the citation, he does not apply for letters
20 of administration and tender the required bond or show cause within the time
21 shown in the citation, such period to be not less than 10 nor more than 30
22 days, an order must be entered by the clerk of the If the person does not file
23 a response to the notice or petition within 15 days from the date of service of
24 the motion, the clerk of superior court shall enter an order adjudging that he
25 has renounced; the person has renounced. If the person files a response
26 within 15 days from the date of service of the motion requesting an
27 extension of time within which to qualify or renounce, upon hearing, the
28 clerk of superior court may grant to that person a reasonable extension of
29 time within which to qualify or renounce for cause shown. If the person
30 qualifies within 15 days of the date of service of the motion, the clerk of
31 superior court shall dismiss the motion, without prejudice, summarily and
32 without hearing and the clerk of superior court shall issue letters to some
33 other person as provided in G.S. 28A-4-1. If cause be shown the clerk of
34 superior court may grant to such person a reasonable extension of time
35 within which to apply and qualify, or renounce. No notice shall be required
36 to be given to any interested person, but the clerk may give notice as the
37 clerk in the clerk's discretion may determine.

38 (2) If no person entitled to administer applies for letters of administration within
39 90 days after the date of death of an intestate, then the clerk of superior court
40 may, in ~~his discretion~~, the clerk's discretion, enter an order declaring all prior
41 rights to apply for letters of administration to be renounced, and issue letters
42 to some suitable person as provided in G.S. 28A-4-1.

43 (c) Nomination by Person Renouncing. – Any person who expressly renounces ~~his~~ the
44 person's prior right to apply for letters of administration may at the same time nominate in
45 writing some other person not disqualified under G.S. 28A-4-2 to be named as personal
46 representative, and such designated person shall be entitled to the same priority of right to
47 apply for letters of administration as the person making the nomination.

48 "Article 6.

49 "Appointment of Personal Representative.

50 **"§ 28A-6-1. Application for letters; grant of letters.**

1 (a) The application for letters of administration or letters testamentary shall be in the
2 form of an affidavit sworn to before an officer authorized to administer oaths, signed by the
3 applicant or ~~his~~ the applicant's attorney, which may be supported by other proof under oath in
4 writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege
5 the following facts:

- 6 (1) The name, and to the extent known, the domicile and the date and place of
7 death of the decedent;
- 8 (2) The legal residence and mailing address of the applicant;
- 9 (3) The names, ages and mailing addresses of the decedent's heirs and devisees,
10 including the names and mailing addresses of the guardians of those having
11 court-appointed guardians, so far as all of these facts are known or can with
12 reasonable diligence be ascertained;
- 13 (4) That the applicant is the person entitled to apply for letters, or that ~~he~~ the
14 applicant applies after persons having prior right to apply are shown to have
15 renounced under Article 5 of this Chapter, or that ~~he~~ the applicant applies
16 subject to the provisions of G.S. 28A-6-2(1), and that ~~he~~ the applicant is not
17 disqualified under G.S. 28A-4-2.
- 18 (5) The nature and probable value of the decedent's property, both real and
19 personal, and the location of such property, so far as all of these facts are
20 known or can with reasonable diligence be ascertained; and
- 21 (6) If the decedent was not domiciled in this State at the time of ~~his~~ the
22 decedent's death, a schedule of ~~his~~ the decedent's property located in this
23 State, and the name and mailing address of ~~his~~ the decedent's domiciliary
24 personal representative, or if there is none, whether a proceeding to appoint
25 one is pending.

26 (b) If it appears to the clerk of superior court that the application and supporting
27 evidence comply with the requirements of subsection (a) of this section and on the basis thereof
28 ~~he~~ the clerk finds that the applicant is entitled to appointment, ~~he~~ the clerk shall issue letters of
29 administration or letters testamentary to the applicant unless in ~~his~~ the clerk's discretion ~~he~~ the
30 clerk determines that the best interests of the estate would be served by delaying the
31 appointment of a personal representative, in which case ~~he~~ the clerk may appoint a collector as
32 provided in Article 11.

33 (c) The clerk of superior court may rely upon the following as evidence of death:

- 34 (1) A certified or authenticated copy of a death certificate purporting to be
35 issued by an official or agency of the place where the death purportedly
36 occurred.
- 37 (2) A certified or authenticated copy of any record or report of a governmental
38 agency, domestic or foreign, evidencing the date of death.
- 39 (3) A certificate or authenticated copy of medical records, including a record of
40 death, evidencing the date of death.
- 41 (4) Any other evidence that the clerk of superior court deems sufficient to
42 confirm the date of death.

43 "§ 28A-6-2. Letters issued without notice; exceptions.

44 Letters of administration or letters testamentary may be issued without notice, including
45 upon a finding of implied renunciation under G.S. 28A-5-1(b) or G.S. 28A-5-2(b), except:

- 46 (1) When the applicant is not entitled to priority of appointment under
47 G.S. 28A-4-1, all persons entitled to an equal or higher preference shall be
48 given ~~notice by citation as provided in G.S. 28A-5-2(b)(1)~~, 15 days prior to
49 written notice of that application, unless they have renounced in accordance
50 with the provisions of Article 5 of this Chapter.

- 1 (2) The clerk of superior court may in any case require that prior written notice
2 be given to such interested persons as ~~he the clerk~~, in ~~his discretion~~ the
3 clerk's discretion, may designate prior to the granting of letters.

4 **"§ 28A-6-3. Appointment of successor to personal representative.**

5 When the appointment of a sole or last surviving personal representative is terminated by
6 death, resignation pursuant to Article 10 of this Chapter, or revocation pursuant to Article 9 of
7 this Chapter, the clerk of superior court shall appoint another personal representative as
8 provided by G.S. 28A-4-1 to act as ~~his successor~~. successor to the sole or last surviving
9 personal representative. When two or more personal representatives have qualified, and the
10 appointment of one or more of them is terminated by death, resignation or revocation, leaving
11 in office one or more personal representatives, the appointment of successors shall not be
12 required unless:

- 13 (1) The clerk of superior court determines, in ~~his~~ the clerk's discretion, that it is
14 in the best interest of the estate to appoint a successor or successors to such
15 personal representative or personal representatives, or
16 (2) In the case of executors, the will so provides.

17 **"§ 28A-6-4. Right to contest appointment; procedure.**

18 Prior to the issuance of letters, any interested person may, by written ~~objection~~ petition filed
19 with the clerk of superior court, ~~with notice to the applicant, and served upon such interested~~
20 persons as the clerk of superior court may direct, contest the issuance of letters of
21 administration or letters testamentary to ~~such applicant~~. After an objection a person otherwise
22 entitled to apply for letters of administration or letters testamentary. After a petition has been
23 duly filed, the clerk of superior court shall conduct a hearing and determine ~~whether to whom~~
24 letters shall ~~issue to the applicant~~. be issued. Appeal may be taken from the order of the clerk as
25 in a ~~special proceeding~~. an estate proceeding pursuant to G.S. 1-301.3.

26 **"§ 28A-6-5. Letters not subject to collateral attack.**

27 The validity of letters issued shall not be subject to collateral attack.

28 "Article 7.

29 "Oath.

30 **"§ 28A-7-1. Oath required before letters issue.**

31 Before letters testamentary, letters of administration or letters of collection are issued to any
32 person, ~~he~~ the person shall take and subscribe an oath or affirmation before the clerk of
33 superior court, or before any other officer of any state or country authorized by the laws of
34 North Carolina to administer oaths, that ~~he~~ the person will faithfully and honestly discharge the
35 duties of ~~his~~ the person's office. Such oath or affirmation shall be in the form prescribed in
36 G.S. 11-11, and shall be filed in the office of the clerk of superior court.

37 "Article 8.

38 "Bond.

39 **"§ 28A-8-1. Bond required before letters issue; when bond not required.**

40 (a) Except as otherwise provided in subsection ~~(b)~~, (b) of this section, every personal
41 representative, before letters are issued, shall give bond, conditioned as provided in
42 G.S. 28A-8-2.

43 (b) No bond shall be required of:

- 44 (1) A resident executor, unless the express terms of the will require ~~him~~ a
45 resident executor to give bond;
46 (2) A nonresident executor (or a resident executor who moves from this State
47 subsequent to ~~his~~ that executor's appointment) who has appointed a resident
48 agent to accept service of process as provided in G.S. 28A-4-2(a)
49 [28A-4-2(4)], when the express terms of the will excuse ~~him~~ a nonresident
50 executor from giving bond;

- 1 (3) A nonresident executor, when there is a resident executor named who has
2 qualified as coexecutor unless the express terms of the will require them to
3 give bond, or the clerk of superior court finds that such bond is necessary
4 for the protection of the estate; or
5 (4) A personal representative appointed solely for the purpose of bringing an
6 action for the wrongful death of the deceased until such time as the personal
7 representative shall receive property into the estate of the deceased; or
8 (5) A personal representative that is a ~~national banking association having its~~
9 ~~principal place of business in this State or a State bank acting pursuant to~~
10 trust institution licensed under G.S. 53-159;
11 (6) A personal representative of an intestate who resides in the State of North
12 Carolina when all of the heirs of the decedent are over 18 years of age and
13 file with the clerk of superior court a written waiver instrument agreeing to
14 relieve the personal representative from the necessity of giving bond; or
15 (7) A personal representative where ~~he~~ the personal representative receives all
16 the property of the decedent;
17 (8) An administrator with the will annexed who resides in the State of North
18 Carolina when all of the devisees of the decedent are over 18 years of age
19 and file with the clerk of superior court a written waiver instrument
20 agreeing to relieve ~~him~~ the administrator with the will annexed of the
21 necessity of giving bond.

22 **"§ 28A-8-1.1. Deposited money; exclusion in computing amount of bond.**

23 Notwithstanding the provisions of G.S. 28A-8-1, in any proceeding for the determination of
24 the amount of bond to be required of the personal representative or testamentary trustee,
25 whether at the time of appointment or subsequently, when it appears that the estate of the
26 decedent or the testamentary trust includes money which has been or will be deposited in a
27 bank or banks in this State, or money which has been or will be invested in an account or
28 accounts in an insured savings and loan association or associations upon condition that such
29 money will not be withdrawn except on authorization of the court, the court may, in its
30 discretion, order such money so deposited or so invested and shall exclude such deposited
31 money from the computation of the amount of such bond or reduce the amount of bond to be
32 required in respect of such money to such an amount as it may deem reasonable.

33 The petitioner for letters testamentary, of administration, or of trusteeship may deliver to
34 any such bank or association any such money in ~~his~~ the petitioner's possession, or may allow
35 such bank to retain any such money already in its possession, or may allow such association to
36 retain any such money already invested with it; and, in either event, the petitioner shall secure
37 and file with the court a written receipt including the agreement of the bank or association that
38 such money shall not be allowed to be withdrawn except on authorization of the court. In so
39 receiving and retaining such money, the bank or association shall be protected to the same
40 extent as though it had received the same from a person to whom letters testamentary, of
41 administration, or of trusteeship had been issued.

42 The term "account in an insured savings and loan association" as used in this section means
43 an account insured by the Federal Deposit Insurance Corporation, the Federal Savings and
44 Loan Insurance Corporation or by a mutual deposit guaranty association authorized by Article
45 7A of Chapter 54 of the General Statutes of North Carolina.

46 The term "money" as used in this section means the principal of the decedent's estate and
47 does not include the income earned by the principal of the decedent's estate which may be
48 withdrawn without any authorization of the court.

49 **"§ 28A-8-2. Provisions of bond.**

50 A bond given pursuant to this Article shall be:

- 51 (1) Payable to the State to the use of all persons interested in the estate; and

1 (2) Conditioned that the personal representative giving the bond shall faithfully
2 execute the trust reposed in ~~him~~ the personal representative and obey all
3 lawful orders of the clerk of superior court or other court touching the
4 administration of the estate committed to ~~him~~; the personal representative;
5 and

6 (3) In an amount not less than:

- 7 a. One and one-fourth times the value of all personal property of the
8 decedent when the bond is secured by a suretyship bond executed by
9 a corporate surety company authorized by the Commissioner of
10 Insurance to do business in this State, provided that the clerk of
11 superior court, when the value of the personal property to be
12 administered by the personal representative exceeds one hundred
13 thousand dollars (\$100,000), may accept bond in an amount equal to
14 the value of the personal property plus ten percent (10%) thereof; or
15 b. Double the value of all personal property of the decedent when the
16 bond is secured by one of the methods provided in subdivision (4)b,
17 (4)c or (4)d; such value of said personal property to be ascertained by
18 the clerk of superior court by examination, on oath, of the applicant
19 or of some other person determined by the clerk to be qualified to
20 testify as to its value; and

21 (4) Secured by one or more of the following:

- 22 a. Suretyship bond executed, at the expense of the estate, by a corporate
23 surety company authorized by the Commissioner of Insurance to do
24 business in this State;
25 b. Suretyship bond executed and justified upon oath before the clerk of
26 superior court by two or more sufficient personal sureties each of
27 whom shall reside in and own real estate in North Carolina and shall
28 have assets with an aggregate value above encumbrances of not less
29 than the amount of the penalty of the required bond;
30 c. A first mortgage or first deed of trust in form approved by the
31 administrative officer of the courts on real estate located in North
32 Carolina:
33 1. Executed by the owner, and conditioned on the performance
34 of the obligations of the bond, and
35 2. Containing a power of sale which, in the case of a mortgage,
36 is exercisable by the clerk of superior court upon a breach of
37 any condition thereof, or, in the case of a deed of trust, is
38 exercisable by the trustee after notice by the clerk of superior
39 court that a breach of condition has occurred.

40 The clerk of superior court shall not accept such mortgage or deed of
41 trust until it shall have been properly registered in the county or
42 counties in which the real estate is located, and the clerk of superior
43 court is satisfied that the real estate subject to the mortgage or deed
44 of trust is worth the amount to be secured thereby, and that the
45 mortgage or deed of trust is a first charge on said real estate. No such
46 mortgage or deed of trust shall be cancelled or surrendered until the
47 approval of the final account, unless substitution is permitted as
48 provided in G.S. 28A-8-3(d).

- 49 d. A deposit by the owner with the clerk of superior court of negotiable
50 securities, of a kind permitted by law to be proper investments for
51 fiduciaries exercising due care, having a fair market value

determined by the clerk to be equal to the amount of the penalty of the bond. Such securities shall be properly endorsed, delivered to the clerk of superior court, and accompanied by a security agreement containing a power of sale authorizing the clerk of superior court to sell them in the event the person to whom letters are being issued commits a breach of any duty imposed upon ~~him~~ that person by law in respect of ~~his~~ that person's office. Such securities shall not be surrendered by the clerk of superior court to the owner until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8-3(d). For the purposes of determining the value of the assets of the personal sureties in subdivision (4)b, or the value of the real estate in subdivision (4)c, or the value of the negotiable securities in subdivision (4)d, the clerk of superior court may require a certificate of the value of such property by one or more persons not interested in the estate determined by the clerk to be qualified to certify such value.

"§ 28A-8-3. Modification of bond requirements.

(a) Increase of Bond or Security in Case of Inadequacy or Insufficiency. –

(1) ~~The clerk of superior court may, on his own motion or upon verified application of any person interested in the estate, court, on the clerk's own motion, may~~ require the personal representative to give a new bond or to furnish additional security if he the clerk of superior court finds that the bond filed pursuant to this Article, or its security, is insufficient, inadequate in amount, or that any of the individual sureties has become or is about to become a nonresident or, in the case of a corporate surety, has withdrawn or is about to withdraw from doing business in this State. ~~Before ordering the personal representative to give a new bond or furnish additional security,~~

(2) Any interested person may file a verified petition in accordance with Article 2 of this Chapter requesting modification of bond requirements. Upon the filing of a verified petition, the clerk of superior court shall issue a citation requiring the personal representative, within 10 days after service thereof, to show cause why such action should not be taken. conduct a hearing in accordance with Article 2 of this Chapter. If the clerk of superior court finds that the bond filed or its security is insufficient or inadequate, ~~he~~ the clerk shall make an order requiring the personal representative to give a new bond or to furnish additional security within a reasonable time to be fixed in the order.

(b) Increase of Bond upon Sale of Real Estate. – When a personal representative makes application for an order to sell real estate, the provisions of G.S. 1-339.10 shall govern.

(c) Reduction of Bond. – On application of the personal representative the penalty of the bond may be reduced from time to time when the clerk of superior court finds that such reduction is clearly justified, but in no event shall the penalty of the bond be reduced below the amount required by G.S. 28A-8-2(3).

(d) Substitution of Security. – When a bond is secured by a mortgage or deed of trust on real estate as provided in G.S. 28A-8-2(4)c or a deposit of negotiable securities as provided in G.S. 28A-8-2(4)d, the clerk of superior court may, on application of the personal representative, order that such real estate or negotiable securities, or a part thereof, be released upon the substitution therefor of other security in compliance with G.S. 28A-8-2(4)a, (4)c, or (4)d. Such substitution may be allowed in conjunction with any other modification of bond requirements permitted by this section.

"§ 28A-8-4. Failure to give additional bond; letters revoked.

1 If any personal representative fails to give an additional bond or new bond or to furnish
 2 additional security as ordered by the clerk of superior court pursuant to the provisions of this
 3 Article, within the time specified in any such ~~order~~, order (not less than five days or more than
 4 15 days), the clerk of superior court shall proceed as provided in G.S. 28A-9-2.

5 **"§ 28A-8-5. Rights of surety in danger of loss.**

6 Any surety on the bond of a personal representative who is in danger of loss under ~~his~~the
 7 surety's suretyship may file ~~his~~ a verified petition ~~on oath~~ with the clerk of superior court
 8 setting forth the facts, and asking that such personal representative be removed from office, or
 9 that ~~he~~ the personal representative be required to give security to indemnify the petitioner
 10 against apprehended loss, or that the petitioner be discharged as surety and be released from
 11 liability for any future breach of the bond. The clerk of superior court shall ~~thereupon issue a~~
 12 ~~citation to the personal representative, requiring him to answer the petition within 10 days after~~
 13 ~~service thereof.~~ conduct a hearing in accordance with Article 2 of this Chapter. If, upon the
 14 hearing, the clerk of superior court determines that the surety is entitled to relief, ~~he~~ the clerk
 15 may grant the same in such manner as to serve the best interest of the estate. In any event,
 16 however, the previous surety shall not be released from liability for any breach of duty by the
 17 personal representative occurring prior to the filing of bond with a new surety unless the new
 18 surety assumes liability for the earlier breaches.

19 **"§ 28A-8-6. Action against obligors on bond of personal representative.**

20 Any person injured by the breach of any bond given by a personal representative or
 21 collector may institute a civil action against one or more of the obligors of the bond and recover
 22 such damages as ~~he~~ the person may have sustained. Any successor personal representative, or
 23 any other personal representative of the same decedent, may institute such action on behalf of
 24 the persons interested in the estate. Any such action against one or more of the obligors of the
 25 bond shall be brought in the name of the State of North Carolina and shall be instituted in the
 26 county in which letters were issued to the personal representative or collector, and the clerk of
 27 superior court shall give notice of the institution of the action in such manner as ~~he~~ the clerk
 28 may determine to all other persons shown by ~~his~~ the clerk's records to be interested in the
 29 estate. The bond of the personal representative is not void after the first or any subsequent
 30 recovery thereon until the entire penalty is recovered. If the plaintiff fails to prevail, costs may
 31 be taxed against the person or persons for whose benefit the action on a personal
 32 representative's bond is prosecuted.

33 "Article 9.

34 "Revocation of Letters.

35 **"§ 28A-9-1. Revocation after hearing.**

36 (a) Grounds. – Letters testamentary, letters of administration, or letters of collection
 37 may be revoked after hearing on any of the following grounds:

- 38 (1) The person to whom they were issued was originally disqualified under the
 39 provisions of G.S. 28A-4-2 or has become disqualified since the issuance of
 40 letters.
- 41 (2) The issuance of letters was obtained by false representation or mistake.
- 42 (3) The person to whom they were issued has violated a fiduciary duty through
 43 default or misconduct in the execution of ~~his~~ the person's office, other than
 44 acts specified in G.S. 28A-9-2.
- 45 (4) The person to whom they were issued has a private interest, whether direct
 46 or indirect, that might tend to hinder or be adverse to a fair and proper
 47 administration. The relationship upon which the appointment was predicated
 48 shall not, in and of itself, constitute such an interest.

49 (b) Procedure. —~~When it appears to the~~

- 50 (1) The clerk of superior court, on his own motion or upon verified complaint
 51 made to him by court may, on the clerk's own motion, conduct a hearing in

1 accordance with Article 2 of this Chapter to determine whether any of the
 2 grounds set forth in subsection (a) of this section exist with regard to any
 3 personal representative or collector within the jurisdiction of the clerk of
 4 superior court.

5 (2) Upon the verified petition of any person interested in the estate, estate for an
 6 order finding that any of the grounds set forth in subsection (a) may exist of
 7 this section exist with regard to any personal representative or collector
 8 within his jurisdiction, he shall issue citation requiring such personal
 9 representative or collector, within 10 days after service thereof, to show
 10 cause why his letters should not be revoked. On the return of such citation
 11 duly executed, the clerk of superior court shall set the date for a hearing. the
 12 jurisdiction of the clerk of superior court, the clerk shall conduct a hearing in
 13 accordance with Article 2 of this Chapter.

14 (3) Notice of the time and date of the hearing shall be given in accordance with
 15 Article 2 of this Chapter and to such persons and in such manner as the clerk
 16 of superior court shall determine. If at the hearing the clerk of superior court
 17 finds any one of the grounds set forth in subsection (a) of this section to
 18 exist, he the clerk of superior court shall revoke the letters issued to such
 19 personal representative or collector.

20 **"§ 28A-9-2. Summary revocation.**

21 (a) Grounds. – Letters testamentary, letters of administration, or letters of collection,
 22 shall be revoked by the clerk of superior court without hearing when:

- 23 (1) After letters of administration or collection have been issued, a will is
 24 subsequently admitted to probate.
 25 (2) After letters testamentary have been issued:
 26 a. The will is set aside, or
 27 b. A subsequent testamentary paper revoking the appointment of the
 28 executor is admitted to probate.
 29 (3) Any personal representative or collector required to give a new bond or
 30 furnish additional security pursuant to G.S. 28A-8-3 fails to do so within the
 31 time ordered.
 32 (4) A nonresident personal representative refuses or fails to obey any citation,
 33 notice, or process served on him or his process agent. that nonresident
 34 personal representative or the process agent of the nonresident personal
 35 representative.
 36 (5) A trustee in bankruptcy, liquidating agent, or receiver has been appointed for
 37 any personal representative or collector, or any personal representative or
 38 collector has executed an assignment for the benefit of creditors.
 39 (6) A personal representative has failed to file an inventory or an annual
 40 account with the clerk of superior court, as required by Article 20 and
 41 Article 21 of this Chapter, and proceedings to compel such filing pursuant to
 42 G.S. 28A-20-2 or 28A-21-4 cannot be had because service cannot be
 43 completed because the personal representative cannot be found.

44 (b) Procedure. – Upon the occurrence of any of the acts set forth in subsection ~~(a)~~, (a) of
 45 this section, the clerk of superior court shall enter an order revoking the letters issued to such
 46 personal representative or collector and shall cause a copy of the order to be served on ~~him or~~
 47 his process agent. the personal representative or collector or the personal representative's or
 48 collector's process agent.

49 **"§ 28A-9-3. Effect of revocation.**

50 Upon entry of the order revoking ~~his~~ a personal representative's or collector's letters, the
 51 authority of the personal representative or collector shall cease. ~~He~~ The personal representative

1 or collector shall surrender all assets of the estate under his control to his the control of the
2 personal representative or collector to the personal representative's or collector's successor, or
3 the remaining personal representative or collector or to the clerk of superior court; and shall file
4 an accounting in the form prescribed by Article 21 of this Chapter. A personal representative or
5 collector whose letters are revoked pursuant to G.S. 28A-9-2(a)(1) or 28A-9-2(a)(2) shall not
6 thereby incur personal liability for administrative acts performed prior to revocation except as
7 provided in G.S. 28A-13-10.

8 **"§ 28A-9-4. Appeal; stay effected.**

9 Any interested person may appeal from the order of the clerk of superior court granting or
10 denying revocation. ~~The procedure shall be the same as in a special proceeding. If the~~
11 revocation as a special proceeding pursuant to G.S. 28A-2-9(b). The clerk of superior court has
12 revoked the letters, such appeal shall stay the judgment and order of may issue a stay of an
13 order revoking the letters upon the appellant posting an appropriate bond set by the clerk until
14 the cause is heard and determined upon appeal.

15 **"§ 28A-9-5. Interlocutory orders.**

16 Pending any proceeding or appeal with respect to revocation of letters, the clerk of superior
17 court may enter such interlocutory orders as are necessary to preserve the assets of the estate.

18 **"§ 28A-9-6. Appointment of successor to personal representative or collector whose**
19 **letters have been revoked; when not required.**

20 Upon the revocation of letters issued to a sole or last surviving personal representative or
21 collector, the clerk of superior court shall appoint another personal representative or collector
22 as provided by G.S. 28A-4-1 to act as ~~his successor.~~ successor to the sole or last surviving
23 personal representative or collector. When two or more personal representatives or collectors
24 have qualified, and the letters of one or more personal representatives or collectors are revoked,
25 leaving in office one or more personal representatives or collectors, the appointment of
26 successors shall not be required unless:

27 (1) The clerk of superior court determines, in ~~his discretion;~~ the discretion of the
28 clerk of superior court, that it is in the best interest of the estate to appoint a
29 successor or successors to the personal representatives or collectors whose
30 letters have been revoked, or

31 (2) In the case of executors, the will so provides.

32 **"§ 28A-9-7. Rights and duties devolve on successor.**

33 After the revocation of letters pursuant to this Article and upon the qualification and
34 appointment of a successor, the substituted personal representative or collector shall succeed to
35 all the powers stated in G.S. 28A-13-7. ~~He~~ The substituted personal representative or collector
36 shall be subject to all the duties, responsibilities and liabilities of the original personal
37 representative or collector, other than liabilities arising out of the grounds for revocation.

38 "Article 10.

39 "Resignation.

40 **"§ 28A-10-1. Clerk's power to accept resignation.**

41 The clerk of superior court in the county where a person has been appointed personal
42 representative shall have the power to accept ~~his~~ that person's resignation.

43 **"§ 28A-10-2. Contents of petition; notice.**

44 (a) When a personal representative desires to resign ~~his~~ the personal representative's
45 office, he the personal representative shall file a verified petition in the office of the clerk of the
46 superior court, setting forth:

47 (1) The facts relating to ~~his~~ the personal representative's appointment and
48 qualifications;

49 (2) The names and residences of all interested persons known to ~~him;~~ the
50 personal representative;

- 1 (3) A full statement of the reasons why the petitioner should be permitted to
2 resign his the petitioner's office; and
- 3 (4) A statement that ~~he~~ the personal representative has filed with the clerk of
4 superior court his the personal representative's accounts and a record of ~~his~~
5 the personal representative's conduct of the office.

6 (b) Notice of the petition for resignation, together with the date and time of the hearing
7 thereon, shall be served upon all interested persons named in the petition in such manner as the
8 clerk of superior court shall determine.

9 **"§ 28A-10-3. Statement of account; record of conduct.**

10 When the personal representative files ~~his~~ the personal representative's petition requesting
11 permission to resign ~~his the personal representative's~~ office, ~~he~~ the personal representative shall
12 also file a verified statement of:

- 13 (1) ~~His—~~The personal representative's accounts since ~~his that personal~~
14 representative's qualification, or if ~~he~~ the personal representative has
15 previously filed an account, a statement of ~~his~~ the personal representative's
16 accounts since the date thereof;
- 17 (2) The assets of the estate and their location;
- 18 (3) The debts and liabilities of the estate;
- 19 (4) All facts and circumstances known to ~~him~~ the personal representative the
20 disclosure of which is necessary for a full and fair assessment of ~~his the~~
21 personal representative's conduct of the office; and
- 22 (5) All additional facts and circumstances known to ~~him~~ the personal
23 representative the disclosure of which is necessary for a full and fair
24 understanding of all matters concerning the estate.

25 **"§ 28A-10-4. Hearing; order.**

26 The clerk of superior court shall conduct a hearing in accordance with Article 2 of this
27 Chapter on the petition not sooner than 10 days nor later than 20 days after notice to interested
28 persons pursuant to G.S. 28A-10-2(b). If the clerk of superior court finds all the accounts
29 proper, including accounts subsequent to the filing of the petition, and determines that the
30 resignation of the personal representative is in the best interest of the estate and can be allowed,
31 the resignation may be approved subject to the provisions of G.S. 28A-10-5. Except in cases
32 governed by G.S. 28A-10-8, ~~he~~ the clerk of superior court shall appoint a successor pursuant to
33 G.S. 28A-4-1.

34 **"§ 28A-10-5. When resignation becomes effective.**

35 The resignation shall not become effective until:

- 36 (1) A successor has been duly qualified, unless G.S. 28A-10-8 is applicable; and
- 37 (2) The clerk of superior court is satisfied that the accounts of the personal
38 representative are true and correct; and
- 39 (3) The personal representative has accounted to ~~his the personal~~
40 representative's successor in full for all assets of the estate, or if pursuant to
41 G.S. 28A-10-8 no successor is appointed, to the remaining personal
42 representative or representatives, and ~~his the personal representative's~~ final
43 account has been filed with and approved by the clerk of superior court.

44 **"§ 28A-10-6. Appeal; stay effected.**

45 Any interested person who has appeared at the hearing and objected to the order of the clerk
46 of superior court granting or denying resignation may appeal ~~therefrom. The procedure shall be~~
47 ~~the same as in a special proceeding. If the~~ an order denying or allowing the resignation as a
48 special proceeding pursuant to G.S. 28A-2-9(b). The clerk of superior court has allowed the
49 resignation, such appeal shall stay the order of may issue a stay of an order allowing the
50 resignation upon the appellant posting an appropriate bond set by the clerk until the cause is
51 heard and determined upon appeal.

"§ 28A-10-7. Rights and duties devolve on successor.

Upon the qualification and appointment of a successor to a personal representative whose resignation has been allowed as provided in G.S. 28A-10-4, the substituted personal representative shall succeed to all the powers stated as provided in G.S. 28A-13-7 and shall also be subject to all the duties, responsibilities, and liabilities stated as provided in Article 13.

"§ 28A-10-8. When appointment of successor to personal representative who has resigned is not required.

When two or more personal representatives have qualified, and one or more personal representatives resign pursuant to this Article, leaving in office one or more personal representatives, the appointment of successors shall not be required unless:

- (1) The clerk of superior court determines, in ~~his~~ the clerk's discretion, that it is in the best interest of the estate to appoint a successor or successors to the personal representative or representatives who have resigned, or
- (2) In the case of executors, the will so provides.

"Article 11.

"Collectors.

"§ 28A-11-1. Appointment and qualifications of collectors.

When for any reason other than a situation provided for in Chapter 28B or Chapter 28C entitled "Estates of Absentees in Military Service" and "Estates of Missing Persons" a delay is encountered in the issuance of letters to a personal representative or when, in any case, the clerk of superior court finds that the best interest of the estate would be served by the appointment of a collector, ~~he~~ the clerk of superior court may issue letters of collection to any person or persons not disqualified to act as a personal representative under G.S. 28A-4-2.

"§ 28A-11-2. Oath and bond.

Every collector shall take an oath as prescribed in G.S. 28A-7-1 and give bond as required in Article 8 of this Chapter for personal representatives.

"§ 28A-11-3. Duties and powers of collectors.

(a) Every collector shall:

- (1) Take such possession, custody, or control of the personal property of the decedent as in the exercise of reasonable judgment ~~he~~ the collector deems necessary to its preservation;
- (2) Publish notices to creditors as provided by Article 14 of this Chapter;
- (3) Collect claims payable to the estate;
- (4) Maintain and defend actions in behalf of the estate;
- (5) File inventories, accounts, and other reports in the same manner as is required of personal representatives;
- (6) Renew obligations of the decedent in the same manner as the personal representative is allowed to do under the provisions of Article 13 of this Chapter; and
- (7) Under the express direction and supervision of the clerk of superior court, possess, exercise and perform all other powers, duties and liabilities given to personal representatives by Article 13 of this Chapter.

"§ 28A-11-4. When collectors' powers cease; settlement of accounts.

(a) When letters testamentary or letters of administration are issued, or when in any case the clerk of superior court terminates the appointment of the collector, the powers of the collector cease.

(b) Upon the termination of ~~his~~ the collector's appointment, the collector shall surrender to the personal representative or to the person otherwise entitled thereto or to the clerk all assets of the estate under this control and shall file with the clerk a verified statement of:

"§ 28A-12-5. Powers and duties.

(a) The public administrator shall have, in respect to the several estates in ~~his~~ the public administrator's hands, all the rights and powers and shall be subject to all the duties and liabilities of other personal representatives.

(b) After the expiration of the term of office of a public administrator or ~~his~~ the public administrator's resignation as public administrator, ~~he~~ the public administrator shall continue, subject to the provisions of Articles 9 and 10 of this Chapter, to administer the several estates previously committed to ~~him~~ the public administrator until ~~he~~ the public administrator has fully administered the same, and ~~his~~ the public administrator's bonds shall continue in effect as to all such estates.

"§ 28A-12-6. Removal from office.

If letters of administration issued to the public administrator with respect to any estate are subsequently revoked on the grounds that they were obtained by false representation as provided in G.S. 28A-9-1(a)(2), or on the grounds as specified in G.S. 28A-9-1(a)(1), 28A-9-1(a)(3), 28A-9-2(a)(3), 28A-9-2(a)(5), or 28A-9-2(a)(6) or if ~~he~~ the public administrator becomes a nonresident of the State, the clerk of superior court shall order the removal of the public administrator from ~~office.~~ office upon notice and hearing in accordance with Article 2 of this Chapter.

"§ 28A-12-7. Procedure after removal from office.

The clerk of superior court shall require of any public administrator who is removed from office pursuant to G.S. 28A-12-6 a complete accounting of all ~~his~~ of the public administrator's activities as public administrator and for the property remaining under ~~his~~ the public administrator's control by reason of ~~his~~ the public administrator's appointment under this Article as administrator of any estate that has not been fully administered at the time of ~~his~~ the public administrator's removal. If it appears to the clerk of superior court that grounds exist for revocation of letters of administration issued with respect to any such estate, ~~he~~ the clerk shall proceed in accordance with the provisions of Article 9 of this Chapter. If letters of administration are revoked pursuant to such proceedings, the clerk of superior court shall issue letters of administration to the successor public administrator or to some other person not disqualified under G.S. 28A-4-2.

"§ 28A-12-8. Compensation.

A public administrator shall be compensated in accordance with Article 23 of this Chapter.

"Article 13.

"Representative's Powers, Duties and Liabilities.

"§ 28A-13-1. Time of accrual of duties and powers.

The duties and powers of a personal representative commence upon ~~his or her~~ the personal representative's appointment. The powers of a personal representative relate back to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. However, a person named executor in a will may, prior to appointment, carry out written instructions of the decedent relating to the decedent's body, funeral and burial arrangements; provided that a health care agent authorized in a valid health care power of attorney to make body, funeral, and burial arrangements shall have precedence in making these arrangements, both before and after qualification of the decedent's personal representative, to the extent provided in G.S. 32A-19(b). A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

"§ 28A-13-2. General duties; relation to persons interested in estate.

A personal representative is a fiduciary who, in addition to the specific duties stated in this Chapter, is under a general duty to settle the estate of ~~his~~ the personal representative's decedent as expeditiously and with as little sacrifice of value as is reasonable under all of the circumstances. ~~He~~ A personal representative shall use the authority and powers conferred upon

1 ~~him~~ the personal representative by this Chapter, by the terms of the will under which ~~he~~the
2 personal representative is acting, by any order of court in proceedings to which ~~he~~ the personal
3 representative is party, and by the rules generally applicable to fiduciaries, for the best interests
4 of all persons interested in the estate, and with due regard for their respective rights.

5 **"§ 28A-13-3. Powers of a personal representative or fiduciary.**

6 (a) Except as qualified by express limitations imposed in a will of the decedent or a
7 court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint
8 personal representatives, a personal representative has the power to perform in a reasonable and
9 prudent manner every act which a reasonable and prudent person would perform incident to the
10 collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the
11 desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and
12 expeditious manner as provided by law, including the powers specified in the following
13 subdivisions:

- 14 (1) To take possession, custody or control of the personal property of the
15 decedent. If in the opinion of the personal representative ~~his~~ the personal
16 representative's possession, custody or control of such property is not
17 necessary for purposes of administration, such property may be left with or
18 surrendered to the heir or devisee presumptively entitled thereto. ~~He~~ The
19 personal representative has the power to take possession, custody or control
20 of the real property of the decedent if ~~he~~ the personal representative
21 determines such possession, custody or control is in the best interest of the
22 administration of the ~~estate.~~ estate, including the power to eject occupants of
23 real property. Prior to exercising such power over real property the
24 procedure as set out in subsection G.S. 28A-13-3(c) shall be ~~followed.~~
25 followed, except with respect to real property that is devised to the personal
26 representative in the decedent's will or title to which is acquired by the
27 personal representative during the estate administration, in which case the
28 personal representative shall be immediately entitled to custody, possession,
29 and control, and may institute an estate proceeding under subsection (d) of
30 this section to enforce those rights. If the personal representative determines
31 that such possession, custody or control is not in the best interest of the
32 administration of the estate such property may be left with or surrendered to
33 the heir or devisee presumptively entitled thereto.
- 34 (2) To retain assets owned by the decedent pending distribution or liquidation
35 even though such assets may include items which are otherwise improper for
36 investment of trust funds.
- 37 (3) To receive assets from other fiduciaries or other sources.
- 38 (4) To complete performance of contracts entered into by the decedent that
39 continue as obligations of ~~his~~ the decedent's estate, or to refuse to complete
40 such contracts, as the personal representative may determine to be in the best
41 interests of the estate, but such refusal shall not limit any cause of action
42 which might have been maintained against decedent if ~~he~~ the decedent had
43 refused to complete such contract. In respect to enforceable contracts by the
44 decedent to convey an interest in land, the provisions of G.S. 28A-17-9 are
45 controlling.
- 46 (5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank
47 operated by the personal representative pursuant to G.S. 53-163.1.
- 48 (6) To make, as a fiduciary, any form of investment allowed by law to the State
49 Treasurer under G.S. 147-69.1, with funds of the estate, when such are not
50 needed to meet debts and expenses immediately payable and are not
51 immediately distributable, including money received from the sale of other

1 assets; or to enter into other short-term loan arrangements that may be
2 appropriate for use by trustees or beneficiaries generally. Provided, that in
3 addition to the types of investments hereby authorized, deposits in
4 interest-bearing accounts of any credit union authorized to do business in
5 this State, when such deposits are insured in the same manner as required by
6 G.S. 147-69.1 for deposits in a savings and loan association, are hereby
7 authorized.

8 (7) To abandon or relinquish all rights in any property when, in the opinion of
9 the personal representative acting reasonably and in good faith, it is
10 valueless, or is so encumbered or is otherwise in such condition that it is of
11 no benefit to the estate.

12 (8) To vote shares of stock or other securities in person or by general or limited
13 proxy, and to execute waivers, consents or objections with respect to such
14 stock or securities.

15 (9) To pay calls, assessments, and any other sums chargeable or accruing
16 against or on account of securities.

17 (10) To hold shares of stock or other securities in the name of a nominee, without
18 mention of the estate in the instrument representing stock or other securities
19 or in registration records of the issuer thereof; provided, that

20 a. The estate records and all reports or accounts rendered by the
21 personal representative clearly show the ownership of the stock or
22 other securities by the personal representative and the facts regarding
23 its holdings, and

24 b. The nominee shall not have possession of the stock or other
25 securities or access thereto except under the immediate supervision
26 of the personal representative or when such securities are deposited
27 by the personal representative in a clearing corporation as defined in
28 G.S. 25-8-102.

29 Such personal representative shall be personally liable for any acts or
30 omissions of such nominee in connection with such stock or other securities
31 so held, as if such personal representative had done such acts or been guilty
32 of such omissions.

33 (11) To insure, at the expense of the estate, the assets of the estate in ~~his~~ the
34 personal representative's possession, custody or control against damage or
35 loss.

36 (12) To borrow money for such periods of time and upon such terms and
37 conditions as to rates, maturities, renewals, and security as the personal
38 representative shall deem advisable, including the power of a corporate
39 personal representative to borrow from its own banking department, for the
40 purpose of paying debts, taxes, and other claims against the estate, and to
41 mortgage, pledge or otherwise encumber such portion of the estate as may
42 be required to secure such loan or loans. In respect to the borrowing of
43 money on the security of the real property of the decedent, G.S. 28A-17-11
44 is controlling.

45 (13) To renew obligations of the decedent for the payment of money.

46 (14) To advance ~~his~~ the personal representative's own money for the protection of
47 the estate, and for all expenses, losses and liabilities sustained in the
48 administration of the estate or because of the holding or ownership of any
49 estate assets. For such advances, with any interest, the personal
50 representative shall have a lien on the assets of the estate as against a devisee
51 or heir.

- 1 (15) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise
2 deal with and settle claims in favor of or against the estate.
- 3 (16) To pay taxes, assessments, his the personal representative's own
4 compensation, and other expenses incident to the collection, care,
5 administration and protection of the assets of the estate in his the personal
6 representative's possession, custody or control.
- 7 (17) To sell or exercise stock subscription or conversion rights; consent, directly
8 or through a committee or other agent, to the reorganization, consolidation,
9 merger, dissolution, or liquidation of a corporation or other business
10 enterprise.
- 11 (18) To allocate items of income or expense to either estate income or principal,
12 as permitted or provided by law.
- 13 (19) To employ persons, including attorneys, auditors, investment advisors,
14 appraisers or agents to advise or assist ~~him~~ the personal representative in the
15 performance of his the personal representative's administrative duties.
- 16 (20) To continue any business or venture in which the decedent was engaged at
17 the date of his the decedent's death, where such continuation is reasonably
18 necessary or desirable to preserve the value, including goodwill, of the
19 decedent's interest in such business. With respect to the use of the decedent's
20 interest in a continuing partnership, the provisions of G.S. 59-71 and 59-72
21 qualify this power; and with respect to farming operations engaged in by the
22 decedent at the time of his the decedent's death, the provisions of
23 G.S. 28A-13-4 qualify this power.
- 24 (21) To incorporate or participate in the incorporation of any business or venture
25 in which the decedent was engaged at the time of his the decedent's death.
- 26 (22) To provide for the exoneration of the personal representative from personal
27 liability in any contract entered into on behalf of the estate.
- 28 (23) To maintain actions for the wrongful death of the decedent according to the
29 provisions of Article 18 of this Chapter and to compromise or settle any such
30 claims, whether in litigation or not. Unless all persons who would be entitled
31 to receive any damages recovered under G.S. 28A-18-2(b)(4) are competent
32 adults and have consented in writing, any such settlement shall be subject to
33 the approval of a judge of the court or tribunal exercising jurisdiction over
34 the action or a judge of the district or superior court in cases where no action
35 has previously been filed. If the claim is brought under Article 31 of Chapter
36 143 of the General Statutes, the settlement is subject to the approval of the
37 Industrial Commission in accordance with that Article. It shall be the duty of
38 the personal representative in distributing the proceeds of such settlement in
39 any instance to take into consideration and to make a fair allocation to those
40 claimants for funeral, burial, hospital and medical expenses which would
41 have been payable from damages which might have been recovered had a
42 wrongful death action gone to judgment in favor of the plaintiff.
- 43 (24) To maintain any appropriate action or proceeding to recover possession of
44 any property of the decedent, or to determine the title thereto; to recover
45 damages for any injury done prior to the death of the decedent to any of his
46 the decedent's property; and to recover damages for any injury done
47 subsequent to the death of the decedent to such property.
- 48 (25) To purchase at any public or private sale of any real or personal property
49 belonging to the decedent's estate or securing an obligation of the estate as a
50 fiduciary for the benefit of the estate when, in his the personal
51 representative's opinion, it is necessary to prevent a loss to the estate.

- 1 (26) To sell or lease personal property of the estate in the manner prescribed by
2 the provisions of Article 16 of this Chapter.
- 3 (27) To sell or lease real property of the estate in the manner prescribed by the
4 provisions of Article 17 of this Chapter.
- 5 (28) To enter into agreements with taxing authorities to secure the benefit of the
6 federal marital deduction pursuant to G.S. 28A-22-6.
- 7 (29) To pay or satisfy the debts and claims against the decedent's estate in the
8 order and manner prescribed by Article 19 of this Chapter.
- 9 (30) To distribute any sum recovered for the wrongful death of the decedent
10 according to the provisions of G.S. 28A-18-2; and to distribute all other
11 assets available for distribution according to the provisions of this Chapter or
12 as otherwise lawfully authorized.
- 13 (31) To exercise such additional lawful powers as are conferred upon ~~him~~the
14 personal representative by the will.
- 15 (32) To execute and deliver all instruments which will accomplish or facilitate
16 the exercise of the powers vested in the personal representative.
- 17 (33) Repealed by Session Laws 2009-48, s. 10, effective October 1, 2009, and
18 applicable to renunciations and powers of attorney executed on or after that
19 date.

20 (a1) Except as qualified by express limitations imposed in a will of the decedent, and
21 subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal
22 representatives, a personal representative shall have absolute discretion to make the election as
23 to which items of the decedent's personal and household effects shall be excluded from the
24 carry over basis provision of the federal income tax law and such election shall be conclusive
25 and binding on all concerned.

26 (a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal
27 representatives, a personal representative has the power to renounce in accordance with the
28 provisions of Chapter 31B of the General Statutes.

29 (b) Any question arising out of the powers conferred by subsections (a), (a1), and (a2)
30 of this section shall be determined in accordance with the provisions of Article 18 of this
31 Chapter.

32 (c) ~~Prior~~ Except with respect to real property that is devised to the personal
33 representative in the decedent's will, or title to which is acquired by the personal representative
34 during the estate administration, in which case the personal representative shall be immediately
35 entitled to custody, possession, and control and may institute an estate proceeding under
36 subsection (d) of this section to enforce those rights, prior to the personal representative
37 exercising possession, custody or control over real property of the estate ~~he~~ estate, the personal
38 representative shall petition the clerk of court to obtain an order authorizing such possession,
39 custody or control. The petition shall include:

- 40 (1) A description of the real property which is the subject of the petition;
- 41 (2) The names, ages, and addresses, if known, of the devisees and heirs of the
42 decedent;
- 43 (3) A statement by the personal representative that ~~he~~ the personal
44 representative has determined that such possession, custody or control is in
45 the best interest of the administration of the estate.

46 The devisees and heirs will be made parties to the proceeding by service of summons in the
47 manner prescribed by law. If the clerk of court determines that it is in the best interest of the
48 administration of the estate to authorize the personal representative to take possession, custody
49 or ~~control~~ control, the clerk of court shall grant an order authorizing that power. If a special
50 proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the

1 personal representative may petition for possession, custody, or control of any real property as
2 a part of that proceeding and is not required to institute a separate special proceeding.

3 (d) The personal representative shall have the power to institute an estate proceeding
4 pursuant to Article 2 of this Chapter to enforce the rights set forth in this subsection. The clerk
5 of superior court may enter orders necessary to enforce the rights set forth in this subsection. If
6 the person occupying the real property is a tenant or lessee of the property, the personal
7 representative may seek ejectment of the tenant or lessee only pursuant to the provisions of
8 Article 3 of Chapter 42 of the General Statutes.

9 **"§ 28A-13-4. Continuance of farming operations of deceased persons.**

10 When any person dies while engaged in farming operations, his the decedent's personal
11 representative is authorized to continue such farming operations until the end of the current
12 calendar year, and until all crops grown during that year are harvested. The net income from
13 such farming operations shall be personal assets of the estate. Any indebtedness incurred in
14 connection with such farming operations after the date of death shall be preferred over the
15 claims of any heir, legatee, devisee, distributee, general or unsecured creditor of said estate.
16 Nothing herein contained shall limit the powers of a personal representative under the terms of
17 a will.

18 **"§ 28A-13-5. Personal representatives hold in joint tenancy.**

19 Any estate or interest in property which becomes vested in two or more personal
20 representatives shall be held by them in joint tenancy with the incident of survivorship.

21 **"§ 28A-13-6. Exercise of powers of joint personal representatives by one or more than
22 one.**

23 (a) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.

24 (b) If a will expressly makes provision for the execution of any of the powers of
25 personal representatives by all of them or by any one or more of them, the provisions of the
26 will govern.

27 (c) Repealed by Session Laws 2005-192, s. 5, effective January 1, 2006.

28 (c1) If there is no governing provision in the will, personal representatives may, by
29 written agreement signed by all of them and filed with and approved by the clerk of superior
30 court of the county in which the personal representatives qualified, provide that any designated
31 one or more of the personal representatives may exercise one or more of the following powers:

32 (1) Establish and maintain bank accounts for the ~~trust~~ estate and issue checks for
33 the estate.

34 (2) Maintain inventories, accountings, and income and expense records of the
35 estate.

36 (3) Enter any safety deposit box rented by the estate.

37 (4) Employ persons as advisors or assistants in the performance of
38 administrative duties, including agents, attorneys, accountants, brokers,
39 appraisers, and custodians.

40 (5) List estate property for taxes and prepare and file tax returns for the ~~trust~~
41 estate.

42 (6) Collect and give receipts for claims and debts of the estate.

43 (7) Pay debts, claims, costs of administration, and taxes of the estate.

44 (8) Compromise, adjust, or otherwise settle any claim by or against the ~~trust~~
45 estate and release, in whole or in part, a claim belonging to the estate.

46 (9) Have custody of the estate property.

47 (10) Perform any function relating to investment of estate assets.

48 (d) Subject to subsection (b) of this section, if two or more personal representatives own
49 shares of corporate stock or other securities, their acts with respect to voting shall have the
50 following effect:

- 1 (1) If only one votes, in person or by proxy, that personal representative's act
2 binds all;
- 3 (2) If more than one vote, in person or by proxy, the act of the majority so
4 voting binds all;
- 5 (3) If more than one vote, in person or by proxy, but the vote is evenly split on
6 any particular matter, each faction is entitled to vote the stock or other
7 securities in question proportionately.

8 (e) Subject to subsections (b), (c1), and (d) of this section, all other acts and duties must
9 be performed by both of the personal representatives if there are two, and by a majority of them
10 if there are more than two. No personal representative who has not joined in exercising a power
11 shall be liable for the consequences of such exercise, nor shall a dissenting personal
12 representative be liable for the consequences of an act in which the personal representative
13 joins at the direction of the majority of the personal representatives, if that personal
14 representative expressed his or her dissent in writing to any other personal representative at or
15 before the time of such joinder.

16 (f) No personal representative shall be relieved of liability on his or her bond or
17 otherwise by entering into any agreement under this section.

18 **"§ 28A-13-7. Powers and duties of successor personal representative.**

19 A successor personal representative is one appointed to succeed a personal representative
20 whose appointment has terminated by death, resignation or revocation. Unless a contrary intent
21 clearly appears from the will, a successor personal representative has all the powers and duties,
22 discretionary or otherwise, of the original personal representative.

23 **"§ 28A-13-8. Powers and duties of administrator with will annexed.**

24 When an administrator with the will annexed has been appointed, whether or not ~~he~~ the
25 administrator is succeeding a previously appointed personal representative, ~~he~~ that
26 administrator has the same powers and duties, discretionary or otherwise, as if ~~he~~ the
27 administrator had been named executor in the will, unless a contrary intent clearly appears from
28 the will.

29 **"§ 28A-13-9. Powers of surviving personal representative.**

30 When one or more of those nominated as coexecutors in a will is not appointed, or when the
31 appointment of one or more joint personal representatives is terminated, every power granted to
32 such joint personal representatives may be exercised by the surviving representative or
33 representatives; provided that nothing to the contrary appears in the will of a testate decedent.

34 **"§ 28A-13-10. Liability of personal representative.**

35 (a) Property of Estate. – A personal representative shall be liable for and chargeable in
36 ~~his~~ the personal representative's accounts with all of the estate of the decedent which comes
37 into ~~his~~ the personal representative's possession at any time, including all the income therefrom;
38 but ~~he~~ the personal representative shall not be liable for any debts due to the decedent or other
39 assets of the estate which remain uncollected without ~~his~~ the personal representative's fault.
40 Except for commissions allowable by law, ~~he~~ the personal representative shall not be entitled to
41 any profits caused by an increase in values, nor be chargeable with loss by a decrease in value
42 or destruction without ~~his~~ the personal representative's fault, of any part of the estate.

43 (b) Property Not a Part of Estate. – A personal representative shall be chargeable in ~~his~~
44 the personal representative's accounts with property not a part of the estate which comes into
45 ~~his~~ the personal representative's possession at any time and shall be liable to the persons
46 entitled thereto if:

- 47 (1) The property was received under a duty imposed on ~~him~~ the personal
48 representative by law in the capacity of personal representative; or
- 49 (2) ~~He~~ The personal representative has commingled such property with the
50 assets of the estate.

1 (c) Breach of Duty. – A personal representative shall be liable and chargeable in his
2 personal representative's accounts for any loss to the estate arising from his the personal
3 representative's embezzlement or commingling of the estate with other property; for loss to the
4 estate through self-dealing; for any loss to the estate from wrongful acts or omissions of his the
5 personal representative's joint personal representatives which ~~he~~ the personal representative
6 could have prevented by the exercise of ordinary care; and for any loss to the estate arising
7 from his the personal representative's failure to act in good faith and with such care, foresight
8 and diligence as an ordinarily reasonable and prudent ~~man~~ person would act with his the
9 ordinarily reasonable and prudent person's own property under like circumstances. If the
10 exercise of power concerning the estate is improper, the personal representative is liable for
11 breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as
12 a trustee of an express trust.

13 "Article 14.

14 "Notice to Creditors.

15 "**§ 28A-14-1. Notice for claims.**

16 (a) Every personal representative and collector after the granting of letters shall notify
17 all persons, firms and corporations having claims against the decedent to present the same to
18 such personal representative or collector, on or before a day to be named in such notice, which
19 day must be at least three months from the day of the first publication or posting of such notice.
20 The notice shall set out a mailing address for the personal representative or collector. The
21 notice shall be published once a week for four consecutive weeks in a newspaper qualified to
22 publish legal advertisements, if any such newspaper is published in the county. If there is no
23 newspaper published in the county, but there is a newspaper having general circulation in the
24 county, then at the option of the personal representative, or collector, the notice shall be
25 published once a week for four consecutive weeks in the newspaper having general circulation
26 in the county and posted at the courthouse or the notice shall be posted at the courthouse and
27 four other public places in the county. Personal representatives are not required to publish or
28 mail notice to creditors if the only asset of the estate consists of a claim for damages arising
29 from death by wrongful act. When any collector or personal representative of an estate has
30 published or mailed the notice provided for by this section, no further publication or mailing
31 shall be required by any other collector or personal representative.

32 (b) Prior to filing the proof of notice required by G.S. 28A-14-2, every personal
33 representative and collector shall personally deliver or send by first class mail to the last known
34 address a copy of the notice required by subsection (a) of this section to all persons, firms, and
35 corporations having unsatisfied claims against the decedent who are actually known or can be
36 reasonably ascertained by the personal representative or collector within 75 days after the
37 granting of letters. Provided, however, no notice shall be required to be delivered or mailed
38 with respect to any claim that is recognized as a valid claim by the personal representative or
39 collector.

40 (c) The personal representative or collector may personally deliver or mail by first class
41 mail a copy of the notice required by subsection (a) of this section to all creditors of the estate
42 whose names and addresses can be ascertained with reasonable diligence. If the personal
43 representative or collector in good faith believes that the notice required by subsection (b) of
44 this section to a particular creditor is or may be required and gives notice based on that belief,
45 the personal representative or collector is not liable to any person for giving the notice, whether
46 or not the notice is actually required by subsection (b) of this section. If the personal
47 representative or collector in good faith fails to give notice required by subsection (b) of this
48 section, the personal representative or collector is not liable to any person for such failure.

49 "**§ 28A-14-1.1. Validation of certain notices.**

50 (a) Any notice to creditors published or posted under G.S. 28A-14-1 which did not, in
51 the advertisement, name the day after which claims could not be presented is validated.

1 (b) This section applies to all notices published and posted between October 1, 1975,
2 and January 1, 1991, except that it does not affect any pending litigation or any litigation
3 instituted within 90 days of January 1, 1991.

4 **"§ 28A-14-2. Proof of notice.**

5 A copy of the notice directed by G.S. 28A-14-1(a) to be posted or published, together with
6 an affidavit or affidavits of one of the persons authorized by G.S. 1-600(a) to make affidavits to
7 the effect that such notice was posted or published in accordance with G.S. 28A-14-1(a), and an
8 affidavit of the personal representative or collector, or the attorney for the personal
9 representative or collector, to the effect that a copy of the notice was personally delivered or
10 mailed to each creditor entitled to notice in accordance with G.S. 28A-14-1(b) shall be filed in
11 the office of the clerk of superior court by the personal representative or collector at the time
12 the inventory required by G.S. 28A-20-1 is filed. The copy of the notice, together with the
13 affidavit or affidavits, shall be deemed a record of the court and a copy thereof, duly certified
14 by the clerk of superior court, shall be received as prima facie evidence of the fact of
15 publication or mailing in all the courts of this State.

16 **"§ 28A-14-3. Personal notice to creditor.**

17 The personal representative or collector may cause the notice to be personally served on
18 any creditor.

19 "Article 15.

20 "Assets; Discovery of Assets.

21 **"§ 28A-15-1. Assets of the estate generally.**

22 (a) All of the real and personal property, both legal and equitable, of a decedent shall be
23 assets available for the discharge of debts and other claims against ~~his~~ the decedent's estate in
24 the absence of a statute expressly excluding any such property. Provided that before real
25 property is selected the personal representative must determine that such selection is in the best
26 interest of the administration of the estate.

27 (b) In determining what property of the estate shall be sold, leased, pledged, mortgaged
28 or exchanged for the payment of the debts of the decedent and other claims against ~~his~~ the
29 decedent's estate, the personal representative shall select the assets which in ~~his~~ the personal
30 representative's judgment are calculated to promote the best interests of the estate. In the
31 selection of assets for this purpose, there shall be no necessary distinction between real and
32 personal property, absent any contrary provision in the will.

33 (c) If it shall be determined by the personal representative that it is in the best interest of
34 the administration of the estate to sell, lease, or mortgage any real estate or interest therein to
35 obtain money for the payment of debts and other claims against the decedent's estate, the
36 personal representative shall institute a special proceeding before the clerk of superior court for
37 such purpose pursuant to Article 17 of this Chapter, except that no such proceeding shall be
38 required for a sale made pursuant to authority given by will. A general provision granting
39 authority to the personal representative to sell the testator's real property, or incorporation by
40 reference of the provisions of G.S. 32-27(2) shall be sufficient to eliminate the necessity for a
41 proceeding under Article 17. If a special proceeding has been instituted by the personal
42 representative pursuant to G.S. 28A-13-3(c), the personal representative may petition for sale,
43 lease, or mortgage of any real property as a part of that proceeding and is not required to
44 institute a separate special proceeding.

45 (d) The crops of every deceased person, remaining ungathered at ~~his~~ the person's death,
46 shall, in all cases, belong to the personal representative or collector, as part of the personal
47 assets of the decedent's estate; and shall not pass to the devisee by virtue of any devise of the
48 land, unless such intent be manifest and specified in the will.

49 **"§ 28A-15-2. Title and possession of property.**

50 (a) Personal Property. – Subsequent to the death of the decedent and prior to the
51 appointment and qualification of the personal representative or collector, the title and the right

1 of possession of personal property of the decedent is vested in ~~his~~ the decedent's heirs; but upon
2 the appointment and qualification of the personal representative or collector, the heirs shall be
3 divested of such title and right of possession which shall be vested in the personal
4 representative or collector relating back to the time of the decedent's death for purposes of
5 administering the estate of the decedent. But, if in the opinion of the personal representative,
6 ~~his~~ the personal representative's possession, custody and control of any item of personal
7 property is not necessary for purposes of administration, such possession, custody and control
8 may be left with or surrendered to the heir or devisee presumptively entitled thereto.

9 (b) Real Property. – The title to real property of a decedent is vested in ~~his~~ the
10 decedent's heirs as of the time of ~~his~~ the decedent's death; but the title to real property of a
11 decedent devised under a valid probated will becomes vested in the devisees and shall relate
12 back to the decedent's death, subject to the provisions of G.S. 31-39.

13 **"§ 28A-15-3. Nonexoneration of encumbered property.**

14 When real or personal property subject to any lien or security interest, except judgment
15 liens, is specifically devised, the devisee takes the property subject to the encumbrance and
16 without a right to have other assets of the decedent applied to discharge the secured obligation,
17 unless an express provision of the will confers such right of exoneration. A general
18 testamentary direction to pay the debts of the decedent is not sufficient to confer such right.

19 **"§ 28A-15-4. Encumbered assets.**

20 When any assets of the estate are encumbered by mortgage, pledge, lien or other security
21 interest, the personal representative may pay the encumbrance or any part thereof, renew or
22 extend any obligation secured by the encumbrance, or convey or transfer the encumbered assets
23 to the creditor in satisfaction of ~~his~~ the creditor's lien, in whole or in part, whether or not the
24 holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate;
25 provided that payment of an encumbrance shall not increase the share of the distributee entitled
26 to the encumbered assets unless the distributee is entitled to exoneration by express provisions
27 of the will.

28 **"§ 28A-15-5. Order in which assets appropriated; abatement.**

29 (a) General Rules. – In the absence of testamentary indication as to the order of
30 abatement, or some other controlling statute, shares of devisees and of heirs abate, without any
31 preference or priority as between real and personal property, in the following order:

- 32 (1) Property not disposed of by the will;
- 33 (2) Residuary devisees;
- 34 (3) General devisees;
- 35 (4) Specific devisees.

36 For purposes of abatement, a demonstrative devise of money or property payable out of or
37 charged on a particular fund or other property is treated as a specific devise; but if the particular
38 fund or property out of which the demonstrative devise is to be paid is nonexistent or
39 insufficient at the death of the testator, the deficiency is to be payable out of the general estate
40 of the decedent and is to be regarded as a general devise and must abate pro rata with other
41 general devisees. Abatement within each classification is in proportion to the amounts of
42 property each of the beneficiaries would have received, had full distribution of the property
43 been made in accordance with the terms of the will.

44 (b) Abatement; Sales; Contribution. – When property which has been specifically
45 devised is sold, leased, or mortgaged, or a security therein is created, by the personal
46 representative, abatement shall be achieved by ratable adjustments in, or contributions from
47 other interest in the remaining assets. The clerk of superior court shall, at the time of the
48 hearing on the petition for final distribution, determine the amounts of the respective
49 contributions and whether the same shall be made before distribution or shall constitute a lien
50 on specific property which is distributed.

51 **"§ 28A-15-6. Federal income tax refunds – joint returns.**

1 Upon the determination by the United States Treasury Department of an overpayment of
2 income tax by a married couple filing a joint federal income tax return, one of whom has died
3 since the filing of such return or where a joint federal income tax return is filed on behalf of a
4 husband and wife, one of whom has died prior to the filing of the return, any refund of the tax
5 by reason of such overpayment, if not in excess of five hundred dollars (\$500.00), shall be the
6 sole and separate property of the surviving spouse. In the event that both spouses are dead at
7 the time such overpayment is determined, such refund, if not in excess of five hundred dollars
8 (\$500.00), shall be the sole and separate property of the estate of the spouse who died last and
9 may be paid directly by the Treasury Department to the executor or administrator of such
10 estate, or to the person entitled to the possession of the assets of a small estate pursuant to the
11 provisions of Article 25 of this Chapter.

12 **"§ 28A-15-7. Federal income tax refunds – separate returns.**

13 Upon the determination by the United States Treasury Department of an overpayment of
14 income tax by any married person filing a separate return, any refund of the tax by reason of
15 such overpayment, if not in excess of two hundred fifty dollars (\$250.00), exclusive of interest,
16 shall be the sole and separate property of the surviving spouse, and the United States Treasury
17 Department may pay said sum directly to such surviving spouse, and such payment to the
18 extent thereof shall operate as a complete acquittal and discharge of the United States Treasury
19 Department.

20 **"§ 28A-15-8. State income tax returns.**

21 Upon the determination by the Secretary of Revenue of North Carolina of an overpayment
22 of income tax by any married person, any refund of the tax by reason of such overpayment, if
23 not in excess of two hundred dollars (\$200.00) exclusive of interest, shall be the sole and
24 separate property of the surviving spouse, and said Secretary of Revenue may pay said sum
25 directly to such surviving spouse, and such payment to the extent thereof shall operate as a
26 complete acquittal and discharge of the Secretary of Revenue.

27 **"§ 28A-15-9. Excess funds.**

28 If the amount of any refund exceeds the sums specified in G.S. 28A-15-6, 28A-15-7 or
29 28A-15-8, the sums specified therein and one half of any additional sums shall be the sole and
30 separate property of the surviving spouse. The remaining one half of such additional sums shall
31 be the property of the estate of the decedent spouse.

32 **"§ 28A-15-9.1. Phase II payments.**

33 A Phase II payment as defined in G.S. 28A-21-3.1 shall be the property of the distributees
34 paid in accordance with that section.

35 **"§ 28A-15-10. Assets of decedent's estate for limited purposes.**

36 (a) When needed to satisfy claims against a decedent's estate, assets may be acquired by
37 a personal representative or collector from the following sources:

- 38 (1) Tentative trusts created by the decedent in savings accounts for other
39 persons.
- 40 (2) Gifts causa mortis made by the decedent.
- 41 (3) Joint deposit accounts with right of survivorship created by decedent
42 pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies
43 with right of survivorship created by decedent in corporate stocks or other
44 investment securities.
- 45 (4) An interest in a security passing to a beneficiary pursuant to the provisions
46 of Article 4 of Chapter 41 of the General Statutes.

47 Such assets shall be acquired solely for the purpose of satisfying such claims, however, and
48 shall not be available for distribution to heirs or devisees.

49 (b) Where there are not sufficient personal and real assets of the decedent to satisfy all
50 the debts and other claims against ~~his~~ the decedent's estate, the personal representative shall
51 have the right to sue for and recover any and all personal property or real property, or interest

1 therein, which the decedent may in any manner have transferred or conveyed with intent to
2 hinder, delay, or defraud his the decedent's creditors, and any personal property or real
3 property, or interest therein, so recovered shall constitute assets of the estate in the hands of the
4 personal representative for the payment of debts and other claims against the estate of the
5 decedent. But if the alienee has sold the personal property or real property, or interest therein,
6 so fraudulently acquired by ~~him~~ the alienee from the decedent to a bona fide purchaser for
7 value without notice of the fraud, then such personal property or real property, or interest
8 therein, may not be recovered from such bona fide purchaser but the fraudulent alienee shall be
9 liable to the personal representative for the value of the personal property or real property, or
10 interest therein, so acquired and disposed of to a bona fide purchaser. If the whole recovery
11 from the fraudulent alienee shall not be necessary for the payment of the debts and other claims
12 against the estate of the decedent, the surplus shall be returned to such fraudulent alienee or his
13 the fraudulent alienee's assigns.

14 (c) Where there has been a recovery in an action for wrongful death, the same shall not
15 be applied to the payment of debts and other claims against the estate of decedent or devisees,
16 except as to the payment of reasonable burial and funeral expenses and reasonable hospital and
17 medical expenses incident to the injury resulting in death and as limited and provided in
18 G.S. 28-18-2 [G.S. 28A-18-2].

19 **"§ 28A-15-11. Debt due from personal representative not discharged by appointment.**

20 The appointment of any person as personal representative does not discharge any debt or
21 demand due from such person to the decedent.

22 **"§ 28A-15-12. ~~Examination of persons or corporations believed to have possession of~~**
23 **Actions to recover property of decedent.**

24 (a) ~~Whenever a personal representative or collector makes oath or affirmation before~~
25 ~~the clerk of superior court of the county where the party to be examined resides or does~~
26 ~~business that he has reasonable ground to believe, setting forth the grounds of his belief, that~~
27 ~~any person, firm or corporation has in his or its possession any property of any kind belonging~~
28 ~~to the estate of his decedent, the clerk shall issue a notice to be served upon the person or any~~
29 ~~member of the firm or officer, agent or employee of the firm or corporation designated in the~~
30 ~~affidavit, to appear before the clerk at his office at a time fixed in the notice, not less than three~~
31 ~~days after the issuance of the notice, and be examined under oath by the personal representative~~
32 ~~or collector or his attorney concerning the possession of such property. If upon examination the~~
33 ~~clerk of superior court finds that the person examined or the firm or corporation for which he~~
34 ~~works has in his or its possession any property belonging solely to the decedent, and fails to~~
35 ~~show any satisfactory reason for retaining possession of the property, the clerk shall issue an~~
36 ~~order requiring the person, firm or corporation forthwith to deliver the property to said personal~~
37 ~~representative or collector and may enforce compliance with the order by proceedings as for~~
38 ~~contempt of court: Provided, that in the case of a firm or corporation, whenever any person~~
39 ~~other than a partner or executive officer of such firm or corporation is examined, no such order~~
40 ~~shall be made until at least three days after service of notice upon a partner or executive officer~~
41 ~~of such firm or corporation to show cause why such order should not be made.~~

42 (a1) A personal representative or collector shall have the right to bring an action to sue
43 for and recover any property of any kind belonging to the estate of the personal representative's
44 decedent, by action filed in the Superior Court Division of the General Court of Justice and
45 shall be entitled to such other provisional remedies as provided for under Subchapter 13 of
46 Chapter 1 of the General Statutes.

47 (b) ~~Any person aggrieved by the order of the clerk of superior court may, within five~~
48 ~~days, appeal to the judge holding the next session of superior court of the county after the order~~
49 ~~is made or to the resident judge of the district, but as a condition precedent to his appeal he~~
50 ~~shall give a justified bond in a sum at least double the value of the property in question,~~
51 ~~conditioned upon the safe delivery of the property and the payment of damages for its~~

1 ~~detention, to the personal representative or collector in the event that the order of the clerk~~
2 ~~should be finally sustained. When the bond is executed and delivered to the court, no~~
3 ~~attachment as for contempt shall be served upon the appealing party and any contempt order~~
4 ~~theretofore issued shall be stayed; but if the appellant fails to have his appeal heard at the next~~
5 ~~session of superior court held in his county, or by the resident judge of the district within 30~~
6 ~~days after giving notice, the appeal shall be deemed abandoned, and the stay of any contempt~~
7 ~~order theretofore issued shall terminate.~~

8 (b1) A personal representative, collector, or any interested person shall have the right to
9 bring an estate proceeding seeking the examination of any persons reasonably believed to be in
10 possession of property of any kind belonging to the estate of the decedent including a demand
11 for the recovery of such property. An estate proceeding brought under the provisions of this
12 subsection shall be instituted by the filing of a verified petition and shall be conducted in
13 accordance with the provisions of Article 2 of this Chapter. The court may enter orders
14 requiring the examination of persons consistent with this subsection and, if the court determines
15 that a person is in possession of property of the estate of the decedent, shall have the authority
16 to order recovery of that property. Orders issued by the clerk of superior court shall be
17 enforceable by proceedings as for contempt of court.

18 (c) The party against whom the final judgment is rendered shall be adjudged to pay the
19 costs of the proceedings hereunder.

20 (d) The remedies provided in this section shall not be exclusive, but shall be in addition
21 to any remedies which are now or may hereafter be provided.

22 **"§ 28A-15-13. Opening and inventory of decedent's safe-deposit box.**

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

24 (1) Institution. – Any entity or person having supervision or possession of a
25 safe-deposit box to which a decedent had access.

26 (1a) Deputy. – A person appointed in writing by a lessee or cotenant of a
27 safe-deposit box as having right of access to the safe-deposit box without
28 further authority or permission of the lessee or cotenant, in a manner and
29 form designated by the institution.

30 (2) Letter of authority. – Letters of administration, letters testamentary, an
31 affidavit of collection of personal property, an order of summary
32 administration, or a letter directed to the institution designating a person
33 entitled to receive the contents of a safe-deposit box to which the decedent
34 had access. The letter of authority must be signed by the clerk of superior
35 court or by the clerk's representative.

36 (3) Qualified person. – A person possessing a letter of authority or a person
37 named as a deputy, lessee or cotenant of the safe-deposit box to which the
38 decedent had access.

39 (b) Presence of Clerk Required. – Any safe-deposit box to which a decedent had access
40 shall be sealed by the institution having supervision or possession of the box. Except as
41 provided in subsection (c) of this section, the presence of the clerk of superior court of the
42 county where the safe-deposit box is located or the presence of the clerk's representative is
43 required before the box may be opened. The clerk or the clerk's representative shall open the
44 safe-deposit box in the presence of the person possessing a key to the box and a representative
45 of the institution having supervision or possession of the box. The clerk shall make an
46 inventory of the contents of the box and furnish a copy to the institution and to the person
47 possessing a key to the box.

48 (c) Presence of Clerk Not Required. – The presence of the clerk of superior court or the
49 clerk's representative is not required when the person requesting the opening of the decedent's
50 safe-deposit box is a qualified person. In that event, the qualified person shall make an

1 inventory of the contents of the box and furnish a copy to the institution and to the person
2 possessing a key to the box if that person is someone other than the qualified person.

3 (d) Testamentary Instrument in Box. – If the safe-deposit box contains any writing that
4 appears to be a will, codicil, or any other instrument of a testamentary nature, then the clerk of
5 superior court or the qualified person shall file the instrument in the office of the clerk of
6 superior court.

7 (e) Release of Contents. – Except as provided in subsection (d) for testamentary
8 instruments, the institution shall not release any contents of the safe-deposit box to anyone
9 other than a qualified person.

10 (f) No Tax Waiver Required. – No tax waiver is required for the release of the contents
11 of the decedent's safe-deposit box.

12 "Article 16.

13 "Sales or Leases of Personal Property.

14 "§ 28A-16-1. Sales or leases without court order.

15 (a) A personal representative has the power to sell, at either a public or private sale, or
16 to lease, personal property of the decedent without a court order.

17 (b) A personal representative who sells or leases personal property of the decedent
18 without a court order is not required to file a special report or have the transaction confirmed by
19 the clerk of superior court, or to follow any of the procedure set forth in Article 29A of Chapter
20 1 of the General Statutes, entitled "Judicial Sales," but shall include in ~~his~~ the personal
21 representative's next account, either annual or final, a record of the receipts and disbursements
22 incident to the transaction.

23 "§ 28A-16-2. Sales or leases by court order.

24 (a) All sales or leases of personal property of the decedent by a collector shall be made
25 only upon order obtained, by motion, from the clerk of superior court.

26 (b) A personal representative may, if ~~he~~ the personal representative so desires, request
27 the clerk of superior court to issue to ~~him~~ the personal representative an order to sell or lease
28 personal property of the decedent.

29 (c) Sales or leases of personal property of the decedent held pursuant to court order
30 shall be conducted as provided in Article 29A of Chapter 1 of the General Statutes, entitled
31 "Judicial Sales."

32 (d) A personal representative may, for ~~his~~ the personal representative's own benefit,
33 purchase or lease personal property belonging to the decedent at a public sale conducted under
34 an order of the clerk of superior court, if the transaction is reported to the clerk of superior
35 court and confirmed by ~~him~~ the clerk of superior court.

36 "§ 28A-16-3. Sales of household furnishings.

37 If the decedent is survived by a spouse, no sale or lease shall be made of the household
38 furnishings in the usual dwelling house occupied by the surviving spouse at the time of the
39 death of the deceased spouse, if such dwelling house was owned by the deceased spouse at the
40 time of his or her death, until the expiration of the time limits set forth in G.S. 29-30(c) for the
41 filing by the surviving spouse of an election in regard to the property of the decedent.

42 "Article 17.

43 "Sales, Leases or Mortgages of Real Property.

44 "§ 28A-17-1. Sales of real property.

45 Pursuant to authority contained in G.S. 28A-15-1 the personal representative may, at any
46 time, apply to the clerk of superior court of the county where the decedent's real property or
47 some part thereof is situated, by petition, to sell such real property for the payment of debts and
48 other claims against the decedent's estate.

49 "§ 28A-17-2. Contents of petition for sale.

50 The petition to sell real property shall include:

- 51 (1) A description of the real property and interest therein sought to be sold;

1 (2) The names, ages and addresses, if known, of the devisees and heirs of the
2 decedent;

3 (3) A statement that the personal representative has determined that it is in the
4 best interest of the administration of the estate to sell the real property
5 sought to be sold.

6 **"§ 28A-17-3. Petition for partition.**

7 When it is alleged that the real property of the decedent sought to be sold consists in whole
8 or in part of an undivided interest in real property, the personal representative of the decedent
9 may include, in the petition to sell the real property for the payment of debts and other claims
10 against the decedent's estate, a request for partition of the lands sought to be sold.

11 **"§ 28A-17-4. Heirs and devisees necessary parties.**

12 No order to sell real property shall be granted until the heirs and devisees of the decedent
13 have been made parties to the special proceeding by service of summons in the manner
14 required by ~~law~~, law, in accordance with G.S. 1A-1, Rule 4. Upon such service, the court shall
15 appoint a guardian ad litem for heirs and devisees who are unknown or whose addresses are
16 unknown, and summons shall issue to ~~him~~ the guardian ad litem as such. The guardian ad litem
17 shall file answer for such heirs and devisees and defend for them, and ~~he~~ the guardian ad litem
18 shall be paid such sum as the court may fix, to be paid as costs of the proceeding.

19 **"§ 28A-17-5. Property subject to sale; conveyance by deceased in fraud of creditors.**

20 The real property subject to sale under this Article shall include real property recovered
21 from a fraudulent alienee pursuant to G.S. 28A-15-10(b).

22 **"§ 28A-17-6. Adverse claimant to be heard; procedure.**

23 When the real property sought to be sold, or any interest therein, is claimed by another
24 person, such claimant may be made a party to the proceeding, and in any event may become a
25 party upon ~~his~~ the claimant's own motion. When an issue of law or fact is joined between the
26 parties, the procedure shall be as prescribed for other special proceedings.

27 **"§ 28A-17-7. Order granted if petition not denied; public or private sale; procedure for
28 sale.**

29 If, by default or admission, the allegations in the petition are not controverted, the clerk of
30 superior court may summarily order a sale. The procedure for the sale shall be as is provided in
31 Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to
32 appear to the clerk by petition and by satisfactory proof that it will be for the best interest of the
33 estate to sell by private sale, the clerk may authorize a private sale in accordance with the
34 provisions of G.S. 1-339.33 through 1-339.40.

35 **"§ 28A-17-8. Under power in will, sales public or private.**

36 Sales of real property made pursuant to authority given by will may be either public or
37 private, unless the will otherwise directs, and may be on such terms as in the opinion of the
38 personal representative are most advantageous to those interested in the decedent's estate.

39 **"§ 28A-17-9. Death of vendor under contract; representative to convey.**

40 When any decedent has contracted to sell any real property and has given bond or other
41 enforceable written contract to the purchaser to convey the same, ~~his~~ the decedent's personal
42 representative may execute and deliver a deed to such real property and such deed shall convey
43 the title as fully as if it had been executed and delivered by the decedent. No deed shall be
44 made unless the purchaser complies with the terms of the bond or other written contract. If the
45 contract for conveyance requires the giving of a warranty deed, the deed given by the personal
46 representative shall contain such warranties as required by the contract and the warranties shall
47 be binding on the estate and not on the personal representative personally.

48 **"§ 28A-17-10. Title in personal representative for estate; he or successor to convey.**

49 When real property is conveyed to a personal representative for the benefit of the estate ~~he~~
50 the personal representative represents, ~~he~~ the personal representative or any successor personal
51 representative may sell and convey it upon such terms as ~~he~~ the personal representative may

1 deem just and for the advantage of the estate. The procedure shall be as is provided in Article
2 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the
3 clerk of superior court by petition and by satisfactory proof that it will be for the best interest of
4 the estate to sell by private sale, the clerk may authorize a private sale in accordance with the
5 provisions of G.S. 1-339.33 through 1-339.40.

6 **"§ 28A-17-11. Personal representative may lease or mortgage.**

7 In lieu of asking for an order of sale of real property, the personal representative may
8 request the clerk of superior court to issue to ~~him~~ the personal representative an order to lease
9 or to mortgage real property of the decedent. The clerk of superior court is authorized to issue
10 an order to lease or mortgage on such terms as ~~he~~ the clerk deems to be in the best interest of
11 the estate.

12 **"§ 28A-17-12. Sale, lease or mortgage of real property by heirs or devisees.**

13 (a) If the first publication or posting of the general notice to creditors as provided for in
14 G.S. 28A-14-1 occurs within two years after the death of the decedent:

- 15 (1) All sales, leases or mortgages of real property by heirs or devisees of any
16 resident or nonresident decedent made after the death of the decedent and
17 before the first publication or posting of the general notice to creditors are
18 void as to creditors and personal representatives; and
19 (2) All sales, leases or mortgages of real property by heirs or devisees of any
20 resident or nonresident decedent made after such first publication or posting
21 and before approval of the final account shall be void as to creditors and
22 personal representatives unless the personal representative joins in the sale,
23 lease or mortgage.

24 (b) If the first publication or posting of the general notice to creditors as provided for in
25 G.S. 28A-14-1 does not occur within two years after the death of the decedent, all sales, leases
26 or mortgages of real property by heirs or devisees of any resident or nonresident decedent shall
27 be valid as to creditors and personal representatives of the decedent.

28 **"§ 28A-17-13. Prior validating acts.**

29 Chapter 70 of the Public Laws of 1923, Chapter 48 of the Public Laws of 1925, Chapter
30 146 of the Public Laws of 1931, and Chapters 31 and 381 of the Public Laws of 1935, all
31 validating certain prior sales of real property by executors or administrators and heretofore
32 codified as G.S. 28-100 through 28-104, shall remain in full force and effect, though no longer
33 carried forward as part of the General Statutes.

34 "Article 18.

35 "Actions and Proceedings.

36 **"§ 28A-18-1. Survival of actions to and against personal representative.**

37 (a) Upon the death of any person, all demands whatsoever, and rights to prosecute or
38 defend any action or special proceeding, existing in favor of or against such person, except as
39 provided in subsection (b) hereof, shall survive to and against the personal representative or
40 collector of ~~his~~ the person's estate.

41 (b) The following rights of action in favor of a decedent do not survive:

- 42 (1) Causes of action for libel and for slander, except slander of title;
43 (2) Causes of action for false imprisonment;
44 (3) Causes of action where the relief sought could not be enjoyed, or granting it
45 would be nugatory after death.

46 **"§ 28A-18-2. Death by wrongful act of another; recovery not assets.**

47 (a) When the death of a person is caused by a wrongful act, neglect or default of
48 another, such as would, if the injured person had lived, have entitled ~~him~~ the injured person to
49 an action for damages therefor, the person or corporation that would have been so liable, and
50 ~~his or their~~ the personal representatives or collectors, collectors of the person or corporation
51 that would have been so liable, shall be liable to an action for damages, to be brought by the

1 personal representative or collector of the decedent; and this notwithstanding the death, and
2 although the wrongful act, neglect or default, causing the death, amounts in law to a felony.
3 The personal representative or collector of the decedent who pursues an action under this
4 section may pay from the assets of the estate the reasonable and necessary expenses, not
5 including attorneys' fees, incurred in pursuing the action. At the termination of the action, any
6 amount recovered shall be applied first to the reimbursement of the estate for the expenses
7 incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be
8 distributed as provided in this section. The amount recovered in such action is not liable to be
9 applied as assets, in the payment of debts or legacies, except as to burial expenses of the
10 deceased, and reasonable hospital and medical expenses not exceeding four thousand five
11 hundred dollars (\$4,500) incident to the injury resulting in death, except that the amount
12 applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of
13 damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the
14 Intestate Succession Act. The limitations on recovery for hospital and medical expenses under
15 this subsection do not apply to subrogation rights exercised pursuant to G.S. 135-40.13A. All
16 claims filed for such services shall be approved by the clerk of the superior court and any party
17 adversely affected by any decision of said clerk as to said claim may appeal to the superior
18 court in term time.

19 (b) Damages recoverable for death by wrongful act include:

- 20 (1) Expenses for care, treatment and hospitalization incident to the injury
21 resulting in death;
- 22 (2) Compensation for pain and suffering of the decedent;
- 23 (3) The reasonable funeral expenses of the decedent;
- 24 (4) The present monetary value of the decedent to the persons entitled to receive
25 the damages recovered, including but not limited to compensation for the
26 loss of the reasonably expected;
 - 27 a. Net income of the decedent,
 - 28 b. Services, protection, care and assistance of the decedent, whether
29 voluntary or obligatory, to the persons entitled to the damages
30 recovered,
 - 31 c. Society, companionship, comfort, guidance, kindly offices and
32 advice of the decedent to the persons entitled to the damages
33 recovered;
- 34 (5) Such punitive damages as the decedent could have recovered pursuant to
35 Chapter 1D of the General Statutes had he the decedent survived, and
36 punitive damages for wrongfully causing the death of the decedent through
37 malice or willful or wanton conduct, as defined in G.S. 1D-5;
- 38 (6) Nominal damages when the jury so finds.

39 (c) All evidence which reasonably tends to establish any of the elements of damages
40 included in subsection (b), or otherwise reasonably tends to establish the present monetary
41 value of the decedent to the persons entitled to receive the damages recovered, is admissible in
42 an action for damages for death by wrongful act.

43 (d) In all actions brought under this section the dying declarations of the deceased shall
44 be admissible as provided for in G.S. 8-51.1.

45 **"§ 28A-18-3. To sue or defend in representative capacity.**

46 All actions and proceedings brought by or against personal representatives or collectors
47 upon any cause of action or right to which the estate of the decedent is the real party in interest,
48 must be brought by or against them in their representative capacity.

49 **"§ 28A-18-4. Service on or appearance of one binds all.**

50 In actions against personal representatives or collectors, they are all to be considered as one
51 person, representing the decedent; and if the summons is served on one or more, but not all, the

1 plaintiff may proceed against those served, and if ~~he~~ the plaintiff recovers, judgment may be
2 entered against all.

3 **"§ 28A-18-5. When creditors may sue on claim; execution in such action.**

4 An action may be brought by a creditor against the personal representative or collector on a
5 demand at any time after it is due, but no execution shall issue against the personal
6 representative or collector on a judgment therein against ~~him~~ the personal representative or
7 collector without leave of the court, upon notice of 20 days and upon proof that the defendant
8 has refused to pay such judgment or its ratable part, and such judgment shall be a lien on the
9 property of the estate of the decedent only from the time of such leave granted.

10 **"§ 28A-18-6. Service by publication on executor without bond.**

11 Whenever process may issue against an executor who has not given bond, and the same
12 cannot be served upon ~~him~~ the executor by reason of ~~his~~ the executor's absence or concealment,
13 service of such process may be made by publication in the manner prescribed in other civil
14 actions.

15 **"§ 28A-18-7. Execution by successor in office.**

16 Any personal representative or collector may have execution issued on any judgment
17 recovered by any person who preceded ~~him~~ the personal representative or collector in the
18 administration of the estate, or by the decedent, in the same cases and the same manner as the
19 original plaintiff might have done.

20 **"§ 28A-18-8. Action to continue, though letters revoked.**

21 In case the letters of a personal representative or collector are revoked, pending an action to
22 which ~~he~~ the personal representative or collector is a party, the adverse party may,
23 notwithstanding, continue the action against ~~him~~ the personal representative or collector in
24 order to charge ~~him~~ the personal representative or collector personally. If such party does not
25 elect so to do, within six months after notice of such revocation, the action may be continued
26 against the successor of the personal representative or collector in the administration of the
27 estate, in the same manner as in case of death.

28 "Article 19.

29 "Claims against the Estate.

30 **"§ 28A-19-1. Manner of presentation of claims.**

31 (a) A claim against a decedent's estate must be in writing and state the amount or item
32 claimed, or other relief sought, the basis for the claim, and the name and address of the
33 claimant; and must be presented by one of the following methods:

34 (1) By delivery in person or by mail to the personal representative, collector or
35 the clerk of superior court. Such claim will be deemed to have been
36 presented from the time of such delivery.

37 (2) By mailing, registered or certified mail, return receipt requested, to the
38 personal representative or collector at the address set out in the general
39 notice to creditors. Such claim will be deemed to have been presented from
40 the time when the return receipt is signed by the personal representative,
41 collector, or ~~his agent,~~ agent of the personal representative or collector, or is
42 refused by the personal representative, collector, or ~~his agent.~~ agent of the
43 personal representative or collector.

44 (3) By delivery to the clerk of court of the county in which the estate is
45 pending, which notice shall be filed in the appropriate estate file and copy
46 mailed first class by the clerk of superior court at the expense of the claimant
47 to the personal representative, collector, or ~~his agent.~~ agent of the personal
48 representative or collector. The claim will be deemed to have been presented
49 from the time of delivery to the clerk of court.

50 (b) In an action commenced after the death of the decedent against ~~his~~ the decedent's
51 personal representative or collector as such, the commencement of the action in the court in

1 which such personal representative or collector qualified will constitute the presentation of a
2 claim and no further presentation is necessary. In an action filed in any other court such claim
3 will be deemed to have been presented at the time of the completion of service of process on
4 such personal representative or collector.

5 (c) In an action pending against the decedent at the time of ~~his~~ the decedent's death,
6 which action survives at law, the court may order the substitution of the personal
7 representative or collector for the decedent ~~or~~ on motion therefor and that motion will
8 constitute the presentation of a ~~claim~~ claim, provided that substitution occurs within the time
9 specified for the presentation of claims under G.S. 28A-19-3, and no further presentation is
10 necessary. Such claim will be deemed to have been presented from the time of the substitution,
11 or motion therefor.

12 **"§ 28A-19-2. Further information or affidavit of claim may be required.**

13 (a) If the personal representative or collector so elects, ~~he~~ the personal representative or
14 collector may demand any or all of the following prior to taking action on the claim:

- 15 (1) If the claim is not yet due, that the date when it will become due be stated;
- 16 (2) If the claim is contingent or unliquidated, that the nature of the uncertainty
17 be stated;
- 18 (3) If the claim is secured, that the security be described.

19 (b) Upon any claim being presented against the estate in the manner prescribed in
20 G.S. 28A-19-1, the personal representative or collector may require the affidavit of the claimant
21 or other satisfactory evidence that such claim is justly due, that no payments have been made
22 thereon, and that there are no offsets against the same, to the knowledge of the claimant; or if
23 any payments have been made, or any offsets exist that their nature and amount be shown by
24 the evidence or stated in the affidavit.

25 **"§ 28A-19-3. Limitations on presentation of claims.**

26 (a) All claims against a decedent's estate which arose before the death of the decedent,
27 except contingent claims based on any warranty made in connection with the conveyance of
28 real estate and claims of the United States and tax claims of the State of North Carolina and
29 subdivisions thereof, whether due or to become due, absolute or contingent, liquidated or
30 unliquidated, secured or unsecured, founded on contract, tort, or other legal basis, which are not
31 presented to the personal representative or collector pursuant to G.S. 28A-19-1 by the date
32 specified in the general notice to creditors as provided for in G.S. 28A-14-1(a) or in those cases
33 requiring the delivery or mailing of notice as provided for in G.S. 28A-14-1(b), within 90 days
34 after the date of the delivery or mailing of the notice if the expiration of said 90-day period is
35 later than the date specified in the general notice to creditors, are forever barred against the
36 estate, the personal representative, the collector, the heirs, and the devisees of the decedent.
37 Provided further, if the expiration of said 90-day period is later than the date specified in the
38 general notice to creditors, the notice delivered or mailed to each creditor, if any, shall be
39 accompanied by a statement which specifies the deadline for filing the claim of the affected
40 creditor.

41 (b) All claims against a decedent's estate which arise at or after the death of the
42 decedent, except claims of the United States and tax claims of the State of North Carolina and
43 subdivisions thereof whether due or to become due, absolute or contingent, liquidated or
44 unliquidated, secured or unsecured, founded on contract, tort, or other legal basis are forever
45 barred against the estate, the personal representative, the collector, the heirs, and the devisees of
46 the decedent unless presented to the personal representative or collector as follows:

- 47 (1) With respect to any claim based on a contract with the personal
48 representative or collector, within six months after the date on which
49 performance by the personal representative or collector is due;

1 (2) With respect to any claim other than a claim based on a contract with the
2 personal representative or collector, within six months after the date on
3 which the claim arises.

4 (c) Except as otherwise provided by subsection (f) of this section, no claim shall be
5 barred by the statute of limitations which was not barred thereby at the time of the decedent's
6 death, if the claim is presented within the period provided by subsection (a) hereof.

7 (d) All claims of creditors upon whom there has been personal service of notice as
8 provided in G.S. 28A-14-3 are forever barred unless presented to the personal representative or
9 collector within the time and manner set out in this Article.

10 (e) Except as otherwise provided by subsection (f) of this section, unless a claim has
11 been presented pursuant to G.S. 28A-19-1 giving notice of an action or special proceeding
12 pending against a decedent at the time of his the decedent's death and surviving under
13 G.S. 28A-18-1 within the time provided by subsection (a) of this section, no recovery may be
14 had upon any judgment obtained in any such action or proceeding against the estate, the
15 personal representative, the collector, the heirs, and the devisees of the decedent.

16 (f) All claims barrable under the provisions of subsections (a) and (b) hereof shall, in
17 any event, be barred if the first publication or posting of the general notice to creditors as
18 provided for in G.S. 28A-14-1 does not occur within three years after the death of the decedent.

19 (g) Nothing in this section affects or prevents any action or proceeding to enforce any
20 mortgage, deed of trust, pledge, lien (including judgment lien), or other security interest upon
21 any property of the decedent's estate, but no deficiency judgment will be allowed if the
22 provisions of this section are not complied with.

23 (h) The word "claim" as used in this section does not apply to claims of heirs or
24 devisees to their respective shares or interests in the decedent's estate in their capacity as such
25 heirs or devisees.

26 (i) Nothing in this section shall bar:

27 (1) Any claim alleging the liability of the decedent or personal representative; or

28 (2) Any proceeding or action to establish the liability of the decedent or personal
29 representative; or

30 (3) The recovery on any judgment against the decedent or personal
31 representative

32 to the extent that the decedent or personal representative is protected by insurance coverage
33 with respect to such claim, proceeding or judgment or where there is underinsured or uninsured
34 motorist coverage that might extend to such claim, proceeding, or judgment.

35 (j) Except as otherwise specifically provided in this section, the limitations on
36 presentation of claims set forth in this section apply to claims by the State of North Carolina, its
37 subdivisions, and its agencies.

38 **"§ 28A-19-4. Payment of claims and charges.**

39 As soon as the personal representative or collector is possessed of sufficient means over and
40 above the other costs of administration, he the personal representative or collector shall pay the
41 year's allowances in the amounts and in the manner prescribed in G.S. 30-15 to 30-33. Prior to
42 the date specified in the general notice to creditors as provided for in G.S. 28A-14-1, the
43 personal representative or collector may pay such other claims and charges as he the personal
44 representative or collector deems in the best interest of the estate if the total assets are sufficient
45 to pay all claims and charges against the estate.

46 **"§ 28A-19-5. Contingent or unliquidated claims.**

47 (a) If a contingent or unliquidated claim becomes absolute before the distribution of the
48 estate of the decedent, it shall be paid in the same manner as absolute claims of the same class.
49 In other cases the clerk of superior court may provide for the payment of contingent or
50 unliquidated claims in any one of the following ways:

- 1 (1) The creditor and the personal representative or collector may determine, by
2 agreement, arbitration, or compromise, the value of the contingent or
3 unliquidated claim, according to its probable present worth, and with the
4 approval of the clerk of superior court, it may be allowed and paid in the
5 same manner as an absolute claim.
- 6 (2) The clerk of superior court may order the personal representative or collector
7 to retain sufficient funds to pay the claim if and when the same becomes
8 absolute, and order distribution of the balance of the estate.
- 9 (3) The clerk of superior court may order distribution of the estate as though the
10 contingent or unliquidated claim did not exist, but the heirs and devisees of
11 the estate of the decedent are liable to the creditor to the extent of the estate
12 received by them, if the contingent or unliquidated claim thereafter becomes
13 absolute; and the court may require such heirs and devisees to give bond for
14 the performance of their liability to the contingent or unliquidated creditor.
- 15 (4) Such other method as the clerk of superior court may order.

16 (b) With respect to a contingent or unliquidated claim rejected by a personal
17 representative pursuant to G.S. 28A-19-16, the claimant may, within the three-month period
18 prescribed by G.S. 28A-19-16, file a petition for an order of the clerk of superior court in
19 accordance with subsection (a) of this section, provided that nothing in this section shall require
20 the clerk of superior court to hear and determine the validity of, priority of, or amount of a
21 contingent or unliquidated claim that has yet become absolute.

22 **"§ 28A-19-6. Order of payment of claims.**

23 (a) After payment of costs and expenses of administration, the claims against the estate
24 of a decedent must be paid in the following order:

25 First class. Claims which by law have a specific lien on property to an amount not
26 exceeding the value of such property.

27 Second class. Funeral expenses to the extent of three thousand five hundred dollars
28 (\$3,500). This limitation shall not include burial place or gravestone. The preferential limitation
29 herein granted shall be construed to be only a limit with respect to preference of payment and
30 shall not be construed to be a limitation on reasonable funeral expenses which may be incurred;
31 nor shall the preferential limitation of payment in the amount of three thousand five hundred
32 dollars (\$3,500) be diminished by any Veterans Administration, social security or other federal
33 governmental benefits awarded to the estate of the decedent or to ~~his or her~~ the decedent's
34 beneficiaries.

35 Third class. Costs associated with gravestones and reasonable costs for the purchase of a
36 suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred
37 dollars (\$1,500). The preferential limitation herein granted shall be construed to be only a limit
38 with respect to preference of payment and shall not be construed to be a limitation on
39 reasonable gravestone or burial place expenses which may be incurred; nor shall the
40 preferential limitation of payment in the amount of one thousand five hundred dollars (\$1,500)
41 be diminished by any Veterans Administration, social security or other federal governmental
42 benefits awarded to the estate of the decedent or to ~~his or her~~ the decedent's beneficiaries.

43 Fourth class. All dues, taxes, and other claims with preference under the laws of the United
44 States:

45 Fifth class. All dues, taxes, and other claims with preference under the laws of the State of
46 North Carolina and its subdivisions.

47 Sixth class. Judgments of any court of competent jurisdiction within the State, docketed and
48 in force, to the extent to which they are a lien on the property of the decedent at ~~his~~ the
49 decedent's death.

50 Seventh class. Wages due to any employee employed by the decedent, which claim for
51 wages shall not extend to a period of more than 12 months next preceding the death; or if such

1 employee was employed for the year current at the decease, then from the time of such
2 employment; for medical services within the 12 months preceding the decease; for drugs and
3 all other medical supplies necessary for the treatment of such decedent during the last illness of
4 such decedent, said period of last illness not to exceed 12 months.

5 Eighth class. A claim for equitable distribution.

6 Ninth class. All other claims.

7 (b) Notwithstanding subsection (a) of this section, if payment of the commissions of the
8 personal representative under G.S. 28A-23-3(g) would cause the estate to be unable to pay all
9 claims against the estate of a decedent, then the commissions shall be limited to the amount
10 allowed under G.S. 28A-23-3(a).

11 **"§ 28A-19-7. Satisfaction of claims other than by payment.**

12 Notwithstanding any provision of law to the contrary,

- 13 (1) If a decedent was liable in person at the time of ~~his~~ the decedent's death for
14 the payment or satisfaction of any claim or the performance, satisfaction, or
15 discharge of any liability or obligation, whether joint or several, primary or
16 secondary, direct or contingent, or enforceable in any other manner or form
17 whatsoever, or
18 (2) If only the property of a decedent or some part thereof was liable at the time
19 of ~~his~~ the decedent's death for the payment or satisfaction of any claim or the
20 performance, satisfaction, or discharge of any liability or obligation, whether
21 joint or several, primary or secondary, direct or contingent, or enforceable in
22 any other manner or form against the property of the decedent but not
23 against ~~him~~ the decedent or ~~his~~ the decedent's estate as a personal liability,
24 and
25 (3) If any person other than the personal representative of the decedent is willing
26 to assume the liability of the decedent and of ~~his~~ the decedent's estate or to
27 receive or accept property of the decedent subject to such liability in cases
28 where the decedent was not personally liable and the creditor, obligee, or
29 other person for whose benefit such liability exists is willing to accept an
30 agreement with that effect and to discharge the personal representative of the
31 decedent and the estate of the decedent from the payment, satisfaction, or
32 discharge of such liability, and
33 (4) If such creditor, obligee, or other person for whose benefit such liability
34 exists and the person assuming the liability or the person receiving or
35 accepting property of the decedent subject to such liability shall execute,
36 acknowledge, and deliver in the form and manner required for deeds
37 conveying real property in North Carolina, an agreement between
38 themselves as to such assumption of liability or the receipt or acceptance of
39 property of the decedent subject to such liability which shall contain a
40 release, as hereinafter defined, discharging the personal representative of the
41 decedent and ~~his~~ the decedent's estate from the payment, satisfaction, or
42 discharge of the liability, and thereafter the said creditor, obligee, or other
43 person for whose benefit such liability exists shall have no remedy for the
44 enforcement thereof except against the person assuming it or against the
45 property subject to it as provided in the said agreement; then upon the filing
46 with the clerk of superior court having jurisdiction over the estate and the
47 personal representative of one duplicate original of the said agreement, or of
48 a certified copy thereof if it is a duly recorded instrument, the same shall be
49 accepted in the same manner as a voucher showing payment or discharge of
50 the said liability in the accounts of the personal representative of the
51 decedent.

1 The word "person" as used in this section shall include one or more natural persons,
2 corporations, partnerships, or entities having the power to own property or to make contracts in
3 regard thereto. The word "release" as used in this section shall include a covenant not to sue in
4 any case in which an unqualified release or discharge of one obligee would discharge another,
5 and if the liability involved is a negotiable instrument or other instrument transferable to a
6 holder in due course, such release shall not be effective unless notice thereof is endorsed on the
7 instrument involved, dated, and signed by the creditor or the holder of the indebtedness or
8 person for whose benefit the property is encumbered.

9 **"§ 28A-19-8. Funeral expenses of decedent.**

10 (a) Any person authorized under G.S. 130A-420 to dispose of a decedent's body may
11 bind a decedent's estate for funeral expenses and related charges, including interest and finance
12 charges, in accordance with this section, including the execution and delivery on behalf of the
13 estate of any agreements, promissory notes, and other instruments relating to the estate.
14 Whether or not a personal representative of the estate has been appointed at the time the
15 expenses are incurred, funeral expenses of a decedent, together with interest or finance charges
16 if financed by the funeral establishment or a third-party creditor, or advanced by a health care
17 agent exercising authority described in G.S. 32A-19(b), shall be considered as an obligation of
18 the estate of the decedent and the decedent's estate shall be primarily liable for those expenses
19 to the funeral establishment that provided the funeral service, to any third-party creditor that
20 finances the payment of those expenses, or to any other person described in this section who
21 has paid such expenses.

22 (b) The provisions of this section shall not affect the application of G.S. 28A-19-6 or
23 G.S. 130A-420.

24 **"§ 28A-19-9. Gravestone and burial place authorized.**

25 (a) ¶ If the decedent has duly appointed a health care agent pursuant to Article 3 of
26 Chapter 32A of the General Statutes to provide for these expenses, the health care agent may
27 make arrangements to provide a suitable gravestone to mark the grave of the testator or
28 intestate, and the personal representative shall reimburse the health care agent subject to the
29 monetary limitations and procedures contained in this section. If the decedent did not have a
30 health care agent, or if the health care agent does not act, it is lawful for a personal
31 representative or the decedent's duly appointed health care agent to provide a suitable
32 gravestone to mark the graves of the testator or intestate and to pay for the cost of erecting the
33 same. The cost thereof shall be treated as a third class claim under G.S. 28A-19-6 and credited
34 as such in final accounts. The costs thereof shall be in the sound discretion of the personal
35 representative, representative or health care agent, having due regard to the value of the estate
36 and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of
37 the estate. Where the personal representative or health care agent desires to spend more than
38 one thousand five hundred dollars (\$1,500) for the purpose of a gravestone, and the will does
39 not grant specific authority to the personal representative for such expenditures in excess of one
40 thousand five hundred dollars (\$1,500), the personal representative shall file a petition before
41 the clerk of the court, and such order as will be made by the court shall specify the amount to
42 be expended for such purpose. In specifying the amount, the clerk may consider the value of
43 the estate. To the extent that the personal representative or health care agent advances the costs
44 for providing a suitable gravestone to mark the graves of the testator or intestate and for
45 erecting the same, the advancement shall be considered as an obligation of the decedent's
46 estate, and the decedent's estate shall be primarily liable for the costs for providing a suitable
47 gravestone to mark the graves of the testator or intestate and for erecting the same.

48 (b) It is lawful for ~~a personal representative~~ the decedent's duly appointed health care
49 agent to provide a suitable burial place for the testator or intestate. If the decedent did not have
50 a health care agent, or if the health care agent does not act, then the personal representative may
51 provide a suitable burial place for the testator or intestate. The cost of a suitable burial place

1 shall be in the sound discretion of the personal ~~representative~~, representative or the decedent's
2 health care agent, having due regard to the value of the estate and to the interests of creditors
3 and needs of the surviving spouse and the heirs and devisees of the estate, and shall be treated
4 as a third class claim under G.S. 28A-19-6.

5 **"§ 28A-19-10. Perpetual care of cemetery lot.**

6 It shall be lawful for a personal representative to provide for perpetual care for the lot upon
7 which is located the grave of the testator or intestate, and the cost thereof shall be paid and
8 credited as such in final accounts: Provided, that the provisions of this section shall be
9 applicable to an interment made in a cemetery authorized by law to operate as a perpetual-care
10 cemetery or association, and the cost thereof shall be in the sound discretion of the personal
11 representative having due regard to the value of the estate and to the interest of the surviving
12 spouse and the heirs and devisees of the estate. Provided, where the personal representative
13 desires to spend more than two hundred fifty dollars (\$250.00) for such purpose, and the will
14 does not grant specific authority to the personal representative for such expenditure in excess of
15 two hundred fifty dollars (\$250.00), ~~he~~ the personal representative shall file ~~his~~ the personal
16 representative's petition before the clerk of the superior court and such order as will be made by
17 the court shall specify the amount to be expended for such purpose.

18 **"§ 28A-19-11. Pleading statute of limitations.**

19 When claims are not barred pursuant to G.S. 28A-19-3, it shall be within the discretion of
20 the personal representative or collector acting in good faith to determine whether or not any
21 applicable statute of limitations shall be pleaded to bar a claim which ~~he~~ the personal
22 representative or collector believes to be just. ~~His~~ The personal representative's or collector's
23 admission of such claim or ~~his~~ the personal representative's or collector's decision not to plead
24 the statute in an action brought on the claim shall, in the absence of any showing of collusion or
25 bad faith, be binding on all persons interested in the estate.

26 **"§ 28A-19-12. Claims due representative not preferred.**

27 No property or assets of the decedent shall be retained by the personal representative or
28 collector in satisfaction of ~~his~~ the personal representative's or collector's own claim, in
29 preference to others of the same class. Prior to payment of ~~his~~ the personal representative's or
30 collector's own claim the personal representative or collector shall receive written approval of
31 the clerk of superior court. If the clerk does not approve the claim the personal representative or
32 collector may refer the claim as a disputed claim under the provisions of G.S. 28A-19-15. The
33 provisions of G.S. 28A-19-1 and G.S. 28A-19-3 shall not apply to such claims and the personal
34 representative or collector may present ~~his~~ the personal representative's or collector's own claim
35 at any time prior to the filing of ~~his~~ the personal representative's or collector's final account.

36 **"§ 28A-19-13. No preference within class.**

37 No personal representative or collector shall give to any claim any preference whatever,
38 either by paying it out of its class or by paying thereon more than a pro rata proportion in its
39 class.

40 **"§ 28A-19-14. Claims not due rebated.**

41 Claims owed by the estate but not yet due may be paid by the personal representative on a
42 rebate of interest thereon for the time unexpired.

43 **"§ 28A-19-15. Disputed claim may be referred.**

44 If the personal representative doubts the justness of any claim so presented, ~~he~~ the personal
45 representative may enter into an agreement, in writing, with the claimant, to refer the matter in
46 controversy, whether the same be of a legal or equitable nature, to one or more disinterested
47 persons, not exceeding three, whose proceedings shall be the same in all respects as if such
48 reference had been ordered in an action. Such agreement to refer, and the award thereupon,
49 shall be filed in the clerk's office where the letters were granted, and shall be a lawful voucher
50 for the personal representative. The same may be impeached in any proceeding against the

1 personal representative for fraud therein: Provided, that the right to refer claims under this
2 section shall extend to claims in favor of the estate as well as those against the estate.

3 **"§ 28A-19-16. Disputed claim not referred barred in three months.**

4 If a claim is presented to and rejected by the personal representative or collector, and not
5 referred as provided in G.S. 28A-19-15, the claimant must, within three months, after due
6 notice in writing of such rejection, ~~or after some part of the claim becomes due,~~ commence an
7 action for the recovery thereof, or in the case of a contingent or unliquidated claim, file a
8 petition for an order from the clerk of superior court pursuant to G.S. 28A-19-5(b), or be
9 forever barred from maintaining an action thereon.

10 **"§ 28A-19-17. No lien by suit against representative.**

11 No lien shall be created by the commencement of a suit against a personal representative or
12 collector.

13 **"§ 28A-19-18. When costs against representative allowed.**

14 No costs shall be recovered in any action against a personal representative or collector
15 unless it appears that payment was unreasonably delayed or neglected, or that the defendant
16 refused to refer the matter in controversy, in which case the court may award such costs
17 against the defendant personally, or against the estate, as may be just.

18 **"§ 28A-19-19. Claims for equitable distribution.**

19 (a) The provisions of G.S. 28A-19-5 and G.S. 28A-19-7 shall not apply to claims for
20 equitable distribution.

21 (b) The personal representative may enter into an agreement, in writing, with a claimant
22 providing for distribution of marital or divisible property, or both, in a manner deemed by the
23 personal representative and the claimant to be equitable. The agreement shall be filed in the
24 clerk's office where the letters were granted and shall be a lawful voucher for the personal
25 representative. The same may be impeached in any proceeding against the personal
26 representative for fraud therein.

27 (c) Unless the claim for equitable distribution has been referred as provided in
28 G.S. 28A-19-15, the claimant may at anytime, subject to the provisions of G.S. 28A-19-16, file
29 an action with the district court for distribution of marital or divisible property in accordance
30 with the provisions of G.S. 50-20.

31 "Article 20.

32 "Inventory.

33 **"§ 28A-20-1. Inventory within three months.**

34 Every personal representative and collector, within three months after ~~his qualification,~~ the
35 qualification of that personal representative or collector, shall return to the clerk, on oath, a just,
36 true and perfect inventory of all the real and personal property of the deceased, which have
37 come to ~~his hands,~~ the hands of the personal representative or collector, or to the hands of any
38 person for ~~him,~~ the personal representative or collector, which inventory shall be signed by ~~him~~
39 the personal representative or collector and be recorded by the clerk.

40 **"§ 28A-20-2. Compelling the inventory.**

41 (a) If the inventory specified in G.S. 28A-20-1 is not filed as prescribed, the clerk of
42 superior court must issue an order requiring the personal representative or collector to file it
43 within the time specified in the order, not less than 20 days, or to show cause why ~~he~~ the
44 personal representative or collector should not be removed from office. If, after due service of
45 the order, the personal representative or collector does not on or before the return day of the
46 order file such inventory or obtain further time in which to file it, the clerk may remove ~~him~~ the
47 personal representative or collector from office or may issue an attachment against ~~him~~ the
48 personal representative or collector for a contempt and commit ~~him until he~~ the personal
49 representative or collector until the personal representative or collector files said inventory
50 report.

1 (b) The personal representative or collector shall be personally liable for the costs of
2 any proceeding incident to ~~his~~ the personal representative's or collector's failure to file the
3 inventory required by G.S. 28A-20-1. Such costs shall be taxed against ~~him~~ the personal
4 representative or collector by the clerk of superior court and may be collected by deduction
5 from any commissions which may be found due the personal representative or collector upon
6 final settlement of the estate.

7 **"§ 28A-20-3. Supplemental inventory.**

8 (a) Whenever any property not included in the original inventory report becomes
9 known to any personal representative or collector or whenever the personal representative or
10 collector learns that the valuation or description of any property or interest therein indicated in
11 the original inventory is erroneous or misleading, ~~he~~ the personal representative or collector
12 shall prepare and file with the clerk of superior court a supplementary inventory in the same
13 manner as prescribed for the original inventory. The clerk shall record the supplemental report
14 with the original inventory.

15 (b) The making of the supplemental inventory shall be enforced in a manner specified
16 in G.S. 28A-20-2.

17 **"§ 28A-20-4. Employment of appraisers.**

18 A personal representative or collector may, but shall not be required to, employ qualified
19 and disinterested appraisers to assist in ascertaining the fair market value as of the date of the
20 decedent's death of any asset the value of which may be subject to reasonable doubt. Different
21 persons may be employed to appraise different kinds of assets. The name and address of any
22 appraiser shall be indicated in the inventory with the asset or assets ~~he~~ the appraiser appraised.

23 "Article 21.

24 "Accounting.

25 **"§ 28A-21-1. Annual accounts.**

26 Until the final account has been filed pursuant to G.S. 28A-21-2, the personal representative
27 or collector shall, for so long as any of the property of the estate remains in ~~his~~ the control,
28 custody or ~~possession~~, possession of the personal representative or collector, file annually in
29 the office of the clerk of superior court an inventory and account, under oath, of the amount of
30 property received by ~~him~~, the personal representative or collector, or invested by ~~him~~, the
31 personal representative or collector, and the manner and nature of such investment, and ~~his~~ the
32 receipts and disbursements of the personal representative or collector for the past year. Such
33 accounts shall be due by the fifteenth day of the fourth month after the close of the fiscal year
34 selected by the personal representative or collector, and annually thereafter. The election of a
35 fiscal year shall be made by the personal representative or collector upon filing of the first
36 annual account. In no event may a personal representative or collector select a fiscal year-end
37 which is more than twelve months from the date of death of the decedent or, in the case of trust
38 administration, the date of the opening of the trust. Any fiscal year selected may not be changed
39 without the permission of the clerk of superior court.

40 The personal representative or collector shall produce vouchers for all payments or verified
41 proof for payments in lieu of vouchers. The clerk of superior court may examine, under oath,
42 such accounting party, or any other person, concerning the receipts, disbursements or any other
43 matter relating to the estate. ~~He~~ The clerk of superior court must carefully review and audit
44 such account and, if ~~he~~ the clerk approves the account, ~~he~~ the clerk must endorse ~~his~~ the
45 approval of the clerk thereon, which shall be *prima facie* evidence of correctness, and cause
46 the same to be recorded.

47 **"§ 28A-21-2. Final accounts.**

48 (a) Unless the time for filing the final account has been extended by the clerk of
49 superior court, the personal representative or collector must file the final account for settlement
50 within one year after qualifying or within six months after receiving a State estate or
51 inheritance tax release, or in the time period for filing an annual account pursuant to

1 G.S. 28A-21-1, whichever is later. If no estate or inheritance tax return was required to be filed
2 for the estate, the personal representative or collector shall so certify in the final account filed
3 with the clerk of superior court. Such certification shall list the amount and value of all of the
4 decedent's property, and with respect to real estate, its particular location within or outside the
5 State, including any property transferred by the decedent over which the decedent had retained
6 any interest, or any property transferred within three years prior to the date of the decedent's
7 death, and after being filed and accepted by the clerk of the superior court shall be prima facie
8 evidence that such property is free of any State inheritance or State estate tax liability. The
9 personal representative or collector shall produce vouchers for all payments or verified proof
10 for all payments in lieu of vouchers. With the approval of the clerk of superior court, such
11 account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed,
12 audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A-21-1.

13 (b) Except as provided in subsection (a), after the date specified in the general notice to
14 creditors as provided for in G.S. 28A-14-1, if all of the debts and other claims against the estate
15 of the decedent duly presented and legally owing have been paid in the case of a solvent estate
16 or satisfied pro rata according to applicable statutes in the case of an insolvent estate, the
17 personal representative or collector may file his the personal representative's or collector's final
18 account to be reviewed, audited and recorded by the clerk of superior court. Nothing in this
19 subsection shall be construed as limiting the right of the surviving spouse or minor children to
20 file for allowances under G.S. 30-15 through 30-18 and the right of a surviving spouse to file
21 for property rights under G.S. 29-30.

22 **"§ 28A-21-2.2. Final accounting by limited personal representative.**

23 (a) Filing Requirement. – A limited personal representative appointed pursuant to
24 Article 29 of this Chapter shall file a sworn affidavit or report listing all debts and other claims
25 duly presented to the limited personal representative and providing proof that the debts and
26 other claims were satisfied, compromised, or denied, and that the time for filing suit thereon
27 has expired. The sworn affidavit or report shall be filed within 30 days of the later of the
28 following:

- 29 (1) The date by which a claim must be presented as set forth in the general
30 notice to creditors provided for in G.S. 28A-14-1.
- 31 (2) The date by which an action for recovery of a rejected claim must be
32 commenced under G.S. 28A-19-6.

33 (b) Action by Clerk. – The affidavit or report shall be reviewed and recorded by the
34 clerk of superior court. Following the review, the clerk of superior court shall take one of the
35 following actions:

- 36 (1) Discharge the limited personal representative from office.
- 37 (2) Require the filing of any additional information or documents determined by
38 the clerk to be necessary to the understanding of the affidavit or report.
- 39 (3) Order the full administration of the decedent's estate and appoint a personal
40 representative.

41 **"§ 28A-21-3. What accounts must contain.**

42 Accounts filed with the clerk of superior court pursuant to G.S. 28A-21-1, signed and under
43 oath, shall contain:

- 44 (1) The period which the account covers and whether it is an annual accounting
45 or a final accounting;
- 46 (2) The amount and value of the property of the estate according to the
47 inventory and appraisal or according to the next previous accounting, the
48 amount of income and additional property received during the period being
49 accounted for, and all gains from the sale of any property or otherwise;
- 50 (3) All payments, charges, losses, and distributions;
- 51 (4) The property on hand constituting the balance of the account, if any; and

1 (5) Such other facts and information determined by the clerk to be necessary to
2 an understanding of the account.

3 **"§ 28A-21-3.1. Phase II tobacco grower and quota owner payments; list of Phase II**
4 **distributees.**

5 (a) The following definitions apply in this section:

6 (1) "National Tobacco Grower Settlement Trust" means the trust established by
7 tobacco companies to provide payments to tobacco growers and tobacco
8 quota owners in 14 states for the purposes of ameliorating potential adverse
9 economic consequences of likely reduction in demand, sales, and prices for
10 tobacco as an agricultural product as a result of the Master Settlement
11 Agreement incorporated in the consent decree entered in the action of State
12 of North Carolina vs. Philip Morris, Incorporated, et al., 98 CVS 14377, in
13 the General Court of Justice, Superior Court Division, Wake County, North
14 Carolina.

15 (2) "Phase II payment" means an amount certified by the North Carolina Phase
16 II Tobacco Certification Entity, Inc., to be paid pursuant to the trust
17 agreement establishing the National Tobacco Grower Settlement Trust.

18 (b) A personal representative or collector of the estate of a decedent who, during 1993
19 or any subsequent year, was a tobacco grower or a tobacco quota owner as defined in Section
20 4.01 of the trust agreement establishing the National Tobacco Grower Settlement Trust may
21 file, along with a final account, a list of Phase II distributees for Phase II payments if all of the
22 following conditions are met:

23 (1) There are no unsatisfied creditors.

24 (2) There are no unsatisfied general monetary bequests.

25 (3) All assets other than any potential Phase II payments have been distributed.

26 (c) A list of Phase II distributees, signed under oath, must contain the following
27 information:

28 (1) The name and address of the personal representative or collector.

29 (2) The name and social security number of the decedent.

30 (3) The name and address, if known, of each devisee or heir entitled to receive
31 Phase II payments and the percentage of Phase II payments to be received by
32 each.

33 (d) The clerk of superior court must review the list of Phase II distributees to determine
34 if the list of distributees and their shares of potential Phase II payments are in accordance with
35 the will or, if there is no will, in accordance with the Intestate Succession Act. If the clerk
36 accepts the list of Phase II distributees for filing, the clerk must endorse the clerk's approval
37 thereon, which shall be prima facie evidence of correctness.

38 (e) Upon determination by the North Carolina Phase II Tobacco Certification Entity,
39 Inc., that the estate of a decedent entitled to any Phase II payment covering a time period when
40 the decedent was alive has been closed, the payment may be paid directly to those distributees
41 and in those shares set forth on a list of Phase II distributees filed under this section without the
42 estate's having to be reopened under G.S. 28A-23-5.

43 (f) The estate of a decedent who is entitled to any Phase II payment may be reopened,
44 if necessary, in accordance with G.S. 28A-23-5 in order to file a list of Phase II distributees
45 under this section.

46 (g) For purposes of this section, Phase II payments covering a time period when
47 decedent was alive are deemed cash and shall not pass by virtue of any devise or inheritance of
48 the decedent's real property.

49 **"§ 28A-21-4. Clerk may compel account.**

50 If any personal representative or collector fails to account as directed in G.S. 28A-9-3,
51 28A-21-1 or 28A-21-2 or renders an unsatisfactory account, the clerk of superior court shall,

1 upon ~~his own~~ motion of the clerk of superior court or upon the request of one or more creditors
2 of the decedent or other interested party, promptly order such personal representative or
3 collector to render a full satisfactory account within 20 days after service of the order. If, after
4 due service of the order, the personal representative or collector does not on or before the return
5 day of the order file such account, or obtain further time in which to file it, the clerk may
6 remove ~~him~~ the personal representative or collector from office or may issue an attachment
7 against ~~him~~ the personal representative or collector for a contempt and commit ~~him until he~~ the
8 personal representative or collector until the personal representative or collector files said
9 account.

10 **"§ 28A-21-5. Vouchers presumptive evidence.**

11 Vouchers, without other proof, are presumptive evidence of disbursement, unless
12 impeached. If lost, the accounting party must, if required, make oath to that fact setting forth
13 the manner of loss, and state the contents and purport of the voucher.

14 **"§ 28A-21-6. Permissive notice of final accounts.**

15 The personal representative or collector may, but is not required to, give written notice of a
16 proposed final account pursuant to G.S. 1A-1, Rule 4, to all devisees of the estate in the case of
17 testacy, and to all heirs of the estate in the case of intestacy, of the date and place of filing of
18 such account. In giving written notice, the personal representative shall attach a copy of the
19 proposed final accounting with exhibits made a part thereof, but is not required to include
20 copies of vouchers, account statements, or other supporting evidence submitted to the clerk. If
21 the personal representative or collector elects to provide this notice, the personal representative
22 or collector shall file with the clerk of superior court a certificate indicating that this notice has
23 been given to all devisees and heirs. Notwithstanding any right to appeal an order or judgment
24 under G.S. 1-301.3, any payment, distribution, action, or other matter disclosed on such
25 account or any annual account for the estate filed by the personal representative or collector
26 must be objected to by a devisee or heir within 30 days after the receipt of the written notice or
27 will be deemed to be accepted by the devisee or heir.

28 "Article 22.

29 "Distribution.

30 **"§ 28A-22-1. Scheme of distribution; testate and intestate estates.**

31 After the payment of costs of administration, taxes and other valid claims against the
32 decedent's estate, the personal representative shall distribute the remaining assets of the estate
33 in accordance with the terms of decedent's valid probated will or the provisions of Chapter 29
34 of the General Statutes or as otherwise lawfully authorized.

35 **"§ 28A-22-2. Shares of after-born and after-adopted children.**

36 The share of an after-born or after-adopted child, as provided by G.S. 29-9 and 31-5.5, shall
37 be allotted to ~~him~~ the after-born or after-adopted child out of any undeviseed real or personal
38 property, or out of both, if there is enough such undeviseed property for that purpose. If there is
39 no undeviseed real or personal property, or if there is not enough, then the whole of the child's
40 share, or the deficiency, shall be made up from the deviseed real or personal property, or from
41 both. The portion contributed by a devisee shall bear the same ratio to ~~his~~ the devisee's devise
42 as the after-born or after-adopted child's share bears to the net estate.

43 **"§ 28A-22-3. Special proceeding against unknown heirs of decedent before distribution of**
44 **estate.**

45 If there may be heirs, born or unborn, of the decedent, other than those known to the
46 personal representative and whose names and residences are unknown, before distributing such
47 estate the personal representative is authorized to institute a special proceeding before the clerk
48 of superior court for the purpose of determining who are the heirs of the decedent. All unknown
49 heirs of the decedent shall be made parties thereto and shall be served with summons by
50 publication as provided by G.S. 1A-1, Rule 4. Upon such service being had, the court shall
51 appoint some discreet person to act as guardian ad litem for said unknown heirs and summons

1 shall issue as to such guardian ad litem. Said guardian ad litem shall file answer on behalf of
2 said unknown heirs and he the guardian ad litem may be paid for his services of the guardian ad
3 litem such sum as the court may fix, to be paid as other costs out of the estate. Upon the filing
4 of the answer by said guardian ad litem all such unknown heirs shall be before the court for the
5 purposes of the proceeding to the same extent as if each had been personally served with
6 summons. Any judgment entered by the court in such proceeding shall be as binding upon said
7 unknown heirs as if they were personally before the court and any payment or distribution
8 made by the personal representative under orders of the court shall have the effect of fully
9 discharging such personal representative and any sureties on his the personal representative's
10 official bond to the full extent of such payment or distribution as ordered.

11 **"§ 28A-22-4. Distribution to nonresident trustee only upon appointment of process agent.**

12 (a) No assets of the estate of a decedent subject to administration in this State shall be
13 delivered or transferred to a trustee of a testamentary trust or an inter vivos trust who is a
14 nonresident of this State who has not appointed a resident agent for the service of civil process
15 for actions or proceedings arising out of the administration of the trust with regard to such
16 property.

17 (b) If property is delivered or transferred to a trustee in violation of this section, process
18 may be served outside this State or by publication, as provided by G.S. 1A-1, Rule 4, and the
19 courts of this State shall have the same jurisdiction over the trustee as might have been obtained
20 by service upon a properly appointed process agent. The provisions of this section with regard
21 to jurisdiction shall be in addition to other means of obtaining jurisdiction permissible under the
22 laws of this State.

23 **"§ 28A-22-5. Distribution of assets in kind in satisfaction of bequests and transfers in**
24 **trust.**

25 (a) Subject to the provisions of subsection (b) of this section, whenever under any will
26 or trust indenture the executor, trustee or other fiduciary is required to, or has an option to,
27 satisfy a bequest or transfer in trust by a transfer of assets of the estate or trust in kind at the
28 values as finally determined for federal estate tax purposes, the executor, trustee or other
29 fiduciary shall, in the absence of contrary provisions in such will or trust indenture, be required
30 to satisfy such bequest or transfer by the distribution of assets fairly representative of the
31 appreciation or depreciation in the value of all property available for distribution in satisfaction
32 of such bequest or transfer.

33 (b) The provisions of subsection (a) of this section shall not apply unless either:

34 (1) The decedent's surviving spouse is the beneficiary of the bequest or trust
35 transfer described in subsection (a) of this section or of the residue of the
36 estate or trust; or

37 (2) Any "skip person", as that term is defined in Chapter 13 of the Internal
38 Revenue Code of 1986, as amended, is or may be a current or future
39 beneficiary of the bequest or trust transfer described in subsection (a) of this
40 section or of the residue of the estate or trust, and the value of the decedent's
41 gross estate for federal tax purposes exceeds the value of the decedent's
42 unused generation-skipping tax exemption available under Chapter 13 of the
43 Internal Revenue Code of 1986, as amended.

44 **"§ 28A-22-6. Agreements with taxing authorities to secure benefit of federal marital**
45 **deduction.**

46 The executor, trustee, or other fiduciary having discretionary powers under a will or trust
47 indenture with respect to the selection of assets to be distributed in satisfaction of a bequest or
48 transfer in trust to or for the benefit of the surviving spouse of a decedent shall be authorized to
49 enter into agreements with the Commissioner of Internal Revenue of the United States of
50 America, and other taxing authorities, requiring the fiduciary to exercise the fiduciary's
51 discretion so that cash and other properties distributed in satisfaction of such bequest or transfer

1 in trust will be fairly representative of the net appreciation or depreciation in value on the date,
2 or dates, of distribution of all property then available for distribution in satisfaction of such
3 bequest or transfer in trust. Any such fiduciary shall be authorized to enter into any other
4 agreement not in conflict with the express terms of the will or trust indenture that may be
5 necessary or advisable in order to secure for federal estate tax purposes the appropriate marital
6 deduction available under the Internal Revenue Laws of the United States of America and to do
7 and perform all acts incident to such purpose.

8 **"§ 28A-22-7. Distribution to parent or guardian of a minor.**

9 (a) If a devise or legacy of personal property to a person under the age of 18 has a total
10 value of less than one thousand five hundred dollars (\$1,500), and the devisee or legatee is
11 residing in the same household with a parent or a guardian appointed prior to the decedent's
12 death, the personal representative may distribute to the parent or guardian the devise or legacy.
13 However, such distribution shall only be made with the prior approval of the clerk of court who
14 issued the letters testamentary or of administration.

15 (b) If such distribution has been made the parent or guardian shall use the property
16 solely for the education, maintenance and support of the devisee or legatee. However, the
17 parent or guardian shall not be required to file an accounting with the clerk of court or to the
18 personal representative, nor shall such distribution be cause for a delay in the filing of the
19 personal representative's final account under the provisions of Article 21 of this Chapter.

20 (c) This section establishes a procedure that is separate from the provisions of
21 G.S. 33-69.1 and it is not the intention of this section to repeal in whole or in part the
22 provisions of G.S. 33-69.1.

23 (d) This section may also be applied to several devises or legacies of personal property
24 to a single devisee or legatee having a combined total value of less than one thousand five
25 hundred dollars (\$1,500).

26 **"§ 28A-22-8. Executor or trustee; discretion over distributions.**

27 Unless otherwise restricted by the terms of the will or trust, an executor or trustee shall
28 have absolute discretion to make distributions in cash or in specific property, real or personal,
29 or an undivided interest therein or partly in cash or partly in such property, and to do so without
30 regard to the income tax basis for federal tax purposes of specific property allocated to any
31 beneficiary.

32 **"§ 28A-22-9. Distribution to known but unlocated devisees or heirs.**

33 (a) If there are known but unlocated devisees or heirs of property held by the personal
34 representative, the personal representative may deliver the share of such devisee or heir to the
35 clerk of superior court immediately prior to filing of the final account. If the devisee or heir is
36 located after the final account has been filed, ~~he~~ the devisee or heir may present a claim for the
37 share to the clerk. If the clerk determines that the claimant is entitled to the share, ~~he~~ the clerk
38 shall deliver the share to the devisee or claimant. If the clerk denies the claim, the claimant may
39 take an appeal as in a special proceeding.

40 (b) The clerk shall hold the share without liability for profit or interest. If no claim has
41 been presented within a period of one year after the filing of the final account, the clerk shall
42 deliver the share to the State Treasurer as abandoned property.

43 (c) The clerk shall not be required to publish any notice to such devisee or heir and
44 shall not be required to report such share to the State Treasurer. If the devisee or heir is located,
45 the clerk shall inform the devisee or heir that ~~he~~ the devisee or heir is entitled to file a claim
46 with the State Treasurer for the share under the provisions of G.S. 116B-67.

47 **"§ 28A-22-10. Distribution of assets of inoperative trust.**

48 When the facts at the time of distribution of property to a trust are such that the trust would
49 be inoperative under the terms of the instrument creating the trust for any reason, including the
50 death of a beneficiary, renunciation by a beneficiary, the exercise of a right to withdraw the
51 property by a beneficiary, or the attainment of a stipulated age by a beneficiary, the personal

1 representative or the trustee authorized or required to make the distribution of that property to
2 the trust may distribute the property directly to the person or persons entitled to it under the
3 terms of the instrument creating the trust without the interposition of the establishment of the
4 trust. If only a portion of the trust would be inoperative, the property distributable to that
5 portion of the trust may be distributed directly to the person or persons entitled to the property
6 under the terms of the instrument creating the trust.

7 **"§ 28A-22-11. Agreements with heirs.**

8 Any agreement by an heir, unknown or known but unlocated, the primary purpose of which
9 is to locate or recover, or assist in the recovery of, a share in a decedent's estate shall be subject
10 to the provisions of G.S. 116B-78.

11 "Article 23.

12 "Settlement.

13 **"§ 28A-23-1. Settlement after final account filed.**

14 When the personal representative or collector has paid or otherwise satisfied or provided for
15 all claims against the estate, has distributed the remainder of the estate pursuant to
16 G.S. 28A-22-1 and has filed his the personal representative's or collector's final account for
17 settlement pursuant to G.S. 28A-21-2, if the clerk of superior court, after review of the personal
18 representative's or collector's final account, approves the same, ~~he~~ the clerk of superior court
19 shall enter an order discharging the personal representative or collector from further ~~liability,~~
20 duties and liabilities as personal representative or collector, including those set forth in Article
21 13 of this Chapter. However, that such an order shall not include a release or discharge of
22 liability for any breach of duty set forth in G.S. 28A-13-10(c).

23 **"§ 28A-23-2. Payment into court of fund due minor.**

24 When any personal representative or collector holds property due a minor without a
25 guardian and desires to file his the personal representative's or collector's petition for
26 settlement, ~~he~~ the personal representative or collector may deliver the property to the clerk of
27 superior court who shall invest upon interest or otherwise manage said property for the use of
28 the minor or the clerk may proceed to appoint a guardian for the minor pursuant to the
29 provisions of Chapter 35A of the General Statutes and then may deliver the property of the
30 minor to the guardian.

31 **"§ 28A-23-3. Commissions allowed personal representatives; representatives guilty of
32 misconduct or default.**

33 (a) Personal representatives, collectors or public administrators shall be entitled to
34 commissions to be fixed in the discretion of the clerk of superior court not to exceed five
35 percent (5%) upon the amounts of receipts, including the value of all personal property when
36 received, and upon the expenditures made in accordance with law. In determining the
37 maximum commissions allowable under this subsection, the clerk of superior court may take
38 into consideration fees paid by the estate for professional services performed in the ordinary
39 course of administering the estate, including services performed by attorneys and accountants.
40 However, the clerk is not required to reduce the maximum commissions allowed by the
41 aggregate fees paid to professionals on a dollar-for-dollar basis.

42 The commissions shall be charged as a part of the costs of administration and, upon
43 allowance, may be retained out of the assets of the estate against creditors and all other persons
44 claiming an interest in the estate. If the gross value of an estate is two thousand dollars (\$2,000)
45 or less, the clerk of superior court may fix the commission to be received by the personal
46 representative, collector or public administrator in an amount the clerk of superior court, in the
47 clerk's discretion, deems just and adequate.

48 (b) In determining the amount of the commissions, both upon personal property
49 received and upon expenditures made, the clerk of superior court shall consider the time,
50 responsibility, trouble and skill involved in the management of the estate. Where real property

1 is sold to pay debts or legacies, the commission shall be computed only on the proceeds
2 actually applied in the payment of debts or legacies.

3 (c) The clerk of superior court may allow commissions from time to time during the
4 course of the administration, but the total commissions allowed shall be determined on final
5 settlement of the estate and shall not exceed the limit fixed in this section.

6 (d) Nothing in this section shall be construed to:

7 (1) Prevent the clerk of the superior court from allowing reasonable sums for
8 necessary charges and disbursements incurred in the management of the
9 estate.

10 (2) Allow commissions on distribution of the shares of heirs or on distribution
11 of shares of devisees.

12 (3) Abridge the right of any party interested in the administration of a decedent's
13 estate to appeal an order of the clerk of superior court to a judge of superior
14 court.

15 (e) No personal representative, collector or public administrator, who has been guilty of
16 default or misconduct in the due execution of ~~his or her~~ the personal representative's,
17 collector's, or public administrator's office resulting in the revocation of ~~his or her~~ the
18 appointment of the personal representative, collector, or public administrator under the
19 provisions of G.S. 28A-9-1, shall be entitled to any commission under the provisions of this
20 section.

21 (f) For the purpose of computing commissions whenever any portion of the dividends,
22 interest, rents or other amounts payable to a personal representative, collector or public
23 administrator is required by any law of the United States or other governmental unit to be
24 withheld for income tax purposes by the person, corporation, organization or governmental unit
25 paying the same, the amount withheld shall be deemed to have been received and expended.

26 (g) Subsection (a) of this section does not apply if the testator's will specifies a
27 stipulated amount or method or standard for determining the compensation for the services
28 rendered by the personal representative, including a provision in the will that the compensation
29 of the personal representative is to be determined by applying the personal representative's
30 regularly adopted schedule of compensation in effect at the time of performance of those
31 services. Subsection (a) of this section also shall not apply if the testator's will provides that the
32 personal representative is to receive "reasonable compensation" for those services or similar
33 language to that effect if the personal representative and the beneficiaries whose shares would
34 be charged with the payment of the personal representative's compensation consent in writing
35 to the specific amount that constitutes reasonable compensation.

36 (h) Subsection (a) of this section shall apply if the testator's will provides that
37 compensation of the personal representative shall be the amount "as provided by law," the
38 "maximum amount provided by law," or other similar language.

39 **"§ 28A-23-4. Counsel fees allowable to attorneys serving as representatives.**

40 The clerk of superior court, in ~~his discretion,~~ the discretion of the clerk of superior court, is
41 authorized and empowered to allow counsel fees to an attorney serving as a personal
42 representative, collector or public administrator (in addition to the commissions allowed ~~him~~
43 the attorney as such representative, collector or public administrator) where such attorney in
44 behalf of the estate ~~he~~ the attorney represents renders professional services, as an attorney,
45 which are beyond the ordinary routine of administration and of a type which would reasonably
46 justify the retention of legal counsel by any such representative, collector or public
47 administrator not ~~himself~~ licensed to practice law.

48 **"§ 28A-23-5. Reopening administration.**

49 If, after an estate has been settled and the personal representative discharged, other property
50 of the estate shall be discovered, or if it shall appear that any necessary act remains
51 unperformed on the part of the personal representative, or for any other proper cause, the clerk

1 of superior court, upon the petition of any person interested in the estate and without notice or
2 upon such notice as he the clerk of superior court may direct, may order that said estate be
3 reopened. He The clerk of superior court may reappoint the personal representative or appoint
4 another personal representative to administer such property or perform such acts as may be
5 deemed necessary. Unless the clerk of superior court shall otherwise order, the provisions of
6 this Chapter as to an original administration shall apply to the proceedings had in the reopened
7 administration; but no claim which is already barred can be asserted in the reopened
8 administration.

9 "Article 24.

10 "120-Hour Survivorship Requirement; Revised Simultaneous Death Act.

11 "**§ 28A-24-1. Definitions.**

12 In this Article:

- 13 (1) "Co-owners with right of survivorship" includes joint tenants in a joint
14 tenancy with right of survivorship, tenants by the entireties, and other
15 co-owners of property or accounts held under circumstances that entitle one
16 or more to the whole of the property or account on the death of the other or
17 others.
- 18 (2) "Governing instrument" means a deed, will, trust, insurance or annuity
19 policy, account with a POD designation, pension, profit sharing, retirement,
20 or similar benefit plan, instrument creating or exercising a power of
21 appointment or a power of attorney, or a dispositive, appointive, or
22 nominative instrument of any similar type.
- 23 (3) "Payor" means a trustee, insurer, business entity, employer, government,
24 governmental agency or subdivision, or any other person authorized or
25 obligated by law or a governing instrument to make payments.

26 "**§ 28A-24-2. Requirement of survival by 120 hours.**

27 (a) Except as otherwise provided in this Article, where the title to property, the
28 devolution of property, the right to elect an interest in property, or any other right or benefit
29 depends upon an individual's survivorship of the death of another individual, an individual who
30 is not established by clear and convincing evidence to have survived the other individual by at
31 least 120 hours is deemed to have predeceased the other individual.

32 (b) If the language of the governing instrument disposes of property in such a way that
33 two or more beneficiaries are designated to take alternatively by reason of surviving each other
34 and it is not established by clear and convincing evidence that any such beneficiary has
35 survived any other such beneficiary by at least 120 hours, the property shall be divided into as
36 many equal shares as there are alternative beneficiaries, and these shares shall be distributed
37 respectively to each such beneficiary's estate.

38 (c) If the language of the governing instrument disposes of property in such a way that
39 it is to be distributed to the member or members of a class who survived an individual, each
40 member of the class will be deemed to have survived that individual by at least 120 hours
41 unless it is established by clear and convincing evidence that the individual survived the class
42 member or members by at least 120 hours.

43 "**§ 28A-24-3. Co-owners with right of survivorship; requirement of survival by 120 hours.**

44 Except as otherwise provided in this Article, (i) if it is not established by clear and
45 convincing evidence that one of two co-owners with right of survivorship survived the other
46 co-owner by at least 120 hours, one-half of the property passes as if one had survived by at
47 least 120 hours and one-half as if the other had survived by at least 120 hours and (ii) if there
48 are more than two co-owners with right of survivorship and it is not established by clear and
49 convincing evidence that at least one of them survived the others by at least 120 hours, the
50 property passes to the estates of each of the co-owners in the proportion that one bears to the
51 whole number of co-owners.

1 § 28A-24-4. Survival of an event; 120-hour period not applicable.

2 For purposes of a governing instrument that requires survival of an event, other than the
3 death of another individual, the 120-hour survivorship requirement of this Article does not
4 apply.

5 § 28A-24-5. Victim deemed to survive slayer.

6 Notwithstanding any other provisions of this Article, solely for the purpose of determining
7 whether the victim is entitled to any right or benefit that depends on surviving the death of a
8 slayer under G.S. 31A-3, the slayer is deemed to have predeceased the victim and the victim is
9 deemed to have survived the slayer by at least 120 hours (or any greater survival period
10 required of the victim under the slayer's will or other governing instrument) unless it is
11 established by clear and convincing evidence that the slayer survived the victim by at least 120
12 hours.

13 § 28A-24-6. Exceptions to the 120-hour survival requirement.

14 Survival by 120 hours is not required if any of the following apply:

- 15 (1) The governing instrument contains language dealing explicitly with
16 simultaneous deaths or deaths in a common disaster and the language is
17 operable under the facts of the case.
- 18 (2) The governing instrument expressly indicates that an individual is not
19 required to survive the death of another individual by any specified period or
20 expressly requires the individual to survive another individual for a specified
21 period; but survival must be established by clear and convincing evidence.
- 22 (3) The imposition of a 120-hour requirement of survival would cause a
23 nonvested property interest or a power of appointment to fail to qualify for
24 validity under G.S. 41-15; but survival must be established by clear and
25 convincing evidence.
- 26 (4) The application of a 120-hour requirement of survival to multiple governing
27 instruments would result in an unintended failure or duplication of a
28 disposition; but survival must be established by clear and convincing
29 evidence.
- 30 (5) The application of a 120-hour requirement of survival would deprive an
31 individual or the estate of an individual of an otherwise available tax
32 exemption, deduction or credit, expressly including the marital deduction,
33 resulting in the imposition of a tax upon a donor or testator or other person
34 (or their estate) as the transferor of any property. "Tax" includes any federal
35 or State gift, estate or inheritance tax.
- 36 (6) The application of a 120-hour requirement of survival would result in an
37 escheat.

38 § 28A-24-7. Evidence of death or status.

39 For purposes of this Article, the following rules of evidence apply relating to the
40 determination of death and status of a beneficiary subject to a requirement of survivorship and
41 of the person the beneficiary must survive:

- 42 (1) Death occurs when an individual is determined to be dead pursuant to
43 G.S. 90-323 or Chapter 28C of the General Statutes.
- 44 (2) A certified or authenticated copy of a death certificate purporting to be
45 issued by an official or agency in the place where the death purportedly
46 occurred is prima facie evidence of the fact, place, date, and time of death
47 and the identity of the decedent. In the absence of evidence disputing the
48 death certificate, that certificate shall be conclusive evidence of the fact,
49 place, date, and time of death and the identity of the decedent.
- 50 (3) A certified or authenticated copy of any record or report of a governmental
51 agency, domestic or foreign, that an individual is missing, detained, dead, or

1 alive is prima facie evidence of the status and of the dates, circumstances,
2 and places disclosed by the record or report. The record or report is
3 conclusive evidence of the status and of the dates, circumstances, and places
4 disclosed by the record or report unless there is evidence to the contrary.

- 5 (4) In the absence of prima facie evidence of death under subdivision (2) or (3)
6 of this section, the fact of death may be established by clear and convincing
7 evidence, including circumstantial evidence.

8 **"§ 28A-24-8. Protection of payors, bona fide purchasers, and other third parties;
9 personal liability of recipient.**

10 (a) A payor or other third party is not liable for having made a payment or transferred
11 an item of property or any other benefit to a person designated in a governing instrument who,
12 under this Article, is not entitled to the payment or item of property, or for having taken any
13 other action in good faith reliance on the person's apparent entitlement under the terms of the
14 governing instrument, before the payor or other third party received written notice of a claimed
15 lack of entitlement under this Article. A payor or other third party is liable for a payment made
16 or other action taken after the payor or other third party received written notice of a claimed
17 lack of entitlement under this Article.

18 Written notice of a claimed lack of entitlement under this Article must be mailed to the
19 payor's or other third party's main office or home by registered or certified mail, return receipt
20 requested, or served upon the payor or other third party in the same manner as a summons in a
21 civil action. Upon receipt of written notice of a claimed lack of entitlement under this Article, a
22 payor or other third party may pay any amount owed or transfer or deposit any item of property
23 other than tangible personal property held by it to or with the clerk of the superior court having
24 jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings
25 have been commenced, to or with the clerk of the superior court having jurisdiction of probate
26 proceedings relating to decedents' estates located in the county of the decedent's residence. The
27 clerk shall hold the funds or item of property and, upon the clerk's determination under this
28 Article, shall order disbursement in accordance with the determination. Payments, transfers, or
29 deposits made to or with the clerk discharge the payor or other third party from all claims for
30 the value of amounts paid to or items of property transferred to or deposited with the clerk.

31 (b) A person who purchases property for value and without notice, or who received a
32 payment or other item of property in partial or full satisfaction of a legally enforceable
33 obligation, is neither obligated under this Article to return the payment, item of property, or
34 benefit, nor liable under this Article for the amount of the payment or the value of the item of
35 property or benefit. But a person who, not for value, receives a payment, item of property, or
36 any other benefit to which the person is not entitled under this Article is obligated to return the
37 payment, item of property, or benefit, or is personally liable for the amount of the payment or
38 the value of the item of property or benefit, to the person who is entitled to it under this Article.

39 "Article 25.

40 "Small Estates.

41 **"§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.**

42 (a) When a decedent dies intestate leaving personal property, less liens and
43 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time
44 after 30 days from the date of death, any person indebted to the decedent or having possession
45 of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in
46 action belonging to the decedent shall make payment of the indebtedness or deliver the tangible
47 personal property or an instrument evidencing a debt, obligation, stock or chose in action to a
48 person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir
49 or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a
50 certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf
51 of the heir or creditor or the public administrator stating:

- 1 (1) The name and address of the affiant and the fact that ~~he or she~~ the affiant is
- 2 the public administrator or an heir or creditor of the decedent;
- 3 (2) The name of the decedent and ~~his~~ the decedent's residence at time of death;
- 4 (3) The date and place of death of the decedent;
- 5 (4) That 30 days have elapsed since the death of the decedent;
- 6 (5) That the value of all the personal property owned by the estate of the
- 7 decedent, less liens and encumbrances thereon, does not exceed twenty
- 8 thousand dollars (\$20,000);
- 9 (6) That no application or petition for appointment of a personal representative
- 10 is pending or has been granted in any jurisdiction;
- 11 (7) The names and addresses of those persons who are entitled, under the
- 12 provisions of the Intestate Succession Act, to the personal property of the
- 13 decedent and their relationship, if any, to the decedent; and
- 14 (8) A description sufficient to identify each tract of real property owned by the
- 15 decedent at the time of ~~his~~ the decedent's death.

16 In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not
17 disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected
18 pursuant to this section may exceed twenty thousand dollars (\$20,000) in value but shall not
19 exceed thirty thousand dollars (\$30,000) in ~~value.~~ value, after reduction for any spousal
20 allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall
21 state: (i) the name and address of the affiant and the fact that ~~he or she~~ the affiant is the
22 surviving spouse and is entitled, under the provisions of the Intestate Succession Act, to all of
23 the property of the decedent; (ii) that the value of all of the personal property owned by the
24 estate of the decedent, less liens and encumbrances thereon, does not exceed thirty thousand
25 dollars (\$30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8)
26 of this subsection.

27 (b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described
28 in subsection (a) shall be filed in the office of the clerk of superior court of the county where
29 the decedent ~~had his domicile at the time of his~~ was domiciled at the time of death. The
30 affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307, shall be
31 indexed in the index to estates, and a copy thereof shall be mailed by the clerk to the persons
32 shown in the affidavit as entitled to the personal property.

33 (c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to
34 require the transfer to the affiant or ~~his~~ the affiant's designee of the title and license to a motor
35 vehicle registered in the name of the decedent owner; the ownership rights of a savings account
36 or checking account in a bank in the name of the decedent owner; the ownership rights of a
37 savings account or share certificate in a credit union, building and loan association, or savings
38 and loan association in the name of the decedent owner; the ownership rights in any stock or
39 security registered on the books of a corporation in the name of a decedent owner; or any other
40 property or contract right owned by decedent at the time of ~~his~~ the decedent's death.

41 **"§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

42 (a) When a decedent dies testate leaving personal property, less liens and encumbrances
43 thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days
44 from the date of death, any person indebted to the decedent or having possession of tangible
45 personal property or an instrument evidencing a debt, obligation, stock or chose in action
46 belonging to the decedent shall make payment of the indebtedness or deliver the tangible
47 personal property or an instrument evidencing a debt, obligation, stock or chose in action to a
48 person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person
49 named or designated as executor in the will, devisee, heir or creditor, of the decedent, not
50 disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in
51 accordance with subsection (b) and made by or on behalf of the heir, the person named or

1 designated as executor in the will of the decedent, the creditor, the public administrator, or the
2 devisee, stating:

- 3 (1) The name and address of the affiant and the fact that ~~he~~ the affiant is the
4 public administrator, a person named or designated as executor in the will,
5 devisee, heir or creditor, of the decedent;
- 6 (2) The name of the decedent and ~~his~~ the decedent's residence at time of death;
- 7 (3) The date and place of death of the decedent;
- 8 (4) That 30 days have elapsed since the death of the decedent;
- 9 (5) That the decedent died testate leaving personal property, less liens and
10 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in
11 value;
- 12 (6) That the decedent's will has been admitted to probate in the court of the
13 proper county and a duly certified copy of the will has been recorded in each
14 county in which is located any real property owned by the decedent at the
15 time of ~~his~~ the decedent's death;
- 16 (7) That a certified copy of the decedent's will is attached to the affidavit;
- 17 (8) That no application or petition for appointment of a personal representative
18 is pending or has been granted in any jurisdiction;
- 19 (9) The names and addresses of those persons who are entitled, under the
20 provisions of the will, or if applicable, of the Intestate Succession Act, to the
21 property of the decedent; and their relationship, if any, to the decedent; and
- 22 (10) A description sufficient to identify each tract of real property owned by the
23 decedent at the time of ~~his~~ the decedent's death.

24 In those cases in which the affiant is the surviving spouse, is entitled to all of the property
25 of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this
26 subsection that may be collected pursuant to this section may exceed twenty thousand dollars
27 (\$20,000) in value but shall not exceed thirty thousand dollars (\$30,000) in value. In such
28 cases, the affidavit shall state: (i) the name and address of the affiant and the fact that ~~he or she~~
29 the affiant is the surviving spouse and is entitled, under the provisions of the decedent's will, or
30 if applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the
31 decedent died testate leaving personal property, less liens and encumbrances thereon, not
32 exceeding thirty thousand dollars (\$30,000); and (iii) the information required under
33 subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection.

34 (b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described
35 in subsection (a) shall be filed in the office of the clerk of superior court of the county where
36 the decedent ~~had his domicile at the time of his~~ was domiciled at the time of death. The
37 affidavit shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307, shall be
38 indexed in the index to estates, and a copy shall be mailed by the clerk to the persons shown in
39 the affidavit as entitled to the property.

40 (c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to
41 require the transfer to the affiant or ~~his~~ the affiant's designee of the title and license to a motor
42 vehicle registered in the name of the decedent owner; the ownership rights of a savings account
43 or checking account in a bank in the name of the decedent owner; the ownership rights of a
44 savings account or share certificate in a credit union, building and loan association, or savings
45 and loan association in the name of the decedent owner; the ownership rights in any stock or
46 security registered on the books of a corporation in the name of a decedent owner; or any other
47 property or contract right owned by decedent at the time of ~~his~~ the decedent's death.

48 **"§ 28A-25-2. Effect of affidavit.**

49 The person paying, delivering, transferring or issuing personal property or the evidence
50 thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or
51 G.S. 28A-25-1.1(a) is discharged and released to the same extent as if ~~he~~ the person dealt with

1 a duly qualified personal representative of the decedent. ~~He~~ The person is not required to see to
2 the application of the personal property or evidence thereof or to inquire into the truth of any
3 statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay,
4 deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its
5 payment, delivery, transfer, or issuance compelled upon proof of their right in an action
6 brought for that purpose by or on behalf of the persons entitled thereto. The court costs and
7 attorney's fee incident to the action shall be taxed against the person whose refusal to comply
8 with the provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The
9 heir or creditor to whom payment, delivery, transfer or issuance is made is answerable and
10 accountable therefor to any duly qualified personal representative or collector of the decedent's
11 estate or to any other person having an interest in the estate.

12 **"§ 28A-25-3. Disbursement and distribution of property collected by affidavit.**

13 (a) If there has been no personal representative or collector appointed by the clerk of
14 superior court, the affiant who has collected personal property of the decedent by affidavit
15 pursuant to G.S. 28A-25-1 or G.S. 28A-25-1.1 shall:

16 (1) Disburse and distribute the same in the following order:

- 17 a. To the payment of the surviving spouse's year's allowance and the
18 children's year's allowance assigned in accordance with G.S. 30-15
19 through G.S. 30-33;
20 b. To the payment of the debts and claims against the estate of the
21 decedent in the order of priority set forth in G.S. 28A-19-6, or to the
22 reimbursement of any person who has already made payment
23 thereof;
24 c. To the distribution of the remainder of the personal property to the
25 persons entitled thereto under the provisions of the will or of the
26 Intestate Succession Act; and

27 (2) File an affidavit with the clerk of superior court that ~~he~~ the affiant has
28 collected the personal property of the decedent and the manner in which ~~he~~
29 the affiant has disbursed and distributed the same. This final affidavit shall
30 be filed within 90 days of the date of filing of the qualifying affidavit
31 provided for in G.S. 28A-25-1 or G.S. 28A-25-1.1. If the affiant cannot file
32 the final affidavit within 90 days, ~~he~~ the affiant shall file a report with the
33 clerk within that time period stating ~~his~~ the affiant's reasons. Upon
34 determining that the affiant has good reason not to file the final affidavit
35 within 90 days, the clerk may extend the time for filing up to one year from
36 the date of filing the qualifying affidavit.

37 (b) Nothing in this section shall be construed as changing the rule of G.S. 28A-15-1 and
38 G.S. 28A-15-5 rendering both real and personal property, without preference or priority,
39 available for the discharge of debts and other claims against the estate of the decedent. If it
40 appears that it may be in the best interest of the estate to sell, lease, or mortgage any real
41 property to obtain money for the payment of debts or other claims against the decedent's estate,
42 the affiant shall petition the clerk of superior court for the appointment of a personal
43 representative to conclude the administration of the decedent's estate pursuant to
44 G.S. 28A-25-5.

45 **"§ 28A-25-4. Clerk may compel compliance.**

46 If any affiant who has collected personal property of the decedent by affidavit pursuant to
47 G.S. 28A-25-1 or G.S. 28A-25-1.1 shall fail to make distribution or file affidavit as required by
48 G.S. 28A-25-3, the clerk of superior court may, upon ~~his own~~ motion of the clerk of superior
49 court or at the request of any interested person, issue an attachment against ~~him~~ the affiant for a
50 contempt and commit ~~him~~ the affiant until ~~he~~ the affiant makes proper distribution and files the

1 affidavit. In addition to or in lieu of filing this attachment, the clerk may require the affiant to
2 post a bond conditioned as provided in G.S. 28A-8-2.

3 **"§ 28A-25-5. Subsequently appointed personal representative or collector.**

4 Nothing in this Article shall preclude any interested person, including the affiant, from
5 petitioning the clerk of superior court for the appointment of a personal representative or
6 collector to conclude the administration of the decedent's estate. If such is done, the affiant who
7 has been collecting personal property by affidavit shall cease to do so, shall deliver all assets in
8 his the affiant's possession to the personal representative, and shall render a proper accounting
9 to the personal representative or collector. A copy of the accounting shall also be filed with the
10 clerk having jurisdiction over the personal representative or collector.

11 **"§ 28A-25-6. Payment to clerk of money owed decedent.**

12 (a) As an alternative to the small estate settlement procedures of this Article, any person
13 indebted to a decedent may satisfy such indebtedness by paying the amount of the debt to the
14 clerk of the superior court of the county of the domicile of the decedent:

- 15 (1) If no administrator has been appointed, and
- 16 (2) If the amount owed by such person does not exceed five thousand dollars
17 (\$5,000), and
- 18 (3) If the sum tendered to the clerk would not make the aggregate sum which
19 has come into the clerk's hands belonging to the decedent exceed five
20 thousand dollars (\$5,000).

21 (b) Such payments may not be made to the clerk if the total amount paid or tendered
22 with respect to any one decedent would exceed five thousand dollars (\$5,000), even though
23 disbursements have been made so that the aggregate amount in the clerk's hands at any one
24 time would not exceed five thousand dollars (\$5,000).

25 (c) If the sum tendered pursuant to this section would make the aggregate sum coming
26 into the clerk's hands with respect to any one decedent exceed five thousand dollars (\$5,000)
27 the clerk shall appoint an administrator, or the sum may be administered under the preceding
28 sections of this Article.

29 (d) If it appears to the clerk after making a preliminary survey that disbursements
30 pursuant to this section would not exhaust funds received pursuant to this section, ~~he~~ the clerk
31 may, in his the clerk's discretion, appoint an administrator, or the funds may be administered
32 under the preceding sections of this Article.

33 (e) The receipt from the clerk of the superior court of a payment purporting to be made
34 pursuant to this section is a full release to the debtor for the payment so made.

35 (f) If no administrator has been appointed, the clerk of superior court shall disburse the
36 money received under this section for the following purposes and in the following order:

- 37 (1) To pay the surviving spouse's year's allowance and children's year's
38 allowance assigned in accordance with law;
- 39 (2) (3) Repealed by Session Laws 1981, c. 383, s. 3.
- 40 (4) All other claims shall be disbursed according to the order set out in
41 G.S. 28A-19-6.

42 Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out of
43 funds provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of Chapter 108A
44 of the General Statutes of North Carolina, any lawful claims for care provided by an adult care
45 home to the deceased, incurred not more than 90 days prior to his the deceased's death. After
46 the death of a spouse who died intestate and after the disbursements have been made in
47 accordance with this subsection, the balance in the clerk's hands belonging to the estate of the
48 decedent shall be paid to the surviving spouse, and if there is no surviving spouse, the clerk
49 shall pay it to the heirs in proportion to their respective interests.

50 (g) The clerk shall not be required to publish notice to creditors.

1 (h) Whenever an administrator is appointed after a clerk of superior court has received
2 any money pursuant to this section, the clerk shall pay to the administrator all funds which have
3 not been disbursed. The clerk shall receive no commissions for payments made to the
4 administrator, and the administrator shall receive no commissions for receiving such payments.

5 "Article 26.

6 "Foreign Personal Representatives and Ancillary Administration.

7 **"§ 28A-26-1. Domiciliary and ancillary probate and administration.**

8 The domiciliary, or original, administration of the estates of all decedents domiciled in
9 North Carolina at the time of death shall be under the jurisdiction of this State and of a proper
10 clerk of superior court in this State, and the original probate of all wills of such persons shall be
11 in this State. Any administration of the estate and any probate of a will of such decedents
12 outside North Carolina shall be ancillary only. All assets, except real estate (but including
13 proceeds from the sale of real estate), subject to ancillary administration in a jurisdiction
14 outside North Carolina shall, to the extent such assets are not necessary for the requirements of
15 such ancillary administration, be transferred and delivered by the ancillary personal
16 representative to the duly qualified personal representative in this State for administration and
17 distribution by the domiciliary personal representative, and the domiciliary personal
18 representative in this State shall have the duty of collecting all such assets from the ancillary
19 personal representative. The receipt of the domiciliary personal representative shall fully acquit
20 the ancillary personal representative with respect to the assets covered thereby. The domiciliary
21 personal representative in North Carolina shall have the exclusive right and duty to pay all
22 federal and North Carolina taxes owed by the estate of such decedent and to make proper
23 distribution of all assets including those collected from the ancillary personal representative.

24 **"§ 28A-26-2. Payment of debt and delivery of property to domiciliary personal
25 representative of a nonresident decedent without ancillary administration in
26 this State.**

27 (a) At any time after the expiration of 60 days from the death of a nonresident decedent,
28 any resident of this State indebted to the estate of the nonresident decedent or having
29 possession or control of personal property, or of an instrument evidencing a debt, obligation,
30 stock or chose in action belonging to the estate of the nonresident decedent may pay the debt or
31 deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose
32 in action, to the domiciliary personal representative of the nonresident decedent upon being
33 presented with a certified or exemplified copy of ~~his~~ the domiciliary personal representative's
34 letters of appointment and an affidavit made by or on behalf of the domiciliary personal
35 representative stating:

- 36 (1) The date of the death of the nonresident decedent;
37 (2) That to the best of ~~his~~ the domiciliary personal representative's knowledge
38 no administration, or application or petition therefor, is pending in this State;
39 (3) That the domiciliary personal representative is entitled to payment or
40 delivery.

41 (b) Payment or delivery made in good faith on the basis of the proof of appointment as
42 domiciliary personal representative of a nonresident decedent and an affidavit meeting the
43 requirements of subsection (a) constitutes a release to the same extent as if payment or delivery
44 had been made to an ancillary personal representative.

45 (c) Payment or delivery under this section shall not be made if a resident creditor of the
46 nonresident decedent has, by registered or certified mail, notified the resident debtor of the
47 nonresident decedent or the resident having possession of the personal property belonging to
48 the nonresident decedent that the debt should not be paid nor the property delivered to the
49 domiciliary personal representative of the nonresident decedent. If no ancillary administrator
50 qualifies within 90 days from the date of the notice, however, the resident debtor may pay the

1 debt or deliver the property directly to the nonresident domiciliary personal representative as
2 set forth in subsection (a) of this section.

3 **"§ 28A-26-3. Ancillary administration.**

4 (a) Any domiciliary personal representative of a nonresident decedent upon the filing of
5 a certified or exemplified copy of letters of appointment with the clerk of superior court who
6 has venue under G.S. 28A-3-1 may be granted ancillary letters in this State notwithstanding
7 that the domiciliary personal representative is a nonresident of this State or is a foreign
8 corporation. If the domiciliary personal representative is a foreign corporation, it need not
9 qualify under any other law of this State to authorize it to act as ancillary personal
10 representative in the particular estate. If application is made for the issuance of ancillary letters
11 to the domiciliary personal representative, the clerk of superior court shall give preference in
12 appointment to the domiciliary personal representative unless the decedent shall have otherwise
13 directed in a will.

14 (b) If, within 90 days after the death of the nonresident, or within 60 days after issue of
15 domiciliary letters, should that be a shorter period, no application for ancillary letters has been
16 made by a domiciliary personal representative, any person who could apply for issue of letters
17 had the decedent been a resident may apply for issue of ancillary letters.

18 If it is known that there is a duly qualified domiciliary personal representative, the clerk of
19 superior court shall send notice of such application, by registered mail, to that personal
20 representative and to the appointing court. Such notice shall include a statement that, within 14
21 days after its mailing, the domiciliary personal representative may apply for the issue of
22 ancillary letters with the preference specified in subsection (a) of this section; and that ~~his~~
23 failure of the domiciliary personal representative to do so will be deemed a waiver, with the
24 result that letters will be issued to another. Upon such failure, the clerk of superior court may
25 issue ancillary letters in accordance with the provisions of Article 4 of this Chapter.

26 If the applicant and the clerk of superior court have no knowledge of the existence of a
27 domiciliary personal representative, the clerk of superior court may proceed to issue ancillary
28 letters. Subsequently, upon it becoming known that a domiciliary personal representative has
29 been appointed, whether such appointment occurred before or after the issue of ancillary letters,
30 the clerk of superior court shall notify the domiciliary personal representative, by registered
31 mail, of the action taken by the clerk of superior court and the state of the ancillary
32 administration. Such notice shall include a statement that at any time prior to approval of the
33 ancillary personal representative's final account the domiciliary personal representative may
34 appear in the proceedings for any purpose ~~he~~ the domiciliary personal representative may deem
35 advisable; and that ~~he~~ the domiciliary personal representative may apply to be substituted as
36 ancillary personal representative, but that such request will not be granted unless the clerk of
37 superior court finds that such action will be for the best interests of North Carolina
38 administration of the estate.

39 **"§ 28A-26-4. Bonds.**

40 (a) Subject to the exception in subsection (b), any personal representative, including a
41 domiciliary personal representative, who is granted ancillary letters of administration in this
42 State must satisfy the bond requirements prescribed in Article 8 of this Chapter.

43 (b) Where a citizen or subject of a foreign country, or of any other state or territory of
44 the United States, by will sufficient according to the laws of this State, and duly probated and
45 recorded in the proper county, devises to ~~his~~ that person's executor, with power to sell and
46 convey, real property situated in this State in trust for a person named in the will, the power
47 being vested in the executor as such trustee, the executor may execute the power without giving
48 bond in this State.

49 **"§ 28A-26-5. Authority of domiciliary personal representative of a nonresident decedent.**

1 The domiciliary personal representative of the nonresident decedent after qualifying as
2 ancillary personal representative in this State is authorized to administer the North Carolina
3 estate of the nonresident decedent in accordance with the provisions of this Chapter.

4 **"§ 28A-26-6. Jurisdiction.**

5 (a) A domiciliary personal representative of a nonresident decedent may invoke the
6 jurisdiction of the courts of this State after qualifying as ancillary personal representative in this
7 State except that ~~he~~ the domiciliary personal representative may invoke such jurisdiction prior
8 to qualification for the purpose of appealing from a decision of the clerk of superior court
9 regarding a question of qualification.

10 (b) A domiciliary personal representative of a nonresident decedent submits to the
11 jurisdiction of the courts of this State:

- 12 (1) As provided in G.S. 1-75.4, or
- 13 (2) By receiving payment of money or taking delivery of personal property
14 under G.S. 28A-26-2; or
- 15 (3) By acceptance of ancillary letters of administration in this State under
16 G.S. 28A-26-3; or
- 17 (4) By doing any act as personal representative in this State which if done as an
18 individual would have given the State jurisdiction over ~~him~~ the personal
19 representative as an individual.

20 **"§ 28A-26-7. Service on personal representative of a nonresident decedent.**

21 A court of this State having jurisdiction of the subject matter and grounds for personal
22 jurisdiction as provided in G.S. 28A-26-6 may exercise personal jurisdiction over a defendant
23 by service of process in accordance with the provisions of G.S. 1A-1, Rule 4(j).

24 **"§ 28A-26-8. Duties of personal representative in an ancillary administration.**

25 (a) All assets of estates of nonresident decedents being administered in this State are
26 subject to all claims, allowances and charges existing or established against the estate of the
27 decedent wherever existing or established.

28 (b) An adjudication of a claim rendered in any jurisdiction in favor of or against any
29 personal representative of the estate of a nonresident decedent is binding on the ancillary
30 personal representative in this State and on all parties to the litigation.

31 (c) Limitations on presentation of claims shall be governed by the provisions of this
32 Chapter except that creditors residing in the domiciliary state barred by the statutes of that state
33 may not file claims in an ancillary administration in this State.

34 (d) In the payment of claims by the ancillary administrator, the following rules shall
35 apply:

- 36 (1) If the value of the entire estate, wherever administered, equals or exceeds
37 family exemptions and allowances, prior charges and claims against the
38 entire estate, the claims allowed in this State shall be paid in full from assets
39 in this State, if such assets are sufficient for the purpose.
- 40 (2) If such total exemptions, allowances, charges and claims exceed the value of
41 the entire estate, the claims allowed in this State shall be paid their proper
42 percentage pro rata by class, if assets in this State are sufficient for the
43 purpose.
- 44 (3) If assets in this State are inadequate for either of the purposes stated in
45 subdivisions (1) or (2) above, the claims allowed in this State shall be paid,
46 pro rata by class, to the extent the local assets will permit.
- 47 (4) If the value of the entire estate, wherever administered, is insufficient to pay
48 all exemptions and allowances, prior charges and claims against the entire
49 estate, the priority for order of payment established by the law of the
50 domicile will prevail.

1 **"§ 28A-26-9. Remission of surplus assets by ancillary personal representative to**
2 **domiciliary personal representative.**

3 Unless a testator in a will otherwise directs, any assets (including proceeds from the sale of
4 real estate) remaining after payment of claims against the estate of a nonresident decedent
5 being administered by an ancillary personal representative other than the domiciliary personal
6 representative shall be transferred and delivered to the domiciliary personal representative or, if
7 none, to the court in the domicile of the decedent which has jurisdiction to administer the
8 estate.

9 "Article 27.

10 "Apportionment of Federal Estate Tax.

11 **"§ 28A-27-1. Definitions.**

12 For the purposes of this Article:

- 13 (1) "Estate" means the gross estate of a decedent as determined for the purpose
14 of the federal estate tax.
- 15 (2) "Fiduciary" includes a personal representative and a trustee.
- 16 (3) "Person" means any individual, partnership, association, joint stock
17 company, corporation, governmental agency, including any multiples or
18 combinations of the foregoing as, for example, individuals as joint tenants.
- 19 (4) "Person interested in the estate" means any person, including a personal
20 representative, guardian, or trustee, entitled to receive, or who has received,
21 from a decedent while alive or by reason of the death of a decedent any
22 property or interest therein included in the decedent's taxable estate.
- 23 (5) "State" means any state, territory, or possession of the United States, the
24 District of Columbia, or the Commonwealth of Puerto Rico.
- 25 (6) "Tax" means the net Federal Estate Tax due, after application of any
26 available unified transfer tax credit, and interest and penalties imposed in
27 addition to the tax.

28 **"§ 28A-27-2. Apportionment.**

29 (a) Except as otherwise provided in subsection (b) of this section, or in G.S. 28A-27-5,
30 G.S. 28A-27-6, or G.S. 28A-27-8, the tax shall be apportioned among all persons interested in
31 the estate in the proportion that the value of the interest of each person interested in the estate
32 bears to the total value of the interests of all persons interested in the estate. The values as
33 finally determined for federal estate tax purposes shall be used for the purposes of this
34 computation.

35 (b) In the event the decedent's will provides a method of apportionment of the tax
36 different from the method provided in subsection (a) above, the method described in the will
37 shall control. However, in the case of any will executed on or after October 1, 1986, a general
38 direction in the will that taxes shall not be apportioned, whether or not referring to this Article,
39 but shall be paid from the residuary portion of the estate shall not, unless specifically stated
40 otherwise, apply to taxes imposed on assets which are includible in the valuation of the
41 decedent's gross estate for federal estate tax purposes only by reason of Sections 2041, 2042 or
42 2044 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent tax
43 law. In the case of an estate administered under any will executed on or after October 1, 1986,
44 in the event that the estate tax computation involves assets described in the preceding sentence,
45 unless specifically stated otherwise, apportionment shall be made against such assets and the
46 tax so apportioned shall be recovered from the persons receiving such assets as provided in
47 Sections 2206, 2207 or 2207A of the Internal Revenue Code of 1954 or corresponding
48 provisions of any subsequent tax law.

49 **"§ 28A-27-3. Procedure for determining apportionment.**

50 (a) The personal representative of a decedent shall determine the apportionment of the
51 tax.

1 (b) If the personal representative finds that it is inequitable to apportion interest and
2 penalties in the manner provided in this Article because such interest or penalties were imposed
3 due to the fault of one or more persons interested in the ~~estate~~ estate, the personal
4 representative may direct apportionment thereon in the manner ~~he~~ the personal representative
5 finds equitable.

6 (c) The expenses reasonably incurred by the personal representative in connection with
7 the apportionment of the tax shall be apportioned as provided for taxes under this Article. If the
8 personal representative finds that it is inequitable to apportion the expenses because such
9 expenses were incurred because of the fault of one or more persons interested in the ~~estate~~
10 estate, the personal representative may direct other more equitable apportionment.

11 **"§ 28A-27-4. Uncollected tax.**

12 The personal representative shall not be under any duty to institute any suit or proceeding to
13 recover from any person interested in the estate the amount of the tax apportioned to the person
14 until the expiration of the six months next following final determination of the tax. A personal
15 representative who institutes the suit or proceeding within a reasonable time after the six
16 months' period shall not be subject to any liability or surcharge because any portion of the tax
17 apportioned to any person interested in the estate was collectable at a time following the death
18 of the decedent but thereafter became uncollectable. If the personal representative cannot
19 collect from any person interested in the estate the amount of the tax apportioned to the person,
20 the amount not recoverable shall be apportioned among the other persons interested in the
21 estate who are subject to apportionment. The apportionment shall be made in the proportion
22 that the value of the interest of each remaining person interested in the estate bears to the total
23 value of the interests of all remaining persons interested in the estate.

24 **"§ 28A-27-5. Exemptions, deductions, and credits.**

25 (a) Any interest for which a deduction or exemption is allowed under the federal
26 revenue laws in determining the value of the decedent's net taxable estate, such as property
27 passing to or in trust for a surviving spouse and gifts or bequests for charitable, public, or
28 similar purposes, shall not be included in the computation provided for in G.S. 28A-27-2 to the
29 extent of the allowable deduction or exemption. When such an interest is subject to a prior
30 present interest which is not allowable as a deduction or exemption, such present interest shall
31 not be included in the computation provided for in this Article and no tax shall be apportioned
32 to or paid from principal.

33 (b) Any credit for property previously taxed and any credit for gift taxes or death taxes
34 of a foreign country paid by the decedent or ~~his~~ the decedent's estate shall inure to the
35 proportionate benefit of all persons liable to apportionment; provided, however, that if the tax
36 which gives rise to such a credit has in fact been paid by a person interested in the estate, the
37 benefit of such credit shall inure to that person paying the tax.

38 (c) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof
39 in respect to property or interests includible in the estate shall inure to the benefit of the persons
40 or interests chargeable with the payment thereof to the extent that, or in the proportion that, the
41 credit reduces the tax.

42 (d) To the extent that property passing to or in trust for a surviving spouse or any
43 charitable, public, or similar gift or bequest does not constitute an allowed deduction for
44 purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and
45 deductible from the property, the property shall not be included in the computation provided for
46 in this Article, and to that extent no apportionment shall be made against the property. This
47 section does not apply in any instance where the result will be to deprive the estate of a
48 deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of
49 the United States or corresponding provisions of any subsequent tax law, relating to deduction
50 for State death taxes on transfers for public, charitable, or religious uses.

51 **"§ 28A-27-6. No apportionment between temporary and remainder interests.**

1 No interest in income and no estate for years or for life or other temporary interest in any
2 property or fund is subject to apportionment as between the temporary interest and the
3 remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable
4 against the corpus of the property or funds subject to the temporary interest and remainder.

5 **"§ 28A-27-7. Fiduciary's rights and duties.**

6 (a) The personal representative may withhold from any property of the decedent in ~~his~~
7 the personal representative's possession, distributable to any person interested in the estate, the
8 amount of the tax apportioned to ~~his~~ the person's interest. If the property in possession of the
9 personal representative and distributable to any person interested in the estate tax is insufficient
10 to satisfy the proportionate amount of the tax determined to be due from the person, the
11 personal representative may recover the deficiency from the person interested in the estate. If
12 the property is not in the possession of the personal ~~representative~~ he representative, the
13 personal representative may recover from any person interested in the estate the amount of the
14 tax apportioned to the person in accordance with this Article.

15 (b) If property held by the fiduciary or other person is distributed prior to final
16 apportionment of the tax, the personal representative may require the distributee to provide a
17 bond or other security for the apportionment liability in the form and amount prescribed by the
18 fiduciary, with the approval of the clerk of superior court having jurisdiction of the
19 administration of the estate.

20 **"§ 28A-27-8. Difference with Federal Estate Tax Law.**

21 If the liabilities of persons interested in the estate as prescribed by this Article differ from
22 those which result under the Federal Estate Tax Law, the liabilities imposed by the federal law
23 will control and the balance of this Article shall apply as if the resulting liabilities had been
24 prescribed herein.

25 **"§ 28A-27-9. Effective date.**

26 The provisions of this Article shall not apply to taxes due on account of the death of
27 decedents dying prior to October 1, 1986.

28 "Article 28.

29 "Summary Administration.

30 **"§ 28A-28-1. Summary administration where spouse is sole beneficiary.**

31 When a decedent dies testate or intestate leaving a surviving spouse as the sole devisee or
32 heir, the surviving spouse may file a petition for summary administration with the clerk of
33 superior court of the county where the decedent was domiciled at the time of death. This
34 procedure is available if the decedent died partially testate, provided that the surviving spouse
35 is the sole devisee under the will and the sole heir of the decedent's intestate property. This
36 procedure is not available if the decedent's will provides that it is not available or if the devise
37 to the surviving spouse is in trust rather than outright.

38 **"§ 28A-28-2. Petition.**

39 (a) The petition shall be signed by the surviving spouse and verified to be accurate and
40 complete to the best of the spouse's knowledge and belief and shall state as follows:

- 41 (1) The name and address of the spouse and the fact that ~~he or she~~ the spouse is
42 the surviving spouse of the decedent;
- 43 (2) The name and domicile of the decedent at the time of death;
- 44 (3) The date and place of death of the decedent;
- 45 (4) The date and place of marriage of the spouse and the decedent;
- 46 (5) A description sufficient to identify each tract of real property owned in
47 whole or in part by the decedent at the time of death;
- 48 (6) A description of the nature of the decedent's personal property and the
49 location of such property, as far as these facts are known or can with
50 reasonable diligence be ascertained;

- 1 (7) The probable value of the decedent's personal property, so far as the value is
2 known or can with reasonable diligence be ascertained;
- 3 (8) That no application or petition for appointment of a personal representative
4 is pending or has been granted in this State;
- 5 (9) That the spouse is the sole devisee or sole heir, or both, of the decedent, and
6 that there is no other devisee or heir; that the decedent's will, if any, does not
7 prohibit summary administration; and that any property passing to the
8 spouse under the will is not in trust;
- 9 (10) The name and address of any executor or coexecutor named by the will and
10 that, if the decedent died testate, a copy of the petition has been personally
11 delivered or sent by first-class mail by the spouse to the last-known address
12 of any executor or coexecutor named by the will, if different from the
13 spouse;
- 14 (11) That, to the extent of the value of the property received by the spouse under
15 the will of the decedent or by intestate succession, the spouse assumes all
16 liabilities of the decedent that were not discharged by reason of death and
17 assumes liability for all taxes and valid claims against the decedent or the
18 estate, as provided in G.S. 28A-28-6; and
- 19 (12) If the decedent died testate, that the decedent's will has been admitted to
20 probate in the court of the proper county; that a duly certified copy of the
21 will has been recorded in each county in which is located any real property
22 owned by the decedent at the time of death; and that a certified copy of the
23 decedent's will is attached to the petition.

24 (b) The petition shall be filed by the clerk upon payment of the fee provided in
25 G.S. 7A-307 and shall be indexed in the index to estates.

26 **"§ 28A-28-3. Clerk's order.**

27 If it appears to the clerk that the petition and supporting evidence, if any, comply with the
28 requirements of G.S. 28A-28-2 and on the basis thereof the spouse is entitled to summary
29 administration, the clerk shall enter an order to that effect and no further administration of the
30 estate is necessary. Nothing in this section shall preclude a petition under the provisions of
31 G.S. 28A-28-7(a) or the appointment of a personal representative or a collector under the
32 provisions of Article 6 or Article 11 of this Chapter.

33 **"§ 28A-28-4. Effect of order.**

34 (a) The presentation of a certified copy of the order described in G.S. 28A-28-3 shall be
35 sufficient to require the transfer to the spouse of any property or contract right owned by the
36 decedent at the time of death, including but not limited to: (i) wages and salary; (ii) the title and
37 license to a motor vehicle registered in the name of the decedent owner; (iii) the ownership
38 rights of a savings account, checking account, or certificate of deposit in a bank in the name of
39 the decedent owner; (iv) the ownership rights of a savings account, share certificate, or
40 certificate of deposit in a credit union, building and loan association, or savings and loan
41 association in the name of the decedent owner; and (v) the ownership rights in any stock or
42 security registered on the books of a corporation in the name of the decedent owner.

43 (b) After the entry of the order described in G.S. 28A-28-3, the spouse may convey,
44 lease, sell, or mortgage any real property devised to or inherited by the spouse from the
45 decedent, at public or private sale, upon such terms as the spouse may determine. This section
46 shall not limit any other powers the spouse may have over property devised to or inherited by
47 the spouse from the decedent. The provisions of G.S. 28A-17-12 are not applicable to a
48 conveyance, sale, lease, or mortgage under this subsection.

49 **"§ 28A-28-5. Effect of payment.**

50 The person paying, delivering, transferring, or issuing property or the evidence thereof
51 pursuant to the order described in G.S. 28A-28-3 is discharged and released to the same extent

1 as if the person dealt with a duly qualified personal representative of the decedent. The person
2 is not required to see to the application of the property or evidence thereof or to inquire into the
3 truth of any statement in the petition or order.

4 If any person to whom the order is presented refuses to pay, deliver, transfer, or issue any
5 property or evidence thereof, the property may be recovered or its payment, delivery, transfer,
6 or issuance may be compelled in an action brought for that purpose by the surviving spouse.
7 The court costs and attorney's fee incident to the action shall be taxed against the person whose
8 refusal to comply with the provisions of G.S. 28A-28-4 made the action necessary.

9 **"§ 28A-28-6. Spouse's assumption of liabilities.**

10 If the clerk grants the order for summary administration, the spouse shall be deemed to have
11 assumed, to the extent of the value of the property received by the spouse under the will of the
12 decedent or by intestate succession, all liabilities of the decedent that were not discharged by
13 reason of death and liability for all taxes and valid claims against the decedent or the estate.
14 The value of the property is the fair market value of the property on the date of death of the
15 decedent less any liens or encumbrances on the property so received. The spouse may assert
16 any defense, counterclaim, cross-claim, or setoff which would have been available to the
17 decedent if the decedent had not died except for actions listed in G.S. 28A-18-1(b). A spouse
18 shall not be deemed to have assumed any liabilities of the decedent that were discharged by
19 reason of death.

20 **"§ 28A-28-7. Right to petition for appointment of personal representative; discharge of
21 spouse's liability.**

22 (a) Nothing in this Article shall preclude any person qualified to serve as personal
23 representative pursuant to G.S. 28A-4-1, including the surviving spouse, from petitioning the
24 clerk of superior court for the appointment of a personal representative or collector to
25 administer the decedent's estate. If a personal representative or collector is appointed, the
26 spouse shall render a proper accounting to the personal representative or collector and file a
27 copy of the accounting with the clerk. The spouse shall deliver assets of the decedent's estate,
28 cash, or other property and shall be discharged of liability in accordance with the provisions of
29 subsection (b) of this section.

30 (b) In the event that a personal representative or collector is appointed, the spouse shall
31 be discharged of liability for the debts of the decedent as follows:

32 (1) If the spouse delivers to the personal representative or collector all of the
33 property received by the spouse in the identical form that it was received by
34 the spouse, then the spouse will be discharged of all liability.

35 (2) If the spouse does not deliver to the personal representative or collector all
36 of the property in the identical form that it was received by the spouse, then
37 the spouse shall be discharged of liability as follows:

38 a. For property delivered to the personal representative or collector that
39 is in the identical form that it was received by the spouse, the spouse
40 is discharged to the extent of the fair market value of the property at
41 the time of the decedent's death or the fair market value at the time
42 the property was received by the personal representative or collector,
43 whichever is greater.

44 b. For property delivered to the personal representative or collector that
45 is not in the identical form that it was received by the spouse, the
46 spouse is discharged to the extent of the fair market value of such
47 property at the time it was delivered to the personal representative or
48 collector.

49 **"Article 29.**

50 **"Notice to Creditors Without Estate Administration.**

51 **"§ 28A-29-1. Notice to creditors without estate administration.**

1 When a decedent dies testate or intestate leaving no property subject to probate, any person
2 otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this
3 Chapter or the trustee then serving under the terms of a revocable trust created by the decedent
4 may file a petition to be appointed as a limited personal representative to provide notice to
5 creditors without administration of an estate before the clerk of superior court of the county
6 where the decedent was domiciled at the time of death. This procedure is not available if the
7 decedent's will provides that it is not available. A limited personal representative shall have the
8 rights and obligations provided for in this Article."

9 SECTION 5. Chapter 29 of the General Statutes reads as rewritten:

10 "Chapter 29.

11 "Intestate Succession.

12 "Article 1.

13 "General Provisions.

14 "§ 29-1. Short title.

15 This Chapter shall be known and may be cited as the Intestate Succession Act.

16 "§ 29-2. Definitions.

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

- 18 (1) "Advancement" means an irrevocable inter vivos gift of property, made by
19 an intestate donor to any person who would be ~~his~~ the donor's heir or one of
20 ~~his~~ the donor's heirs upon ~~his~~ the donor's death, and intended by the intestate
21 donor to enable the donee to anticipate ~~his~~ the donee's inheritance to the
22 extent of the gift; except that no gift to a spouse shall be considered an
23 advancement unless so designated by the intestate donor in a writing signed
24 by the donor at the time of the gift.
- 25 (2) "Estate" means all the property of a decedent, including but not limited to:
26 a. An estate for the life of another; and
27 b. All future interests in property not terminable by the death of the
28 owner thereof, including all reversions, remainders, executory
29 interests, rights of entry and possibilities of reverter, subject,
30 however, to all limitations and conditions imposed upon such future
31 interests.
- 32 (3) "Heir" means any person entitled to take real or personal property upon
33 intestacy under the provisions of this Chapter.
- 34 (4) "Lineal descendants" of a person means all children of such person and
35 successive generations of children of such children.
- 36 (5) "Net estate" means the estate of a decedent, exclusive of family allowances,
37 costs of administration, and all lawful claims against the estate.
- 38 (6) "Share," when used to describe the share of a net estate or property which
39 any person is entitled to take, includes both the fractional share of the
40 personal property and the undivided fractional interest in the real property,
41 which the person is entitled to take.

42 "§ 29-3. Certain distinctions as to intestate succession abolished.

43 In the determination of those persons who take upon intestate succession there is no
44 distinction:

- 45 (1) Between real and personal property, or
46 (2) Between ancestral and nonancestral property, or
47 (3) Between relations of the whole blood and those of the half blood.

48 "§ 29-4. Curtesy and dower abolished.

49 The estates of curtesy and dower are hereby abolished.

50 "§ 29-5. Computation of next of kin.

51 Degrees of kinship shall be computed as provided in G.S. 104A-1.

1 **"§ 29-6. Lineal succession unlimited.**

2 There shall be no limitation on the right of succession by lineal descendants of an intestate.

3 **"§ 29-7. Collateral succession limited.**

4 There shall be no right of succession by collateral kin who are more than five degrees of
5 kinship removed from an intestate; provided that if there is no collateral relative within the five
6 degrees of kinship referred to herein, then collateral succession shall be unlimited to prevent
7 any property from escheating.

8 **"§ 29-8. Partial intestacy.**

9 If part but not all of the estate of a decedent is validly disposed of by his the decedent's will,
10 the part not disposed of by such will shall descend and be distributed as intestate property.

11 **"§ 29-9. Inheritance by unborn infant.**

12 Lineal descendants and other relatives of an intestate born within 10 lunar months after the
13 death of the intestate, shall inherit as if they had been born in the lifetime of the intestate and
14 had survived him.

15 **"§ 29-10. Renunciation.**

16 Renunciation of an intestate share shall be as provided for in Chapter 31B of the General
17 Statutes.

18 **"§ 29-11. Aliens.**

19 Unless otherwise provided by law, it shall be no bar to intestate succession by any person,
20 that ~~he~~, the person, or any other person through whom ~~he~~ the person traces ~~his-the person's~~
21 inheritance, is or has been an alien.

22 **"§ 29-12. Escheats.**

23 If there is no person entitled to take under G.S. 29-14 or G.S. 29-15, or if in case of an
24 illegitimate intestate, there is no one entitled to take under G.S. 29-21 or G.S. 29-22 the net
25 estate shall escheat as provided in G.S. 116B-2.

26 **"§ 29-12.1. Controversies under this Chapter.**

27 Any controversy arising under this Chapter shall be determined as an estate proceeding
28 under Article 2 of Chapter 28A of the General Statutes, except that controversies arising under
29 Article 8 of this Chapter shall be determined as set forth in that Chapter.

30 "Article 2.

31 "Shares of Persons Who Take upon Intestacy.

32 **"§ 29-13. Descent and distribution upon intestacy; 120-hour survivorship requirement,**
33 **revised simultaneous death act, Article 24, Chapter 28A.**

34 (a) All the estate of a person dying intestate shall descend and be distributed, subject to
35 the payment of costs of administration and other lawful claims against the estate, and subject to
36 the payment of State inheritance or estate taxes, as provided in this Chapter.

37 (b) The determination of whether an heir has predeceased a person dying intestate shall
38 be made as provided by Article 24 of Chapter 28A of the General Statutes.

39 **"§ 29-14. Share of surviving spouse.**

40 (a) Real Property. – The share of the surviving spouse in the real property is:

- 41 (1) If the intestate is survived by only one child or by any lineal descendant of
42 only one deceased child, a one-half undivided interest in the real property;
- 43 (2) If the intestate is survived by two or more children, or by one child and any
44 lineal descendant of one or more deceased children or by lineal descendants
45 of two or more deceased children, a one-third undivided interest in the real
46 property;
- 47 (3) If the intestate is not survived by a child, children or any lineal descendant of
48 a deceased child or children, but is survived by one or more parents, a
49 one-half undivided interest in the real property;
- 50 (4) If the intestate is not survived by a child, children or any lineal descendant of
51 a deceased child or children, or by a parent, all the real property.

- 1 (b) Personal Property. – The share of the surviving spouse in the personal property is:
- 2 (1) If the intestate is survived by only one child or by any lineal descendant of
- 3 only one deceased child, and the net personal property does not exceed thirty
- 4 thousand dollars (\$30,000) in value, all of the personal property; if the net
- 5 personal property exceeds thirty thousand dollars (\$30,000) in value, the
- 6 sum of thirty thousand dollars (\$30,000) plus one half of the balance of the
- 7 personal property;
- 8 (2) If the intestate is survived by two or more children, or by one child and any
- 9 lineal descendant of one or more deceased children, or by lineal descendants
- 10 of two or more deceased children, and the net personal property does not
- 11 exceed thirty thousand dollars (\$30,000) in value, all of the personal
- 12 property; if the net personal property exceeds thirty thousand dollars
- 13 (\$30,000) in value, the sum of thirty thousand dollars (\$30,000) plus one
- 14 third of the balance of the personal property;
- 15 (3) If the intestate is not survived by a child, children, or any lineal descendant
- 16 of a deceased child or children, but is survived by one or more parents, and
- 17 the net personal property does not exceed fifty thousand dollars (\$50,000) in
- 18 value, all of the personal property; if the net personal property exceeds fifty
- 19 thousand dollars (\$50,000) in value, the sum of fifty thousand dollars
- 20 (\$50,000) plus one half of the balance of the personal property;
- 21 (4) If the intestate is not survived by a child, children, or any lineal descendant
- 22 of a deceased child or children, or by a parent, all of the personal property.

23 (c) When an equitable distribution of property is awarded to the surviving spouse

24 pursuant to G.S. 50-20 subsequent to the death of the decedent, the share of the surviving

25 spouse determined under subsections (a) and (b) of this section shall be first determined as

26 though no property had been awarded to the surviving spouse pursuant to G.S. 50-20

27 subsequent to the death of the decedent, and then reduced by the net value of the marital estate

28 awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the

29 decedent.

30 **"§ 29-15. Shares of others than surviving spouse.**

31 Those persons surviving the intestate, other than the surviving spouse, shall take that share

32 of the net estate not distributable to the surviving spouse, or the entire net estate if there is no

33 surviving spouse, as follows:

- 34 (1) If the intestate is survived by only one child or by only one lineal descendant
- 35 of only one deceased child, that person shall take the entire net estate or
- 36 share, but if the intestate is survived by two or more lineal descendants of
- 37 only one deceased child, they shall take as provided in G.S. 29-16; or
- 38 (2) If the intestate is survived by two or more children or by one child and any
- 39 lineal descendant of one or more deceased children, or by lineal descendants
- 40 of two or more deceased children, they shall take as provided in G.S. 29-16;
- 41 or
- 42 (3) If the intestate is not survived by a child, children or any lineal descendant
- 43 of a deceased child or children, but is survived by both parents, they shall
- 44 take in equal shares, or if either parent is dead, the surviving parent shall
- 45 take the entire share; or
- 46 (4) If the intestate is not survived by such children or lineal descendants or by a
- 47 parent, the brothers and sisters of the intestate, and the lineal descendants of
- 48 any deceased brothers or sisters, shall take as provided in G.S. 29-16; or
- 49 (5) If there is no one entitled to take under the preceding subdivisions of this
- 50 section or under G.S. 29-14,

1 (b) Brothers and Sisters and Their Lineal Descendants. – If the intestate is survived by
2 brothers and sisters or the lineal descendants of deceased brothers and sisters, their respective
3 shares in the property which they are entitled to take under G.S. 29-15 of this Chapter shall be
4 determined in the following manner:

5 (1) Brothers and Sisters. – To determine the share of each surviving brother and
6 sister, divide the property by the number of surviving brothers and sisters
7 plus the number of deceased brothers and sisters who have left lineal
8 descendants surviving the intestate within the fifth degree of kinship to the
9 intestate.

10 (2) Nephews and Nieces. – To determine the share of each surviving nephew or
11 niece by a deceased brother or sister of the intestate in the property not
12 taken under the preceding subdivision of this subsection, divide that property
13 by the number of such surviving nephews or nieces plus the number of
14 deceased nephews and nieces who have left lineal descendants surviving the
15 intestate within the fifth degree of kinship to the intestate.

16 (3) Grandnephews and Grandnieces. – To determine the share of each surviving
17 grandnephew or grandniece by a deceased nephew or niece of the intestate in
18 the property not taken under the preceding subdivisions of this subsection,
19 divide that property by the number of such surviving grandnephews and
20 grandnieces plus the number of deceased grandnephews and grandnieces
21 who have left children surviving the intestate.

22 (4) Great-Grandnephews and Great-Grandnieces. – To determine the share of
23 each surviving child of a deceased grandnephew or grandniece of the
24 intestate, divide equally among the great-grandnephews and
25 great-grandnieces of the intestate any property not taken under the preceding
26 subdivisions of this subsection.

27 (5) Grandparents and Others. – If there is no one within the fifth degree of
28 kinship to the intestate entitled to take the property under the preceding
29 subdivisions of this subsection, then the intestate's property shall go to those
30 entitled to take under G.S. 29-15(5).

31 (c) Uncles and Aunts and Their Lineal Descendants. – If the intestate is survived by
32 uncles and aunts or the lineal descendants of deceased uncles and aunts, their respective shares
33 in the property which they are entitled to take under G.S. 29-15 shall be determined in the
34 following manner:

35 (1) Uncles and Aunts. – To determine the share of each surviving uncle and
36 aunt, divide the property by the number of surviving uncles and aunts plus
37 the number of deceased uncles and aunts who have left children or
38 grandchildren surviving the intestate.

39 (2) Children of Uncles and Aunts. – To determine the share of each surviving
40 child of a deceased uncle or aunt of the intestate in the property not taken
41 under the preceding subdivision of this subsection, divide that property by
42 the number of surviving children of deceased uncles and aunts plus the
43 number of deceased children of deceased uncles and aunts who have left
44 children surviving the intestate.

45 (3) Grandchildren of Uncles and Aunts. – To determine the share of each
46 surviving child of a deceased child of a deceased uncle or aunt of the
47 intestate, divide equally among the grandchildren of uncles or aunts of the
48 intestate any property not taken under the preceding subdivisions of this
49 subsection.

50 "Article 4.

51 "Adopted Children.

1 **"§ 29-17. Succession by, through and from adopted children.**

2 (a) A child, adopted in accordance with Chapter 48 of the General Statutes or in
3 accordance with the applicable law of any other jurisdiction, and the heirs of such child, are
4 entitled by succession to any property by, through and from ~~his~~ the child's adoptive parents and
5 their heirs the same as if ~~he~~ the child were the natural legitimate child of the adoptive parents.

6 (b) An adopted child is not entitled by succession to any property, by, through, or from
7 ~~his~~ the child's natural parents or their heirs, except as provided in subsection (e) of this section.

8 (c) The adoptive parents and the heirs of the adoptive parents are entitled by succession
9 to any property, by, through and from an adopted child the same as if the adopted child were
10 the natural legitimate child of the adoptive parents.

11 (d) The natural parents and the heirs of the natural parents are not entitled by succession
12 to any property, by, through or from an adopted child, except as provided in subsection (e) of
13 this section.

14 (e) If a natural parent has previously married, is married to, or shall marry an adoptive
15 parent, the adopted child is considered the child of such natural parent for all purposes of
16 intestate succession.

17 "Article 5.

18 "Legitimated Children.

19 **"§ 29-18. Succession by, through and from legitimated children.**

20 A child born an illegitimate who shall have been legitimated in accordance with G.S. 49-10
21 or 49-12 or in accordance with the applicable law of any other jurisdiction, and the heirs of
22 such child, are entitled by succession to property by, through and from ~~his~~ the child's father and
23 mother and their heirs the same as if born in lawful wedlock; and if ~~he~~ the child dies intestate,
24 ~~his~~ the child's property shall descend and be distributed as if ~~he~~ the child had been born in
25 lawful wedlock.

26 "Article 6.

27 "Illegitimate Children.

28 **"§ 29-19. Succession by, through and from illegitimate children.**

29 (a) For purposes of intestate succession, an illegitimate child shall be treated as if ~~he~~
30 that child were the legitimate child of ~~his~~ the child's mother, so that ~~he~~ the child and ~~his~~ the
31 child's lineal descendants are entitled to take by, through and from ~~his~~ the child's mother and
32 ~~his~~ the child's other maternal kindred, both descendants and collaterals, and they are entitled to
33 take from ~~him~~ the child.

34 (b) For purposes of intestate succession, an illegitimate child shall be entitled to take
35 by, through and from:

36 (1) Any person who has been finally adjudged to be the father of such child
37 pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of
38 G.S. 49-14 through 49-16;

39 (2) Any person who has acknowledged himself during his own lifetime and the
40 child's lifetime to be the father of such child in a written instrument executed
41 or acknowledged before a certifying officer named in G.S. 52-10(b) and
42 filed during his own lifetime and the child's lifetime in the office of the clerk
43 of superior court of the county where either he or the child resides.

44 Notwithstanding the above provisions, no person shall be entitled to take hereunder unless ~~he~~
45 the person has given written notice of the basis of ~~his~~ the person's claim to the personal
46 representative of the putative father within six months after the date of the first publication or
47 posting of the general notice to creditors.

48 (c) Any person described under subdivision (b)(1) or (2) above and ~~his~~ the person's
49 lineal and collateral kin shall be entitled to inherit by, through and from the illegitimate child.

50 (d) Any person who acknowledges ~~himself to be~~ that he is the father of an illegitimate
51 child in his duly probated last will shall be deemed to have intended that such child be treated

1 as expressly provided for in said will or, in the absence of any express provision, the same as a
2 legitimate child.

3 **"§ 29-20. Descent and distribution upon intestacy of illegitimate children.**

4 All the estate of a person dying illegitimate and intestate shall descend and be distributed,
5 subject to the payment of costs of administration and other lawful claims against the estate, and
6 subject to the payment of State inheritance or estate taxes, as provided in this Article.

7 **"§ 29-21. Share of surviving spouse.**

8 The share of the surviving spouse of an illegitimate intestate shall be the same as provided
9 in G.S. 29-14 for the surviving spouse of a legitimate person. In determining whether the
10 illegitimate intestate is survived by one or more parents as provided in G.S. 29-14(3), any
11 person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be regarded as a parent.

12 **"§ 29-22. Shares of others than the surviving spouse.**

13 Those persons surviving the illegitimate intestate, other than the surviving spouse, shall
14 take that share of the net estate provided in G.S. 29-15. In determining whether the illegitimate
15 intestate is survived by one or more parents or their collateral kindred as provided in
16 G.S. 29-15, any person identified as the father under G.S. 29-19(b)(1) or (b)(2) shall be
17 regarded as a parent.

18 "Article 7.

19 "Advancements.

20 **"§ 29-23. In general.**

21 If a person dies intestate as to all ~~his~~ the person's estate, property which ~~he~~ the person gave
22 in his lifetime as an advancement shall be counted toward the advancee's intestate share, and to
23 the extent that it does not exceed such intestate share, shall be taken into account in computing
24 the estate to be distributed.

25 **"§ 29-24. Presumption of gift.**

26 A gratuitous inter vivos transfer is presumed to be an absolute gift and not an advancement
27 unless shown to be an advancement.

28 **"§ 29-25. Effect of advancement.**

29 If the amount of the advancement equals or exceeds the intestate share of the ~~advancee,~~ he
30 advancee, the advancee shall be excluded from any further portion in the distribution of the
31 estate, but ~~he~~ the advancee shall not be required to refund any part of such advancement; and if
32 the amount of the advancement is less than ~~his~~ the advancee's share, ~~he~~ the advancee shall be
33 entitled to such additional amount as will give ~~him~~ his the advancee the advancee's full share of
34 the intestate donor's estate.

35 **"§ 29-26. Valuation.**

36 The value of the property given as an advancement shall be determined as of the time when
37 the advancee came into possession or enjoyment, or at the time of the death of the intestate,
38 whichever first occurs. However, if the value of the property, so advanced, is stated by the
39 intestate donor in a writing signed by ~~him~~ the intestate donor and designating the gift as an
40 advancement, such value shall be deemed the value of the advancement.

41 **"§ 29-27. Death of advancee before intestate donor.**

42 If the advancee dies before the intestate donor leaving a lineal heir or heirs who take by
43 intestate succession from the intestate donor, the advancement shall be taken into account in the
44 same manner as if it had been made directly to such heir or heirs, but the value shall be
45 determined as of the time the original advancee came into possession or enjoyment, or when
46 the heir or heirs came into possession or enjoyment or at the time of the death of the intestate
47 donor, whichever first occurs.

48 **"§ 29-28. Inventory.**

49 If any person who has, in the lifetime of an intestate donor, received a part of the donor's
50 property, refuses, upon order of the clerk of superior court of the county in which the
51 administrator or collector qualifies, to give an inventory on oath, setting forth therein to the best

1 of ~~his~~ the person's knowledge and belief the particulars of the transfer of such property, ~~he~~ the
2 person shall be considered to have received ~~his~~ the person's full share of the donor's estate, and
3 shall not be entitled to receive any further part or share.

4 "**§ 29-29. Release by advancee.**

5 If the advancee acknowledges to the intestate donor by a signed writing that ~~he~~ the
6 advancee has been advanced ~~his~~ the advancee's full share of the intestate donor's estate, both ~~he~~
7 the advancee and those claiming through ~~him~~ the advancee shall be excluded from any further
8 participation in the intestate donor's estate.

9 "Article 8.

10 "Election to Take Life Interest in Lieu of Intestate Share.

11 "**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share**
12 **provided.**

13 (a) In lieu of the intestate share provided in G.S. 29-14 or G.S. 29-21, or of the elective
14 share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who
15 has petitioned for an elective share shall be entitled to take as ~~his or her~~ the surviving spouse's
16 intestate share or elective share a life estate in one third in value of all the real estate of which
17 the deceased spouse was seised and possessed of an estate of inheritance at any time during
18 coverture, except that real estate as to which the surviving spouse:

- 19 (1) Has waived ~~his or her~~ the surviving spouse's rights by joining with the other
20 spouse in a conveyance thereof, or
21 (2) Has ~~release~~ released or quitclaimed ~~his or her~~ the surviving spouse's interest
22 therein in accordance with G.S. 52-10, or
23 (3) Was not required by law to join in conveyance thereof in order to bar the
24 elective life estate, or
25 (4) Is otherwise not legally entitled to the election provided in this section.

26 (b) ~~Regardless of the value thereof and despite the fact that a life estate therein might~~
27 ~~exceed the fractional limitation provided for in subsection (a), the life estate provided for in~~
28 ~~subsection (a) shall at the election of the surviving spouse include~~ The surviving spouse may
29 elect to take a life estate in the usual dwelling house occupied by the surviving spouse at the
30 time of the death of the deceased spouse if such dwelling house were owned by the deceased
31 spouse at the time of ~~his or her~~ the deceased spouse's death, together with the outbuildings,
32 improvements and easements thereunto belonging or appertaining, and lands upon which
33 situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple
34 ownership in the household furnishings ~~therein~~ therein, despite the fact that a life estate
35 therein might exceed the fractional limitation provided for in subsection (a) of this section. If
36 the value of a life estate in the dwelling house is less than the value of a life estate in one-third
37 in value of all the real estate, the surviving spouse may elect to take a life estate in the dwelling
38 and a life estate in such other real estate as to make the aggregate life estate of the surviving
39 spouse equal to a life estate in one-third in value of all the real estate.

40 (c) The election provided for in subsection (a) shall be made by the filing of a ~~notice~~
41 thereof petition in accordance with Article 2 of Chapter 28A of the General Statutes with the
42 clerk of the superior court of the county in which the administration of the estate is pending, or,
43 if no administration is pending, then with the clerk of the superior court of any county in which
44 the administration of the estate could be commenced. Such The election shall be made:
45 prior to the shorter of the following applicable periods:

- 46 (1) ~~At any time within~~ In case of testacy, (i) within 12 months of the date of
47 death of the deceased spouse if letters testamentary are not issued within that
48 period, or (ii) within one month after the expiration of the time fixed limit
49 for the filing of the petition a claim for elective share under Article 1A of
50 Chapter 30, or if letters have been issued.

- 1 (2) In case of intestacy, ~~then~~ (i) within 12 months after the date of death of the
2 deceased spouse if letters of administration are not issued within that period,
3 or
4 ~~(3) If letters of administration are issued within 12 months after the date of the~~
5 ~~death of the deceased spouse, then~~ (ii) within one month after the expiration
6 of the time ~~limited~~ limit for filing claims against the estate, ~~or if letters have~~
7 ~~been issued.~~
- 8 (4) If litigation that affects the share of the surviving spouse in the estate is
9 ~~pending,~~ pending, including a pending petition for determination of an
10 elective share, then within such reasonable time as may be allowed by
11 written order of the clerk of the superior court.
- 12 (5) Nothing in this subsection shall extend the period of time for a surviving
13 spouse to petition for an elective share under Article 1A of Chapter 30 of the
14 General Statutes.

15 (c1) The ~~notice of election~~ petition shall:

- 16 (1) Be directed to the clerk with whom filed;
17 (2) State that the surviving spouse making the same elects to take under this
18 section rather than under the provisions of G.S. 29-14, 29-21, or 30-3.1, as
19 applicable;
20 (3) Set forth the names of all heirs, devisees, legatees, personal representatives
21 and all other persons in possession of or claiming an estate or an interest in
22 the property described in subsection (a); and
23 (4) Request the allotment of the life estate provided for in subsection (a).

24 (c2) The ~~notice of election~~ petition may be filed in person, or by attorney authorized in a
25 writing executed and duly acknowledged by the surviving spouse and attested by at least one
26 witness. If the surviving spouse is a minor or an incompetent, the ~~notice of election~~ petition
27 may be executed and filed by a general guardian or by the guardian of the person or estate of
28 the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the
29 ~~notice of election~~ petition may be executed and filed by a ~~next friend~~ guardian ad litem
30 appointed by the clerk. The ~~notice of election,~~ petition, whether in person or by attorney, shall
31 be filed as a record of the court, and a summons together with a copy of the ~~notice~~ petition shall
32 be served upon each of the interested persons named in the ~~notice of election,~~ petition, in
33 accordance with G.S. 1A-1, Rule 4.

34 (d) In case of election to take a life estate in lieu of an intestate share or elective share,
35 as provided in either G.S. 29-14, 29-21, or 30-3.3(a), the clerk of superior court, with whom the
36 ~~notice of election~~ petition has been filed, shall summon and appoint a jury of three disinterested
37 persons who being first duly sworn shall promptly allot and set apart to the surviving spouse
38 the life estate provided for in subsection (a) and make a final report of such action to the clerk.

39 (e) The final report shall be filed by the jury not more than 60 days after the
40 summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes
41 and bounds the real estate in which the surviving spouse shall have been allotted and set aside a
42 life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and
43 recorded in the office of the register of deeds of each county in which any part of the real
44 property of the deceased spouse, affected by the allotment, is located.

45 (f) In the election and procedure to have the life estate allotted and set apart provided
46 for in this section, the rules of procedure relating to partition proceedings under Chapter 46 of
47 the General Statutes shall apply except insofar as the same would be inconsistent with the
48 provisions of this section. A determination of the life estate under this section may be appealed
49 in accordance with G.S. 1-301.3.

1 (g) Neither the household furnishings in the dwelling house nor the life estates taken by
2 election under this section shall be subject to the payment of debts due from the estate of the
3 deceased spouse, except those debts secured by such property as follows:

- 4 (1) By a mortgage or deed of trust in which the surviving spouse has waived ~~his~~
5 ~~or her~~ the surviving spouse's rights by joining with the other spouse in the
6 making thereof; or
7 (2) By a purchase money mortgage or deed of trust, or by a conditional sales
8 contract of personal property in which title is retained by the vendor, made
9 prior to or during the marriage; or
10 (3) By a mortgage or deed of trust made prior to the marriage; or
11 (4) By a mortgage or deed of trust constituting a lien on the property at the time
12 of its acquisition by the deceased spouse either before or during the
13 marriage.

14 (h) If no election is made in the manner and within the time provided for in subsection
15 (c) the surviving spouse shall be conclusively deemed to have waived ~~his or her~~ the surviving
16 spouse's right to elect to take under the provisions of this section, and any interest which the
17 surviving spouse may have had in the real estate of the deceased spouse by virtue of this
18 section shall terminate."

19 **SECTION 6.** G.S. 30-3.4 reads as rewritten:

20 "**§ 30-3.4. Procedure for determining the elective share.**

21 (a) **Exercisable Only During Lifetime.** – The right of the surviving spouse to file a
22 claim for an elective share must be exercised during the lifetime of the surviving spouse, by the
23 surviving spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of
24 attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate
25 transactions, or, with approval of court, by the guardian of the surviving spouse's estate or
26 general guardian. If a surviving spouse dies before the claim for an elective share has been
27 settled, the surviving spouse's personal representative shall succeed to the surviving spouse's
28 rights to an elective share.

29 (b) **Time Limitations.** – A claim for an elective share must be made within six months
30 after the issuance of letters testamentary or letters of administration in connection with the will
31 or intestate proceeding with respect to which the surviving spouse claims the elective share by
32 (i) filing a petition with the clerk of superior court of the county in which the primary
33 administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition
34 to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not
35 toll the six-month period of limitations.

36 ~~(e) **Time for Hearing.** – Unless waived by the personal representative and the surviving~~
37 ~~spouse, the clerk shall set the matter for hearing no earlier than two months and no later than~~
38 ~~six months after the filing of the petition. However, the clerk may extend the time of hearing as~~
39 ~~the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal~~
40 ~~representative, and to any person described in G.S. 30-3.5 who may be required to contribute~~
41 ~~toward the satisfaction of the elective share.~~

42 (d) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable
43 to decedents dying on or after October 1, 2009.

44 (d1) **Mediation.** – The clerk may order mediation as described in G.S. 7A-38.3B of any
45 disputes in connection with an elective share proceeding.

46 (e) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable
47 to decedents dying on or after October 1, 2009.

48 (e1) **Procedure.** – An elective share proceeding shall be an estate ~~matter and may be~~
49 appealed pursuant to G.S. 1-301.3. proceeding and shall be conducted in accordance with the
50 procedures of Article 2 of Chapter 28A of the General Statutes.

1 (e2) Information About Total Net Assets. – In order to assist the clerk in determining
2 whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the
3 following provisions apply:

4 (1) Submission within two months. – In every case in which a petition to
5 determine an elective share has been filed, within two months of the filing of
6 the petition, the personal representative shall submit sufficient information
7 about the total assets for the clerk to determine the elective share. To fulfill
8 its obligation to provide information, the personal representative may
9 prepare and submit to the clerk a proposed Form 706, United States Estate
10 (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of
11 whether that form is required to be filed with the Internal Revenue Service.
12 The clerk may extend the time for submission of the proposed Form 706 or
13 other information as the clerk sees fit.

14 (2) Examination regarding assets. – If the personal representative, the surviving
15 spouse, or a responsible person has reasonable grounds to believe that any
16 person has a claim or has in its possession assets included in Total Net
17 Assets, then the personal representative, surviving spouse, or responsible
18 person may use the procedures set out in G.S. 28A-15-12 to cause the clerk
19 to examine the person believed to have a claim or to possess assets included
20 in Total Net Assets.

21 (f) Findings and Conclusions. – After notice and hearing, the clerk shall determine
22 whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall
23 then determine the elective share and shall order the personal representative to transfer that
24 amount to the surviving spouse. The clerk's order shall recite specific findings of fact and
25 conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving
26 Spouse, and the elective share.

27 (g) Repealed by Session Laws 2009, c. 368, s. 1, effective July 27, 2009, and applicable
28 to decedents dying on or after October 1, 2009.

29 (h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the
30 personal representative, other responsible persons, and the surviving spouse in connection with
31 elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's
32 discretion among the personal representative, other responsible persons, and the surviving
33 spouse."

34 **SECTION 7.** Article 4 of Chapter 30 of the General Statutes reads as rewritten:

35 "Article 4.

36 "Year's Allowance.

37 "Part 1. Nature of Allowance.

38 **"§ 30-15. When spouse entitled to allowance.**

39 Every surviving spouse of an intestate or of a testator, whether or not ~~he or she~~ the
40 surviving spouse has petitioned for an elective share, shall, unless the surviving spouse has
41 forfeited ~~his or her~~ the surviving spouse's right thereto, as provided by law, be entitled, out of
42 the personal property of the deceased spouse, to an allowance of the value of twenty thousand
43 dollars (\$20,000) for the surviving spouse's support for one year after the death of the deceased
44 spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired
45 against the property of the deceased spouse, and shall, in cases of testacy, be charged against
46 the share of the surviving spouse.

47 **"§ 30-16. Duty of personal representative, magistrate, or clerk to assign allowance.**

48 It shall be the duty of every administrator, collector, or executor of a will, on application in
49 writing, signed by the surviving spouse, at any time within one year after the death of the
50 deceased spouse, to assign to the surviving spouse the year's allowance as provided in this
51 Article.

1 If there shall be no administration, or if the personal representative shall fail or refuse to
2 apply to a magistrate or clerk of court, as provided in G.S. 30-20, for 10 days after the
3 surviving spouse has filed the aforesaid application, or if the surviving spouse is the personal
4 representative, the surviving spouse may make application to the magistrate or clerk, and it
5 shall be the duty of the magistrate or clerk to proceed in the same manner as though the
6 application had been made by the personal representative.

7 Where any personal property of the deceased spouse shall be located outside the township
8 or county where the deceased spouse resided at the time of his the deceased spouse's death, the
9 personal representative or the surviving spouse may apply to any magistrate or to any clerk of
10 court of any township or county where such personal property is located, and it shall be the
11 duty of such magistrate or clerk to assign the year's allowance as if the deceased spouse had
12 resided and died in that township.

13 **"§ 30-17. When children entitled to an allowance.**

14 Whenever any parent dies survived by any child under the age of 18 years, including an
15 adopted child or a child with whom the widow may be pregnant at the death of her husband, or
16 a child who is less than 22 years of age and is a full-time student in any educational institution,
17 or a child under 21 years of age who has been declared mentally incompetent, or a child under
18 21 years of age who is totally disabled, or any other person under the age of 18 years residing
19 with the deceased parent at the time of death to whom the deceased parent or the surviving
20 parent stood in loco parentis, every such child shall be entitled to receive an allowance of two
21 thousand dollars (\$2,000) for the child's support for the year next ensuing the death of such
22 parent. Such allowance shall be in addition to the child's share of the deceased parent's estate
23 and shall be exempt from any lien by judgment or execution against the property of such
24 parent. The personal representative of the deceased parent shall, within one year after the
25 parent's death, assign to every such child the allowance herein provided for; but if there is no
26 personal representative or if ~~he~~ the personal representative fails or refuses to act within 10 days
27 after written request by a guardian ~~or next friend~~ on behalf of such child, the allowance may be
28 assigned by a magistrate or clerk of court upon application of said ~~guardian or next friend.~~
29 guardian.

30 If the child resides with the widow of the deceased parent at the time such allowance is
31 paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides
32 with its surviving parent who is other than the widow of the deceased parent, such allowance
33 shall be paid to said surviving parent for the use and benefit of such child, regardless of
34 whether the deceased died testate or intestate or whether the widow dissented from the will.
35 Provided, however, the allowance shall not be available to an illegitimate child of a deceased
36 father, unless such deceased father shall have recognized the paternity of such illegitimate child
37 by deed, will or other paper-writing. If the child does not reside with a parent when the
38 allowance is paid, the allowance shall be paid to the child's general guardian, if any, and if
39 none, to the clerk of the superior court who shall receive and disburse same for the benefit of
40 such child.

41 **"§ 30-18. From what property allowance assigned.**

42 Such allowance shall be made in money or other personal property of the estate of the
43 deceased spouse.

44 "Part 2. Assigned by Magistrate or Clerk.

45 **"§ 30-19. Value of property ascertained.**

46 The value of the personal property assigned to the surviving spouse and children shall be
47 ascertained by a magistrate or the clerk of court of the county in which administration was
48 granted or the will probated.

49 **"§ 30-20. Procedure for assignment.**

50 Upon the application of the surviving spouse, a child by ~~his guardian or next friend,~~ the
51 child's guardian, or the personal representative of the deceased, the clerk of superior court of

1 the county in which the deceased resided may assign the inquiry to a magistrate of the county.
2 The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled
3 to an allowance according to the provisions of this Article, and determine the money or other
4 personal property of the estate, and pay over to or assign to the surviving spouse and to the
5 children, if any, so much thereof as they shall be entitled to as provided in this Article. Any
6 deficiencies shall be made up from any of the personal property of the deceased, and if the
7 personal property of the estate shall be insufficient to satisfy such allowance, the clerk of the
8 superior court shall enter judgment against the personal representative for the amount of such
9 deficiency, to be paid when a sufficiency of such assets shall come into ~~his hands.~~ the personal
10 representative's hands.

11 **"§ 30-21. Report of clerk or magistrate.**

12 The clerk of court, or magistrate upon assignment, shall make and sign three lists of the
13 money or other personal property assigned to each person, stating their quantity and value, and
14 the deficiency to be paid by the personal representative. Where the allowance is to the
15 surviving spouse, one of these lists shall be delivered to ~~him.~~ the surviving spouse. Where the
16 allowance is to a child, one of these lists shall be delivered to the surviving parent with whom
17 the child is living; or to the child's guardian ~~or next friend~~ if the child is not living with said
18 surviving parent; or to the child if said child is not living with the surviving parent and has no
19 ~~guardian or next friend.~~ guardian. One list shall be delivered to the personal representative. One
20 list shall be returned by the magistrate or clerk, within 20 days after the assignment, to the
21 superior court of the county in which administration was granted or the will probated, and the
22 clerk shall file and record the same, together with any judgment entered pursuant to G.S. 30-20.

23 **"§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.**

24 **"§ 30-23. Right of appeal.**

25 The personal representative, or the surviving spouse, or child by ~~his guardian or next friend,~~
26 the child's guardian, or any creditor, legatee or heir of the deceased, may appeal from the
27 finding of the magistrate or clerk of court to the superior court of the county, ~~and,~~ by filing a
28 copy of the assignment and a notice of appeal within 10 days after the assignment, ~~either the~~
29 ~~adverse party to appear before such court on a certain day, not less than five nor exceeding 10~~
30 ~~days after the service of the citation.~~ and the appeal shall be heard as provided in G.S. 1-301.2,
31 provided that the hearing on the appeal shall be at the next available session of superior court.

32 **"§ 30-24. Hearing on appeal.**

33 ~~At or before the day named, the appellant shall file with the clerk a copy of the assignment~~
34 ~~and a statement of his exceptions thereto, and the issues thereby raised shall be decided de~~
35 ~~novo.~~

36 **"§ 30-25. Personal representative entitled to credit.**

37 Upon the settlement of the accounts of the personal representative, ~~he~~ the personal
38 representative shall be credited with the articles assigned, and the value of the deficiency
39 assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for
40 fraud or gross negligence in him.

41 **"§ 30-26. When above allowance is in full.**

42 ~~If the estate of a deceased be insolvent, or if his or her personal estate does not exceed~~
43 ~~twenty thousand dollars (\$20,000), the allowances for the year's support of the surviving spouse~~
44 ~~and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and~~
45 ~~G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any~~
46 ~~further allowances.~~

47 "Part 3. Assigned in Superior Court.

48 **"§ 30-27. Surviving spouse or child may apply to superior court.**

49 ~~It shall not, however, be obligatory on a~~ In addition to any support assigned to the surviving
50 spouse or child to have the support assigned as above prescribed. Without prescribed, without
51 application to the personal representative, the surviving spouse, or the child through his the

1 child's guardian or next friend, may at any time may, after the date specified in the general
2 notice to creditors as provided for in G.S. 28A-14-1(a), and within one year after the
3 decedent's death, apply to the superior court of the county in which administration was granted
4 or the will probated to have a year's support assigned. assigned at an amount other than
5 prescribed in G.S. 30-15 and G.S. 30-17.

6 **"§ 30-28. Nature of proceeding; parties.**

7 The application shall be by ~~summons, as is prescribed for special proceedings, in which the~~
8 petition in a special proceeding before the clerk of superior court. The personal representative
9 of the deceased, if there be is one other than the plaintiff, the largest known creditor, or legatee,
10 or some distributee of the deceased, living in the county, shall be made defendant, and the
11 proceedings shall be as prescribed for special proceedings between parties: petitioner, all
12 known creditors, and all known heirs of the deceased, if the deceased is intestate, and devisees
13 of the deceased, if the deceased is testate, shall be made parties to the special proceeding. If the
14 personal representative of the deceased is aware of a creditor, heir, or devisee who should have
15 been made a respondent but was not, then the personal representative shall file a motion to add
16 the creditor, heir, or devisee as a necessary party, and the court shall order such other party to
17 appear in the proceeding.

18 **"§ 30-29. What complaint petition must show.**

19 In the ~~complaint petition~~ the plaintiff petitioner shall set forth, besides the facts entitling
20 plaintiff petitioner to a year's support and the value of the support claimed, the further facts that
21 ~~the estate of the decedent is not insolvent, and that the personal estate of which he or she the~~
22 decedent died possessed exceeded twenty thousand dollars (\$20,000), and also whether or not
23 an allowance has been made to plaintiff petitioner and the nature and value thereof.

24 **"§ 30-30. Judgment and order for commissioners.**

25 ~~If the material allegations of the complaint be found true, the judgment shall be that~~
26 plaintiff is entitled to the relief sought; and the court shall thereupon issue an order to the
27 sheriff or other proper officer of the county, commanding him to summon a magistrate and two
28 persons qualified to act as jurors, who The clerk of superior court shall hear the matter and
29 determine whether the petitioner is entitled to some or all of the relief sought and, if the clerk
30 determines that the petitioner is so entitled, the clerk shall determine the money or other
31 personal property of the estate and assign to the plaintiff petitioner a sufficiency thereof for
32 plaintiff's petitioner's support for one year from the decedent's death. Any deficiency shall be
33 made up from any of the personal property of the deceased, and if the personal property of the
34 estate shall be insufficient for such support, the clerk of the superior court shall enter judgment
35 against the personal representative for the amount of such deficiency, to be paid when a
36 sufficiency of such assets shall come into his the personal representative's hands. Any judgment
37 so rendered shall have the same priority over other debts and claims against the estate as an
38 allowance assigned pursuant to G.S. 30-15 or G.S. 30-17.

39 **"§ 30-31. Duty of commissioners; amount Amount of allowance.**

40 ~~The said commissioners shall be sworn by the magistrate and shall proceed as prescribed in~~
41 this Chapter, except that they The clerk of superior court may assign to the plaintiff petitioner a
42 value sufficient for the support of plaintiff petitioner according to the estate and condition of
43 the decedent and without regard to the limitations set forth in this Chapter; but the value
44 allowed shall be fixed with due consideration for other persons entitled to allowances for year's
45 support from the decedent's estate; and the total value of all allowances shall not in any case
46 exceed the one half of the average annual net income of the deceased for three years next
47 preceding his the deceased's death. This report shall be returned by the magistrate to the court.

48 **"§ 30-31.1. Service of judgment and appeal.**

49 The petitioner shall serve the clerk's judgment on all other parties. The judgment also shall
50 be filed in the estate file of the deceased. Any aggrieved party may appeal the judgment in
51 accordance with G.S. 1-301.2.

1 **"§ 30-31.2. Execution.**

2 If the clerk's judgment is not appealed as provided in G.S. 1-301.2, execution shall issue to
3 enforce the judgment as in like cases under Article 28 of Chapter 1 of the General Statutes.

4 ~~**"§ 30-32. Exceptions to the report.**~~

5 ~~The personal representative, or any creditor, distributee or legatee of the deceased, within~~
6 ~~10 days after the return of the report, may file exceptions thereto. The plaintiff shall be notified~~
7 ~~thereof and cited to appear before the court on a certain day, within 20 and not less than 10~~
8 ~~days after service of the notice, and answer the same; the case shall thereafter be proceeded in,~~
9 ~~heard and decided as provided in special proceedings between parties.~~

10 ~~**"§ 30-33. Confirmation of report; execution.**~~

11 ~~If the report shall be confirmed, the court shall so declare, and execution shall issue to~~
12 ~~enforce the judgment as in like cases."~~

13 **SECTION 8.** Chapter 31 of the General Statutes, as amended by Section 3 of this
14 act, reads as rewritten:

15 **"Chapter 31.**

16 **"Wills.**

17 **"Article 1.**

18 **"Execution of Will.**

19 **"§ 31-1. Who may make will.**

20 Any person of sound mind, and 18 years of age or over, may make a will.

21 **"§ 31-2: Repealed by Session Laws 1953, c. 1098, s. 1.**

22 **"§ 31-3: Rewritten and renumbered as G.S. 31-3.1 to 31-3.6 by Session Laws 1953, c. 1098, s.**
23 **2.**

24 **"§ 31-3.1. Will invalid unless statutory requirements complied with.**

25 No will is valid unless it complies with the requirements prescribed therefor by this Article.

26 **"§ 31-3.2. Kinds of wills.**

27 (a) Personal property may be bequeathed and real property may be devised by

28 (1) An attested written will which complies with the requirements of
29 G.S. 31-3.3, or

30 (2) A holographic will which complies with the requirements of G.S. 31-3.4.

31 (b) Personal property may also be bequeathed by a nuncupative will which complies
32 with the requirements of G.S. 31-3.5.

33 **"§ 31-3.3. Attested written will.**

34 (a) An attested written will is a written will signed by the testator and attested by at
35 least two competent witnesses as provided by this section.

36 (b) The testator must, with intent to sign the will, do so by actually signing the will
37 himself or by having someone else in the testator's presence and at his the testator's direction
38 sign the testator's name thereon.

39 (c) The testator must signify to the attesting witnesses that the instrument is his the
40 testator's instrument by signing it in their presence or by acknowledging to them his the
41 testator's signature previously affixed thereto, either of which may be done before the attesting
42 witnesses separately.

43 (d) The attesting witnesses must sign the will in the presence of the testator but need not
44 sign in the presence of each other.

45 **"§ 31-3.4. Holographic will.**

46 (a) A holographic will is a will

47 (1) Written entirely in the handwriting of the testator but when all the words
48 appearing on a paper in the handwriting of the testator are sufficient to
49 constitute a valid holographic will, the fact that other words or printed matter
50 appear thereon not in the handwriting of the testator, and not affecting the

1 meaning of the words in such handwriting, shall not affect the validity of the
2 will, and

3 (2) Subscribed by the testator, or with ~~his~~ the testator's name written in or on the
4 will in ~~his~~ the testator's own handwriting, and

5 (3) Found after the testator's death among ~~his~~ the testator's valuable papers or
6 effects, or in a safe-deposit box or other safe place where it was deposited by
7 ~~him~~ the testator or under ~~his~~ the testator's authority, or in the possession or
8 custody of some person with whom, or some firm or corporation with which,
9 it was deposited by ~~him~~ the testator or under ~~his~~ the testator's authority for
10 safekeeping.

11 (b) No attesting witness to a holographic will is required.

12 **"§ 31-3.5. Nuncupative will.**

13 A nuncupative will is a will

14 (1) Made orally by a person who is in ~~his~~ that person's last sickness or in
15 imminent peril of death and who does not survive such sickness or imminent
16 peril, and

17 (2) Declared to be ~~his~~ that person's will before two competent witnesses
18 simultaneously present at the making thereof and specially requested by ~~him~~
19 the person to bear witness thereto.

20 **"§ 31-3.6. Seal not required.**

21 A seal is not necessary to the validity of a will.

22 **"§ 31-4. Execution of power of appointment by will.**

23 No appointment, made by will in the exercise of any power, shall be valid unless the same
24 be executed in the manner by law required for the execution of wills; and every will, executed
25 in such manner, shall, so far as respects the execution and attestation thereof, be a valid
26 execution of a power of appointment by will, notwithstanding it shall have been expressly
27 required that a will made in exercise of such power should be executed with some additional or
28 other form of execution or solemnity.

29 **"§ 31-4.1: Repealed by Session Laws 2010-181, s. 1, effective July 1, 2010.**

30 **"§ 31-4.2: Repealed by Session Laws 2010-181, s. 2, effective July 1, 2010.**

31 "Article 2.

32 "Revocation of Will.

33 **"§ 31-5. Rewritten and renumbered as G.S. 31-5.1 by Session Laws 1953, c. 1098, s. 3.**

34 **"§ 31-5.1. Revocation of written will.**

35 A written will, or any part thereof, may be revoked only

36 (1) By a subsequent written will or codicil or other revocatory writing executed
37 in the manner provided herein for the execution of written wills, or

38 (2) By being burnt, torn, canceled, obliterated, or destroyed, with the intent and
39 for the purpose of revoking it, by the testator himself or by another person in
40 ~~his~~ the testator's presence and by ~~his~~ the testator's direction.

41 **"§ 31-5.2. Revocation of nuncupative will.**

42 A nuncupative will or any part thereof may be revoked

43 (1) By a subsequent nuncupative will, or

44 (2) By a subsequent written will or codicil or other revocatory writing executed
45 in the manner provided herein for the execution of written wills.

46 **"§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

47 A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may
48 petition for an elective share when there is a will made prior to the marriage in the same
49 manner, upon the same conditions, and to the same extent, as a surviving spouse may petition
50 for an elective share when there is a will made subsequent to marriage.

51 **"§ 31-5.4. Revocation by divorce or annulment; revival.**

1 Dissolution of marriage by absolute divorce or annulment after making a will does not
2 revoke the will of any testator but, unless otherwise specifically provided in the will, it revokes
3 all provisions in the will in favor of the testator's former spouse or purported former spouse,
4 including, but not by way of limitation, any provision conferring a general or special power of
5 appointment on the former spouse or purported former spouse and any appointment of the
6 former spouse or purported former spouse as executor, trustee, conservator, or guardian. If
7 provisions are revoked solely by this section, they are revived by the testator's remarriage to the
8 former spouse or purported former spouse.

9 **"§ 31-5.5. After-born or after-adopted child; illegitimate child; effect on will.**

10 (a) A will shall not be revoked by the subsequent birth of a child to the testator, or by
11 the subsequent adoption of a child by the testator, or by the subsequent entitlement of an
12 after-born illegitimate child to take as an heir of the testator pursuant to the provisions of
13 G.S. 29-19(b), but any after-born, after-adopted or entitled after-born illegitimate child shall
14 have the right to share in the testator's estate to the same extent he the after-born, after-adopted,
15 or entitled after-born illegitimate child would have shared if the testator had died intestate
16 unless:

- 17 (1) The testator made some provision in the will for the child, whether adequate
18 or not;
- 19 (2) It is apparent from the will itself that the testator intentionally did not make
20 specific provision therein for the child;
- 21 (3) The testator had children living when the will was executed, and none of the
22 testator's children actually take under the will;
- 23 (4) The surviving spouse receives all of the estate under the will; or
- 24 (5) The testator made provision for the child that takes effect upon the death of
25 the testator, whether adequate or not.

26 (b) The provisions of G.S. 28A-22-2 shall be construed as being applicable to
27 after-adopted children and to after-born children, whether legitimate or entitled illegitimate.

28 (c) The terms "after-born," "after-adopted" and "entitled after-born" as used in this
29 section refer to children born, adopted or entitled subsequent to the execution of the will.

30 **"§ 31-5.6. No revocation by subsequent conveyance.**

31 No conveyance or other act made or done subsequently to the execution of a will of, or
32 relating to, any real or personal estate therein comprised, except an act by which such will shall
33 be duly revoked, shall prevent the operation of the will with respect to any estate or interest in
34 such real or personal estate as the testator shall have power to dispose of by will at the time of
35 his the testator's death.

36 **"§ 31-5.7. Specific provisions for revocation exclusive; effect of changes in circumstances.**

37 No will can be revoked in whole or in part by any act of the testator or by a change in his
38 the testator's circumstances or condition except as provided by G.S. 31-5.1 through 31-5.6
39 inclusive.

40 **"§ 31-5.8. Revival of revoked will.**

41 No will or any part thereof that has been in any manner revoked can, except as provided in
42 G.S. 31-5.4, be revived otherwise than by a reexecution thereof, or by the execution of another
43 will in which the revoked will or part thereof is incorporated by reference.

44 **"§ 31-6. Renumbered as G.S. 31-5.3 by Session Laws 1953, c. 1098, s. 5.**

45 **"§ 31-7. Repealed by Session Laws 1953, c. 1098, s. 9.**

46 **"§ 31-8. Renumbered as G.S. 31-5.6 by Session Laws 1953, c. 1098, s. 8.**

47 "Article 3.

48 "Witnesses to Will.

49 **"§ 31-8.1. Who may witness.**

50 Any person competent to be a witness generally in this State may act as a witness to a will.

51 **"§ 31-9. Executor competent witness.**

1 No person, on account of being an executor of a will, shall be incompetent to be admitted a
 2 witness to prove the execution of such will, or to prove the validity or invalidity thereof.

3 **"§ 31-10. Beneficiary competent witness; when interest rendered void.**

4 (a) A witness to an attested written or a nuncupative will, to whom or to whose spouse
 5 a beneficial interest in property, or a power of appointment with respect thereto, is given by the
 6 will, is nevertheless a competent witness to the will and is competent to prove the execution or
 7 validity thereof. However, if there are not at least two other witnesses to the will who are
 8 disinterested, the interested witness and ~~his~~ the interested witness's spouse and anyone claiming
 9 under ~~him~~ the interested witness shall take nothing under the will, and so far only as their
 10 interests are concerned the will is void.

11 (b) A beneficiary under a holographic will may testify to such competent, relevant and
 12 material facts as tend to establish such holographic will as a valid will without rendering void
 13 the benefits to be received by ~~him~~ the beneficiary thereunder.

14 **"§ 31-10.1. Corporate trustee not disqualified by witnessing of will by stockholder.**

15 A corporation named as a trustee in a will is not disqualified to act as trustee by reason of
 16 the fact that a person owning stock in the corporation signed the will as a witness.

17 "Article 4.

18 "Depository for Wills.

19 **"§ 31-11. Depositories in offices of clerks of superior court where living persons may file
 20 wills.**

21 The clerk of the superior court in each county of North Carolina shall be required to keep a
 22 receptacle or depository in which any person who desires to do so may file ~~his or her~~ that
 23 person's will for safekeeping; and the clerk shall, upon written request of the testator, or the
 24 duly authorized agent or attorney for the testator, permit said will or testament to be withdrawn
 25 from said depository or receptacle at any time prior to the death of the testator: Provided, that
 26 the contents of said will shall not be made public or open to the inspection of anyone other than
 27 the testator or ~~his~~ the testator's duly authorized agent until such time as the said will shall be
 28 offered for probate.

29 **"§§ 31-11.1 through 31-11.5. Reserved for future codification purposes.**

30 "Article 4A.

31 "Self-Proved Wills.

32 **"§ 31-11.6. How attested wills may be made self-proved.**

33 (a) Any will may be simultaneously executed, attested, and made self-proved, by
 34 acknowledgment thereof by the testator and affidavits of the witnesses, each made before an
 35 officer authorized to administer oaths under the laws of the state where execution occurs and
 36 evidenced by the officer's certificate, under official seal, in substantially the following form:

37 "I, _____, the testator, sign my name to this instrument this ____ day of _____,
 38 and being first duly sworn, do hereby declare to the undersigned authority that I sign and
 39 execute this instrument as my last will and that I sign it willingly (or willingly direct another to
 40 sign for me), that I execute it as my free and voluntary act for the purposes therein expressed,
 41 and that I am eighteen years of age or older, of sound mind, and under no constraint or undue
 42 influence.

43 _____
 44 Testator

45 We _____, _____, the witnesses, sign our names to this instrument, being first duly
 46 sworn, and do hereby declare to the undersigned authority that the testator signs and executes
 47 this instrument as his last will and that he signs it willingly (or willingly directs another to sign
 48 for him), and that each of us, in the presence and hearing of the testator, hereby signs this will
 49 as witness to the testator's signing, and to the best of our knowledge the testator is eighteen
 50 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

THE STATE OF _____
COUNTY OF _____

Subscribed, sworn to and acknowledged before me by _____, the testator and
subscribed and sworn to before me by _____ and _____, witnesses, this ____ day of

(SEAL)

(SIGNED) _____
(OFFICIAL CAPACITY OF OFFICER)"

(b) An attested written will executed as provided by G.S. 31-3.3 may at any time
subsequent to its execution be made self-proved, by the acknowledgment thereof by the testator
and the affidavits of the attesting witnesses, each made before an officer authorized to
administer oaths under the laws of this State, and evidenced by the officer's certificate, under
official seal, attached or annexed to the will in form and content substantially as follows:

"STATE OF NORTH CAROLINA
"COUNTY/CITY OF _____

"Before me, the undersigned authority, on this day personally appeared _____, and
_____, known to me to be the testator and the witnesses, respectively, whose names are
signed to the attached or foregoing instrument and; all of these persons being by me first duly
sworn. The testator, declared to me and to the witnesses in my presence: That said instrument is
his last will; that he had willingly signed or directed another to sign the same for him, and
executed it in the presence of said witnesses as his free and voluntary act for the purposes
therein expressed; or, that the testator signified that the instrument was his instrument by
acknowledging to them his signature previously affixed thereto.

The said witnesses stated before me that the foregoing will was executed and acknowledged
by the testator as his last will in the presence of said witnesses who, in his presence and at his
request, subscribed their names thereto as attesting witnesses and that the testator, at the time of
the execution of said will, was over the age of 18 years and of sound and disposing mind and
memory.

Testator

Witness

Witness

Witness

Subscribed, sworn and acknowledged before me by _____, the testator, subscribed and
sworn before me by _____, _____ and _____ witnesses, this ____ day of _____,

A.D. _____
(SEAL)

(SIGNED) _____
(OFFICIAL CAPACITY OF OFFICER)"

(c) The sworn statement of any such witnesses taken as herein provided shall be
accepted by the court as if it had been taken before such court.

"Article 5.

"Probate of Will.

"§§ 31-12 through 31-31.2: Recodified as Article 2A of Chapter 28A of the General Statutes by Section 3 of this act.

"Article 6.

"Caveat to Will.

"§ 31-32. ~~When and by whom caveat filed.~~ Filing of caveat.

(a) At the time of application for probate of any will, and the probate thereof in common form, or at any time within three years thereafter, any ~~person entitled under such will, or party~~ interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such will: ~~Provided, will; provided,~~ that if any person entitled to file a caveat be within the age of 18 years, or ~~insane, or imprisoned, incompetent as defined in G.S. 35A-1101(7) or (8),~~ then such person may file a caveat within three years after the removal of such disability.

~~Notwithstanding the provisions of the first paragraph of this section, as to persons not under disability, a caveat to the probate of a will probated in common form prior to May 1, 1951, must be filed within seven years of the date of probate or within three years from May 1, 1951, whichever period of time is shorter.~~

(b) The caveat shall be filed in the decedent's estate file. The clerk of superior court shall give notice of the filing by making an entry upon the page of the will book where the will is recorded, evidencing that the caveat has been filed and giving the date of such filing.

(c) If a will has been probated in solemn form pursuant to G.S. 28A-2A-7, any party who was properly served in that probate in solemn form shall be barred from filing a caveat.

"§ 31-33. ~~Bond given and cause~~ Cause transferred to trial docket.

~~When a caveator shall have given bond with surety approved by the clerk, in the sum of two hundred dollars (\$200.00), payable to the propounder of the will, conditioned upon the payment of all costs which shall be adjudged against such caveator in the superior court or when a caveator shall have deposited money or given a mortgage in lieu of such bond, or shall have filed affidavits and satisfied the clerk of his inability to give such bond or otherwise secure such costs,~~

(a) Upon the filing of a caveat, the clerk shall transfer the cause to the superior court for trial. Such trial by jury. The caveat shall be served upon all interested parties in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil Procedure.

(b) After service under subsection (a) of this section, the caveator shall cause notice of the caveat proceeding to be given to all devisees, legatees, or other persons in interest in the manner provided for service of process by G.S. 1A-1, Rule 4(j) and (k). The notice shall advise such devisees, legatees, or other persons in interest, of the session of superior court to which the proceeding has been transferred and shall call upon them to appear and make themselves proper parties to the proceeding if they so choose. At the session of court to which such proceeding is transferred, or as soon thereafter as motion to that effect shall be made by the propounder, and before trial, the judge shall require any of the devisees, legatees or other persons in interest so cited, either those who make themselves a hearing to align the parties to be served upon all parties in accordance with G.S. 1A-1, Rule 5 of the Rules of Civil Procedure. At the alignment hearing, all of the interested parties who wish to be aligned as parties shall appear and be aligned by the court as parties with the caveators or whose interests appear to him antagonistic to that of parties with the propounders of the will, to align themselves and to file bond within such time as he shall direct and before trial. Upon the failure of any party to file such bond, will. If an interested party does not appear to be aligned or chooses not to be aligned, the judge shall dismiss that interested party from the proceeding proceeding, but that party shall be bound by the proceeding.

1 (c) Within 30 days following the entry of an order aligning the parties, any interested
2 party who was aligned may file a responsive pleading to the caveat, provided, however, that
3 failure to respond to any averment or claim of the caveat shall not be deemed an admission of
4 that averment or claim. An extension of time to file a responsive pleading to the caveat may be
5 granted as provided by G.S. 1A-1, Rule 6 of the Rules of Civil Procedure.

6 (d) Upon motion of an aligned party, the court may require a caveator to provide
7 security in such sum as the court deems proper for the payment of such costs and damages as
8 may be incurred or suffered by the estate if the estate is found to have been wrongfully
9 enjoined or restrained. The court may consider relevant facts related to whether a bond should
10 be required and the amount of any such bond, including, but not limited to, (i) whether the
11 estate may suffer irreparable injury, loss, or damage as a result of the caveat and (ii) whether
12 the caveat has substantial merit. Provisions for bringing suit in forma pauperis apply to the
13 provisions of this subsection.

14 ~~"§ 31-34. Prosecution bond required in actions to contest wills.~~

15 ~~When any action is instituted to contest a will the clerk of the superior court will require the~~
16 ~~prosecution bond required in other civil actions: Provided, however, that provisions for~~
17 ~~bringing suit in forma pauperis shall also apply to the provisions of this section.~~

18 "§ 31-35. Affidavit of witness as evidence.

19 Whenever the subscribing witness to any will shall die, or be ~~insane or~~ mentally
20 incompetent, or be absent beyond the State, it shall be competent upon any issue of devisavit
21 vel non to give in evidence the affidavits and proofs taken by the clerk upon admitting the will
22 to probate in common form, and such affidavit and proceedings before the clerk shall be prima
23 facie evidence of the due and legal execution of said will.

24 "§ 31-36. Effect of caveat on estate administration.

25 (a) Order of Clerk. – Where a caveat is ~~entered and bond given,~~ filed, the clerk of the
26 superior court shall forthwith issue an order that shall apply during the pendency of the caveat
27 to any personal representative, having the estate in charge, as follows:

- 28 (1) Distributions to beneficiaries. – That there shall be no distributions of assets
29 of the estate to any beneficiary;
- 30 (2) Commissions. – That no commissions shall be advanced or awarded to any
31 personal representative;
- 32 (3) Accountings. – That the personal representative shall file all accountings
33 required by the clerk of superior court and that the personal representative
34 may pay any applicable filing fees associated with those accountings from
35 the assets of the estate;
- 36 (4) Preservation of estate assets. – That the personal representative shall
37 preserve the property of the estate and that the personal representative is
38 authorized to pursue and prosecute claims that the estate may have against
39 others; and
- 40 (5) Taxes, claims and debts of estate. – That the personal representative may file
41 all appropriate tax returns and that the personal representative may pay, in
42 accordance with the procedures of subsection (b) of this section: taxes;
43 funeral expenses of the decedent; debts that are a lien upon the property of
44 the decedent; bills of the decedent accrued before death; claims against the
45 estate that are timely filed; professional fees related to administration of the
46 estate, including fees for tax return preparation, appraisal fees, and attorneys'
47 fees for estate administration.

48 (b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of
49 subsection (a) of this section, the personal representative shall file with the clerk a notice of the
50 personal representative's intent to pay those items and shall serve the notice upon all parties to
51 the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. If within 10 days of

1 service any party files with the clerk a written objection to that payment, the clerk shall
 2 schedule a hearing and determine whether the proposed payment shall be made. If no such
 3 objection is filed with the clerk, the clerk may approve the payment without hearing, and upon
 4 that approval, the personal representative may make the payment. The parties to the caveat may
 5 consent to any such payment, and upon such consent, the clerk may approve the payment
 6 without hearing. The clerk may defer ruling on the payment pending the resolution of the
 7 caveat.

8 (c) Preservation of Estate Assets. – Questions regarding the use, location, and
 9 disposition of assets that cannot be resolved by the parties and consented to by the clerk shall
 10 be decided by the clerk. When a question has not been resolved by agreement, either party may
 11 request a hearing before the clerk upon 10 days notice and shall serve the notice upon all
 12 parties to the caveat, pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure. Decisions
 13 of the clerk may be appealed to the superior court pursuant to G.S. 1-301.3.

14 ~~"§ 31-37. Superior court clerks to enter notice of caveat on will book; final judgment also~~
 15 ~~to be entered.~~

16 ~~Wherever a caveat is filed with the clerk of the superior court of any county in the State to~~
 17 ~~any last will and testament which has been admitted to probate in said office, it shall be the~~
 18 ~~duty of such clerk, and he is hereby directed to give notice of the filing of such caveat by~~
 19 ~~making an entry upon the page of the will book where such last will and testament is recorded,~~
 20 ~~evidencing that such caveat has been filed and giving the date of such filing. When such caveat~~
 21 ~~and proceedings resulting therefrom shall have resulted in final judgment with respect to such~~
 22 ~~will, the clerk of the court shall make a further entry upon the page of the will book where~~
 23 ~~such last will and testament is recorded to the effect that final judgment has been entered, either~~
 24 ~~sustaining or setting aside such will.~~

25 ~~"§ 31-37.1. Parties may enter into a settlement agreement. Settlement agreement; filing of~~
 26 ~~judgment.~~

27 (a) Prior to an entry of judgment by the superior court in a caveat proceeding, the
 28 parties may enter into a settlement agreement, ~~whereupon judgment may be entered by the~~
 29 ~~court, which must be approved by the superior court. Upon approval of a settlement agreement,~~
 30 ~~the court shall enter judgment, without a verdict by a jury, in accordance with the terms of the~~
 31 ~~settlement agreement, agreement. The consent of interested parties who are not aligned as~~
 32 ~~parties pursuant to G.S. 31-33 is not necessary for a settlement agreement under this section.~~

33 (b) When judgment is entered by the superior court in a caveat proceeding, the clerk of
 34 superior court shall file a copy of the judgment in the estate file and shall make entry upon the
 35 page of the will book where such will is recorded to the effect that final judgment has been
 36 entered, either sustaining or setting aside the contested will.

37 "Article 7.

38 "Construction of Will.

39 "§ 31-38. Devise presumed to be in fee.

40 When real estate shall be devised to any person, the same shall be held and construed to be
 41 a devise in fee simple, unless such devise shall, in plain and express words, show, or it shall be
 42 plainly intended by the will, or some part thereof, that the testator intended to convey an estate
 43 of less dignity.

44 "§ 31-39. Probate necessary to pass title; recordation in county where land lies; rights of
 45 innocent purchasers.

46 No will shall be effectual to pass real or personal estate unless it shall have been duly
 47 proved and allowed in the probate court of the proper county, and a duly certified copy thereof
 48 shall be recorded in the office of the superior court clerk of the county wherein the land is
 49 situate, and the probate of a will devising real estate shall be conclusive as to the execution
 50 thereof against the heirs and devisees of the testator, whenever the probate thereof under the
 51 like circumstances, would be conclusive against the next of kin and legatees of the testator:

1 Provided, that the probate and registration of any will shall not affect the rights of innocent
2 purchasers for value from the heirs at law of the testator when such purchase is made more than
3 two years after the death of such testator or when such purchase is made after the filing of the
4 final account by the duly authorized administrator of the decedent and the approval thereof by
5 the clerk of the superior court having jurisdiction of the estate. Such conveyances, if made
6 before the expiration of the time required by this section to have elapsed in order for same to be
7 valid against the heirs and devisees of the testator, shall, upon the expiration of such time,
8 become good and valid to the same effect as if made after the expiration of such time, unless in
9 the meantime a proceeding shall have been instituted in the proper court to probate the will of
10 the testator.

11 **"§ 31-40. What property passes by will.**

12 Any testator, by ~~his~~ the testator's will duly executed, may devise, bequeath, or dispose of all
13 real and personal estate which ~~he~~ the testator shall be entitled to at the time of ~~his~~ the testator's
14 death, and which, if not so devised, bequeathed, or disposed of, would descend or devolve upon
15 ~~his~~ the testator's heirs at law, or upon ~~his~~ the testator's executor or administrator; and the power
16 hereby given shall extend to all contingent, executory, or other future interest in any real or
17 personal estate, whether the testator may or may not be the person or one of the persons in
18 whom the same may become vested, or whether ~~he~~ the testator may be entitled thereto under
19 the instrument by which the same was created, or under any disposition thereof by deed or will;
20 and also to all rights of entry for conditions broken, whether any such condition has or has not
21 been broken at the testator's death, all other rights of entry, and possibilities of reverter; and
22 also to such of the same estates, interests, and rights respectively, and other real and personal
23 estate, as the testator may be entitled to at the time of ~~his~~ the testator's death, notwithstanding
24 that ~~he~~ the testator may become entitled to the same subsequently to the execution of ~~his~~ the
25 testator's will.

26 **"§ 31-41. Will relates to death of testator.**

27 Every will shall be construed, with reference to the real and personal estate comprised
28 therein, to speak and take effect as if it had been executed immediately before the death of the
29 testator, unless a contrary intention shall appear by the will.

30 **"§ 31-42. Failure of devises by lapse or otherwise; renunciation; 120-hour survivorship
31 requirement, revised simultaneous death act, Article 24, Chapter 28A.**

32 (a) Unless the will indicates a contrary intent, if a devisee predeceases the testator,
33 whether before or after the execution of the will, and if the devisee is a grandparent of or a
34 descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take
35 in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in
36 the same manner that the issue would take as heirs of the deceased devisee under the intestacy
37 provisions in effect at the time of the testator's death. The provisions of this section apply
38 whether the devise is to an individual, to a class, or is a residuary devise. In the case of the class
39 devise, the issue shall take whatever share the deceased devisee would have taken had the
40 devisee survived the testator; in the event the deceased class member leaves no issue, the
41 devisee's share shall devolve upon the members of the class who survived the testator and the
42 issue of any deceased members taking by substitution.

43 (b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of this
44 section do not apply to a devise to a devisee who predeceases the testator, or if a devise
45 otherwise fails, the property shall pass to the residuary devisee or devisees in proportion to their
46 share of the residue. If the devise is a residuary devise, it shall augment the shares of the other
47 residuary devisees, including the shares of any substitute takers under subsection (a) of this
48 section. If there are no residuary devisees, then the property shall pass by intestacy.

49 (c) Renunciation of a devise is as provided for in Chapter 31B of the General Statutes.

50 (c1) The determination of whether a devisee has predeceased the testator shall be made
51 as provided by Article 24 of Chapter 28A of the General Statutes.

1 (d) As used in this section, "devisee" means any person entitled to take real or personal
2 property under the provisions of a will.

3 **"§§ 31-42.1 through 31-42.2. Repealed by Session Laws 1965, c. 938, s. 2.**

4 **"§ 31-43. General gift by will an execution of power of appointment.**

5 A general devise of the real estate of the testator, or of ~~his~~ the testator's real estate in any
6 place or in the occupation of any person mentioned in the will, or otherwise described in a
7 general manner, shall be construed to include any real estate, or any real estate to which such
8 description shall extend, as the case may be, which ~~he~~ the testator may have power to appoint
9 in any manner ~~he~~ the testator may think proper; and shall operate as an execution of such
10 power, unless a contrary intention shall appear by the will; and in like manner a bequest of the
11 personal estate of the testator, or any bequest of personal property, described in a general
12 manner, shall be construed to include any personal estate, or any personal estate to which such
13 description shall extend, as the case may be, which ~~he~~ the testator may have power to appoint
14 in any manner ~~he~~ the testator may think proper, and shall operate as an execution of such
15 power, unless a contrary intention shall appear by the will.

16 **"§ 31-44. Repealed by Session Laws 1951, c. 762, s. 2.**

17 **"§ 31-45. Rewritten and renumbered as G.S. 31-5.5 by Session Laws 1953, c. 1098, s. 7.**

18 **"§ 31-46. Validity of will; which laws govern.**

19 A will is valid if it meets the requirements of the applicable provisions of law in effect in
20 this State either at the time of its execution or at the time of the death of the testator.

21 **"§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents
22 dying in calendar year 2010.**

23 (a) Purpose. – The federal estate tax and generation-skipping transfer tax expired
24 January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills
25 and trusts and to promote judicial economy in the administration of trusts and estates, this
26 section construes certain formula clauses that reference federal estate and generation-skipping
27 transfer tax laws and that are used in wills or codicils of decedents who die in or before
28 calendar year 2010.

29 (b) Applicability. – This section applies to the following:

30 (1) To a will or codicil executed by a decedent before December 31, 2009, that
31 contains a formula provision described in subsection (c) of this section if the
32 decedent dies after December 31, 2009, and before the earlier of January 1,
33 2011, and the effective date of the reinstatement of the federal estate tax and
34 generation-skipping transfer tax, unless the will or codicil clearly manifests
35 an intent that a rule contrary to the rule of construction described in
36 subsection (c) of this section applies.

37 (2) To the terms of a will or codicil executed by a decedent who dies before
38 December 31, 2009, providing for a disposition of property that contains a
39 formula provision described in subsection (c) of this section and occurs as a
40 result of the death of another individual who dies after December 31, 2009,
41 and before the earlier of January 1, 2011, and the effective date of the
42 reinstatement of the federal estate tax and generation-skipping transfer tax,
43 unless the terms of the will or codicil clearly manifests an intent that a rule
44 contrary to the rule of construction described in subsection (c) of this section
45 applies.

46 (c) Construction. – A will or codicil subject to this section is considered to refer to the
47 federal estate and generation-skipping transfer tax laws as they applied with respect to estates
48 of decedents dying on December 31, 2009, if the will or codicil contains a formula that meets
49 one or more of the following conditions:

50 (1) The formula refers to any of the following: "applicable credit amount,"
51 "applicable exclusion amount," "applicable exemption amount," "applicable

1 fraction," "estate tax exemption," "generation-skipping transfer tax
2 exemption," "GST exemption," "inclusion ratio," "marital deduction,"
3 "maximum marital deduction," "unified credit," or "unlimited marital
4 deduction."

5 (2) The formula measures a share of an estate or trust based on the amount that
6 can pass free of federal estate taxes or the amount that can pass free of
7 federal generation-skipping transfer taxes.

8 (3) The formula is otherwise based on a provision of federal estate tax or federal
9 generation-skipping transfer tax law similar to the provisions in subdivision
10 (1) or (2) of this subsection.

11 (d) **Judicial Determination.** – The personal representative or an affected beneficiary
12 under a will or testamentary trust may bring an action in the superior court division of the
13 General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee
14 of a trust created under the will or an affected beneficiary under the trust may bring a
15 proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine
16 whether the decedent intended that the references under subsection (c) of this section be
17 construed with respect to the federal law as it existed after December 31, 2009. The action must
18 be commenced within 12 months following the death of the decedent.

19 "Article 8.

20 "Testamentary Additions to Trusts.

21 **"§ 31-47. Testamentary additions to trusts.**

22 (a) A will may validly devise property to:

23 (1) The trustee of a trust established before the testator's death by the testator, by
24 the testator and some other person, or by some other person, including a trust
25 authorized by G.S. 36C-4-401.1; or

26 (2) The trustee of a trust to be established at the testator's death, if the trust is
27 identified in the testator's will and its terms are set forth in a written
28 instrument executed before or concurrently with the execution of the
29 testator's will, regardless of the existence, size, or character of the corpus of
30 the trust during the testator's lifetime.

31 The devise is not invalid because the trust is amendable or revocable, or because the trust
32 instrument or any amendment thereto was not executed in the manner required for wills, or
33 because the trust was amended after the execution of the testator's will or after the testator's
34 death. A revocable trust to which property is first transferred under subdivision (2) of this
35 subsection is an inter vivos trust and not a testamentary trust and, as of the date of the execution
36 of the trust instrument, is subject to Article 6 of Chapter 36C of the General Statutes.

37 (b) Unless the testator's will provides otherwise, property devised to the trustee of a
38 trust described in subsection (a) of this section is not held under a testamentary trust of the
39 testator, but it becomes a part of the trust to which it is devised, and shall be administered and
40 disposed of in accordance with the provisions of the governing instrument setting forth the
41 terms of the trust, including any amendments thereto made before or after the testator's death.

42 (c) Unless the testator's will provides otherwise, a revocation or termination of the trust
43 before the testator's death causes the devise to lapse.

44 (d) A devise to a trust shall be construed as a devise to the trustee of that trust.

45 (e) For purposes of this section, "devise," when used as a noun, means a testamentary
46 disposition of real or personal property and, when used as a verb, means to dispose of real or
47 personal property by will.

48 (f) Nothing in this section alters, amends, or in any manner affects the application of
49 the doctrine of acts of independent significance.

50 "Article 9.

51 "Incorporation by Reference; Acts of Independent Significance.

1 **"§ 31-51. Incorporation by reference.**

2 A writing in existence when a will is executed may be incorporated by reference if the
3 language of the will manifests this intent and describes the writing sufficiently to permit its
4 identification.

5 **"§ 31-52. Acts and events of independent significance.**

6 A will may dispose of property by reference to acts and events that have significance apart
7 from their effect upon the disposition made by the will, whether they occur before or after the
8 execution of the will or before or after the testator's death. These acts and events may include
9 the execution or revocation of another individual's will and the safekeeping of items in a
10 secured depository.

11 **SECTION 9. G.S. 31B-1.2 reads as rewritten:**

12 **"§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

13 (a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding
14 by petition before the clerk of court for a determination as to whether a renunciation would be
15 compatible with the fiduciary's duties. ~~Commencement~~ In the case of a trustee, commencement
16 of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by
17 Chapter 36C of the General Statutes. In the case of a personal representative, commencement
18 of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by
19 Chapter 28A of the General Statutes. In addition to any other notice requirements, notice of the
20 proceeding shall be given to all persons entitled to delivery of a copy of an instrument of
21 renunciation under G.S. 31B-2.1.

22 (b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a
23 declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a
24 determination as to whether the renunciation is compatible with the fiduciary's duties. In
25 addition to any other notice requirements, notice of the action shall be given to all persons
26 entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

27 (c) A proceeding or action instituted under this section shall comply with all of the
28 following:

29 (1) The petition or complaint shall state the basis for the fiduciary's allegation
30 that the renunciation is compatible with the fiduciary's duties, considering
31 among other things the intended purposes of the trust or other instrument and
32 the impact of the renunciation on beneficiaries and potential beneficiaries. A
33 petition or complaint filed by a trustee of a charitable trust shall contain a
34 statement that a copy of the petition or complaint is being provided to the
35 Attorney General.

36 (2) After considering among other things the intended purposes of the trust or
37 other instrument and the impact of the renunciation on beneficiaries and
38 potential beneficiaries, the court shall enter an order stating the court's
39 determination as to whether the renunciation is compatible with the
40 fiduciary's duties.

41 (d) The effectiveness of a renunciation is not affected by a determination under this
42 section that the renunciation is not compatible with a fiduciary's duties."

43 **SECTION 10. G.S. 32A-20(a) reads as rewritten:**

44 "(a) A health care power of attorney shall become effective when and if the physician or
45 physicians or, in the case of mental health treatment, physician or eligible psychologist as
46 defined in G.S. 122C-3(13d), designated by the principal determine in writing that the principal
47 lacks sufficient understanding or capacity to make or communicate decisions relating to the
48 health care of the principal, and shall continue in effect during the incapacity of the principal.
49 The determination shall be made by the principal's attending physician or eligible psychologist
50 if the physician or physicians or eligible psychologist designated by the principal is unavailable
51 or is otherwise unable or unwilling to make this determination or if the principal failed to

1 designate a physician or physicians or eligible psychologist to make this determination. A
2 health care power of attorney may include a provision that, if the principal does not designate a
3 physician for reasons based on his religious or moral beliefs as specified in the health care
4 power of attorney, a person designated by the principal in the health care power of attorney
5 may certify in writing, acknowledged before a notary public, that the principal lacks sufficient
6 understanding or capacity to make or communicate decisions relating to his health care. The
7 person so designated must be a competent person 18 years of age or older, not engaged in
8 providing health care to the principal for remuneration, and must be a person other than the
9 health care agent. For purposes of exercising authority described in G.S. 32A-19(b), however, a
10 health care power of attorney shall be effective following the death of the principal without
11 regard to the principal's understanding or capacity when the principal was living. Nothing in
12 this section shall be construed to prevent a principal from revoking a health care power of
13 attorney."

14 **SECTION 11.** G.S. 36C-2-205(d) reads as rewritten:

15 "(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in
16 the clerk's discretion, with or without motion or notice, may enter an order enlarging the period
17 of time within which an act is required or permitted by this Article, by any applicable Rules of
18 Civil Procedure or by order of the court, if the request is made before the expiration of the
19 period originally prescribed, but not to exceed 10 days, ~~nor more than once.~~ except to the extent
20 that the court finds that justice requires that the time be enlarged for a period of greater than 10
21 days. Upon motion made after the expiration of the specified period, the clerk of superior court
22 may permit the act where the failure to act was the result of excusable neglect. Notwithstanding
23 any other provision of this subsection, the parties to a proceeding may enter into binding
24 stipulations, without approval of the clerk of superior court, enlarging the time within which an
25 act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by
26 order of the court, not to exceed 30 days."

27 **SECTION 12.** G.S. 36C-2-205(e) reads as rewritten:

28 "(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs,
29 G.S. 1A-1, Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, and 45 45, 56, and 65 of the Rules of
30 Civil Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of superior
31 court, the clerk may further direct that any or all of the following remaining Rules of Civil
32 Procedure shall apply: Rules 15, 16, 17, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35,
33 36, and 37; apply, including, without limitation, discovery rules; however, nothing in Rule 17
34 requires the appointment of a guardian ad litem for a party represented except as provided
35 under ~~G.S. 36C-3-305.~~ G.S. 36C-2-206. In applying these Rules to a trust proceeding pending
36 before the clerk of superior court, the term "judge" shall be construed as "clerk of superior
37 court."

38 **SECTION 13.** G.S. 36C-6-604 reads as rewritten:

39 "**§ 36C-6-604. Limitation on action contesting validity of revocable trust; distribution of**
40 **trust property.**

41 (a) A person may commence a judicial proceeding to contest the validity of a trust that
42 was revocable at the settlor's death within the earlier of:

43 (1) Three years after the settlor's death; or

44 (2) 120 days after the trustee sent the person a copy of the trust instrument and a
45 notice written notice pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil
46 Procedure, informing the person of the trust's existence, of the trustee's name
47 and address, and of the time allowed for commencing a proceeding.

48 (b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the
49 trustee may proceed to distribute the trust property in accordance with the terms of the trust.
50 The trustee is not subject to liability for doing so unless:

- 1 (1) The trustee knows of a pending judicial proceeding contesting the validity of
- 2 the trust; or
- 3 (2) A potential contestant has notified the trustee of a possible judicial
- 4 proceeding to contest the trust, and a judicial proceeding is commenced
- 5 within 60 days after the contestant sent the notification.

6 (c) A beneficiary of a trust that is determined to have been invalid is liable to return any
7 distribution received."

8 **SECTION 14.** This act becomes effective January 1, 2012, and applies to estates of
9 decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 436
Finance Committee Substitute Adopted 6/13/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S436-CSSV-44 [v.1]

6/15/2011 5:04:23 PM

Short Title: Extend Sunsets.

(Public)

Sponsors:

Referred to:

March 29, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE QUALIFIED BUSINESS VENTURE TAX CREDIT SUNSET
3 AND TO EXTEND THE SALES TAX REFUND ALLOWED TO A JOINT
4 GOVERNMENTAL AGENCY CREATED TO OPERATE A CABLE TELEVISION
5 SYSTEM FOR ONE YEAR.
6 The General Assembly of North Carolina enacts:
7 SECTION 1. G.S. 105-163.015 reads as rewritten:
8 "§ 105-163.015. Sunset.
9 This Part is repealed effective for investments made on or after January 1, ~~2013~~2016."
10 SECTION 2. Section 1 of S.L. 2010-153 reads as rewritten:
11 "SECTION 1. A joint agency created by an interlocal agreement pursuant to
12 G.S. 160A-462 to operate a cable system that provides video programming services is allowed
13 a refund of sales and use tax paid by it on purchases made on or after July 1, 2007, and before
14 ~~June 30, 2010, June 30, 2011,~~ to the same extent allowed to a city under G.S. 105-164.14(c).
15 Notwithstanding G.S. 105-164.14, the joint agency must make a request for a refund in writing
16 before ~~January 1, 2011~~ January 1, 2011, for sales and use tax paid on or after July 1, 2007, and
17 before June 30, 2010."
18 SECTION 3. This act is effective when it becomes law.





SENATE BILL 436: Extend Sunsets

2011-2012 General Assembly

Committee:	House Finance	Date:	June 15, 2011
Introduced by:	Sen. Hartsell	Prepared by:	Trina Griffin
Analysis of:	PCS to Second Edition S436-CSSV-44		Committee Counsel

SUMMARY: *Senate Bill 436 would extend the sunset on the tax credit for qualified business ventures from January 1, 2013, to January 1, 2016. The bill would also extend for one year the sales tax refund allowed to a joint governmental agency created to operate a cable television system. The PCS makes a technical change related to the sales tax refund extension.*

QUALIFIED BUSINESS VENTURE TAX CREDIT: The General Assembly enacted the tax credit for investments in qualified business ventures in August 1987 to promote economic development for North Carolina businesses. The purpose of the credit is to stimulate early stage investments that help move new technologies from universities and other research laboratories to commercialization. The qualified business investment tax credit is allowed for an individual taxpayer who invests in a qualifying small business. Qualifying small businesses include a business that engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, a business that has received within the preceding three years funding from a federal agency under the Small Business Innovation Research Programs, or a business that has been certified by a research university as currently performing under a licensing agreement with the institution for commercializing technology developed at the institution.

The credit is equal to 25% of the amount invested and may not exceed \$50,000 per individual in a single taxable year. The total amount of tax credits allowed to taxpayers for investments made in a calendar year may not exceed \$7.5 million. If the total amount of tax credits claimed exceeds this maximum amount, the credit is allocated proportionately among the taxpayers.

Section 1 of the bill would extend the sunset on the credit from January 1, 2013, to January 1, 2016. The General Assembly last extended the credit in S.L. 2010-31 from January 1, 2011, to January 1, 2013.

SALES TAX REFUND FOR MI CONNECTION: Last session, the General Assembly allowed cities that jointly operate a cable television system to obtain a refund of State and local sales and use tax paid by the entity on purchases made between July 1, 2007, and June 30, 2010. Section 2 of the bill would extend the refund for one year, for purchases made through June 30, 2011.

The only entity that fits this description is MI Connection. MI Connection is a locally owned and operated cable and Internet system serving the towns of Mooresville, Davidson and Cornelius in the counties of Mecklenburg and Iredell. The municipalities have created a joint agency through an interlocal agreement pursuant to G.S. 160A-462 to operate a cable television system. A cable television system is one of the listed systems that a municipality has the authority to operate as a public enterprise under Article 16 of Chapter 160A of the General Statutes.

Under G.S. 105-164.14(c) a city may obtain a sales tax refund of the purchases it makes. Under that authority, a city that operates a cable television system may obtain a sales tax refund; MI Connection was not allowed a refund under that subsection because it was operated as a joint venture, rather than by the cities themselves.

S436-SMSV-89(CSSV-44) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 436 (Second Edition)

SHORT TITLE: Extend Sunsets

SPONSOR(S): Senator Hartsell

FISCAL IMPACT (\$ In millions)					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
QBV Tax Credit	\$0.0	\$0.0	\$(7.5)	\$(7.5)	\$(7.5)
Sales Tax Refund	(0.03)				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue					
EFFECTIVE DATE: Effective when the bill becomes law.					

BILL SUMMARY: Senate Bill 436 extends the sunset for the qualified business venture tax credit from January 1, 2013 to January 1, 2016. The qualified business venture tax credit is allowed for an individual taxpayer who invests in a qualifying small business. Qualifying small businesses include a business that engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, a business that has received within the preceding three years funding from a federal agency under the Small Business Innovation Research Programs, or a business that has been certified by a research university as currently performing under a licensing agreement with the institution for commercializing technology developed at the institution. The credit is equal to 25% of the amount invested and may not exceed \$50,000 per individual in a single taxable year. The total amount of tax credits allowed to taxpayers for investments made in a calendar year may not exceed \$7.5 million.

Version two of SB 436 also extends the sunset for the sales tax refund for MI Connection for one year for purchases made through June 30, 2011. The 2010 session of the General Assembly enacted HB 455 authorizing MI Connection as an institution eligible for a sales and use tax refund under G.S. 105-164.14. The legislation redefined the types of joint governmental agencies eligible for a sales tax refund under G.S.105-164.14(c). Under the bill, an agency created by an interlocal agreement pursuant to G.S. 160A-462 to be eligible for a sales and use tax refund. The agency must also operate a public broadcast station or "communication system that provides high-speed

broadband Internet access service or other Internet access service” or provide other video programming services.

ASSUMPTIONS AND METHODOLOGY: Credit utilization for the qualified business venture tax credit is expected to equal the cap. Therefore, the impact for each year the credit is extended equals the \$7.5 million cap.

SB 436 extends the annual sales and use tax refund allowed to MI Connection for an additional fiscal year. This change reduces General Fund availability by \$25,000 for the 2011-12 fiscal year and local revenues by \$5,000 per fiscal year.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

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APPROVED BY:

Lynn Muchmore, Director
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DATE: June 15, 2011

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 670
Health Care Committee Substitute Adopted 5/12/11
Finance Committee Substitute Adopted 5/17/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S670-PCS15192-SQ-52

Short Title: Revise Membership/Hearing Aid Fitters Board. (Public)

Sponsors:

Referred to:

April 20, 2011

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A BILL TO BE ENTITLED
AN ACT RELATING TO HEARING AID FITTING AND DISPENSING BY CERTAIN
LICENSED AUDIOLOGISTS AND REVISING THE MEMBERSHIP ON THE NORTH
CAROLINA STATE HEARING AID DEALERS AND FITTERS BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93D-1 reads as rewritten:

"§ 93D-1. Definitions.

For the purposes of this Chapter:

- (1) "Board" shall mean the North Carolina State Hearing Aid Dealers and Fitters Board.
- (2) "Fitting and selling hearing aids" shall mean the evaluation or measurement of the powers or range of human hearing by means of an audiometer or by other means and the consequent selection or adaptation or sale or rental of hearing aids intended to compensate for hearing loss including the making of an impression of the ear.
- (3) "Hearing aid" shall mean any instrument or device designed for or represented as aiding, improving or compensating for defective human hearing and any parts, attachments or accessories of such an instrument or device.
- (4) "Registered Sponsor" shall mean a person with a permanent license as an audiologist under Article 22 of Chapter 90 of the General Statutes who is registered in accordance with G.S. 93D-3(c)(16), or a licensee of the Board who has been approved as a sponsor of an apprentice.
- (5) "Hearing Instrument Specialist" shall mean a person licensed by the Board to engage in fitting or selling hearing aids in North Carolina."

SECTION 2. G.S. 93D-2 reads as rewritten:

"§ 93D-2. Fitting and selling without license unlawful.

It shall be unlawful for any person to fit or sell hearing aids unless ~~he~~the person has first obtained a license from the North Carolina State Hearing Aid Dealers and Fitters Board or is an apprentice working under the supervision of ~~a board licensee~~Registered Sponsor."

SECTION 3. G.S. 93D-3(a) reads as rewritten:



1 "(a) There is hereby created a board whose duty it shall be to carry out the purposes and
2 enforce the provisions of this Chapter, and which shall be known as the "North Carolina State
3 Hearing Aid Dealers and Fitters Board." The Board shall be composed of seven members. Four
4 members who have been ~~actively engaged in the fitting and selling of hearing aids for a licensed~~
5 Hearing Instrument Specialist for at least the preceding three years prior to appointment, shall
6 be appointed by the Governor. These initial appointments are for the following terms: one for
7 one year, one for two years, one for three years and one for four years. All appointments made
8 on or after July 1, 1981, shall be for terms of three years.

9 One member shall be appointed by the Governor who shall be a physician practicing in
10 North Carolina, preferably specializing in the field of otolaryngology. All appointments shall
11 be for terms of three years.

12 One member, who shall be a person with hearing loss, shall be appointed by the Governor
13 to represent the interest of hearing aid consumers from a list of two audiologists residing in
14 North Carolina, which list shall be compiled by the North Carolina Speech and Hearing
15 Association. This initial appointment shall be for a term of three years ending June 30, 2013.
16 All appointments made on or after ~~July 1, 1981~~, July 1, 2013, shall be for a term of three years.

17 One member shall be appointed by the Governor to represent the interest of the public at
18 large. This member shall have no ties to the hearing aid business nor shall he be an audiologist.
19 The Governor shall appoint the public member not later than July 1, 1981, to serve a term of
20 three years.

21 All Board members serving on June 30, 1981, shall be eligible to complete their respective
22 terms. No member appointed to a term on or after July 1, 1981, shall serve more than two
23 complete consecutive terms.

24 Vacancies on the Board shall be filled by appointment of the Governor. Appointees shall
25 serve the unexpired term of their predecessor in office and must be appointed from the same
26 category as their predecessor in office. The members of the Board, before entering their duties,
27 shall respectively take all oaths taken and prescribed for other State officers, in the manner
28 provided by law, which oaths shall be filed in the office of the Secretary of State, and the Board
29 shall have a common seal."

30 **SECTION 4. G.S. 93D-3(c) reads as rewritten:**

31 "(c) The Board shall:

- 32 (1) Authorize all disbursements necessary to carry out the provisions of this
33 Chapter;
- 34 (2) Supervise and administer qualifying examinations to test and determine the
35 knowledge and proficiency of applicants for licenses;
- 36 (3) Issue licenses to qualified persons who apply to the Board;
- 37 (4) Obtain audiometric equipment and facilities necessary to carry out the
38 examination of applicants for licenses;
- 39 (5) Suspend or revoke licenses pursuant to this Chapter;
- 40 (6) Make and publish rules, including a code of ethics, that are necessary and
41 proper to regulate the fitting and selling of hearing aids and to carry out the
42 provisions of this Chapter;
- 43 (7) Exercise jurisdiction over the hearing of complaints, charges of malpractice
44 including corrupt or unprofessional conduct, and allegations of violations of
45 the Board's rules that are made against any fitter and seller of hearing aids in
46 North Carolina;
- 47 (8) Require the periodic inspection and calibration of audiometric testing
48 equipment of persons who are fitting and selling hearing aids;
- 49 (9) In connection with any matter within the jurisdiction of the Board, summon
50 and subpoena and examine witnesses under oath and to compel their
51 attendance and the production of books, papers, or other documents or

- 1 writings deemed by the Board to be necessary or material to the inquiry.
2 Each summons or subpoena shall be issued under the hand of the secretary
3 and treasurer or the president of the Board and shall have the force and effect
4 of a summons or subpoena issued by a court of record. Any witness who
5 shall refuse or neglect to appear in obedience thereto or to testify or produce
6 books, papers, or other documents or writings required shall be liable to
7 contempt charges. The Board shall pay to any witness subpoenaed before it
8 the fees and per diem as paid witnesses in civil actions in the superior court
9 of the county where such hearing is held;
- 10 (10) Inform the Attorney General of any information or knowledge it acquires
11 regarding any "price-fixing" activity whatsoever in connection with the sales
12 and service of hearing aids;
- 13 (11) Establish and enforce rules to guarantee that a full refund will be made by
14 the seller of a hearing aid to the purchaser when presented with a written
15 medical opinion of an otolaryngologist that the purchaser's hearing cannot be
16 improved by the use of a hearing aid;
- 17 (12) Fund, establish, conduct, approve and sponsor instructional programs for
18 registered apprentices and for persons who hold a license as well as for
19 persons interested in obtaining adequate instruction or programs of study to
20 qualify them for registration to the extent that the Board deems such
21 instructional programs to be beneficial or necessary;
- 22 (13) Register persons serving as apprentices as set forth in G.S. 93D-9;
- 23 (14) Have the power to set and collect fees in accordance with Chapter 150B of
24 the General Statutes for the items listed in this subdivision and for other
25 items for which this Chapter gives the Board the authority to set a fee:
- 26 a. For a continuing education make-up class provided by the Board, a
27 fee not to exceed fifty dollars (\$50.00) per person for each day of
28 instruction. The Board may not offer a make-up class that is longer
29 than two days;
- 30 b. For a license examination preparation course provided by the Board,
31 a fee not to exceed fifty dollars (\$50.00) per person for each day of
32 instruction. The Board may not offer an examination preparation
33 course that is longer than three days;
- 34 c. For approval of a continuing education program provider, a fee not to
35 exceed forty dollars (\$40.00);
- 36 d. For verifying and recording attendance at a continuing education
37 program not provided by the Board, a fee not to exceed fifteen
38 dollars (\$15.00) per licensee per program;
- 39 e. For providing a voluntary two-day apprentice training workshop, a
40 fee not to exceed one hundred dollars (\$100.00) per person, and for
41 providing a three-day voluntary apprentice training workshop, a fee
42 not to exceed one hundred fifty dollars (\$150.00) per person;
- 43 f. For administering an examination, a fee of three hundred dollars
44 (\$300.00); and
- 45 g. For the registration of a Registered Sponsor not otherwise licensed
46 under this Chapter, a fee of one hundred fifty dollars (\$150.00) per
47 annum;
- 48 (15) Adopt annually a balanced budget prior to the beginning of its fiscal year,
49 against which expenditures shall be reviewed throughout the fiscal year to
50 ensure that expenditures during the year do not exceed receipts for that year
51 plus amounts held by the Board in reserve. Except for monies from charges

1 for photocopying and similar charges, the Board's receipts shall consist of
2 and be limited to funds derived from fees expressly authorized by ~~law-law~~;
3 and

4 (16) Register any person holding a valid permanent license as an audiologist
5 under Article 22 of Chapter 90 of the General Statutes, who holds a doctoral
6 degree in Audiology and who makes an application to serve as a Registered
7 Sponsor to apprentice as set forth in G.S. 93D-9, but who is not otherwise
8 subject to licensure by the Board."

9 SECTION 5. G.S. 93D-5 reads as rewritten:

10 "§ 93D-5. Requirements for registration; examinations; ~~apprentice~~ licenses.

11 (a) No person shall begin the fitting and selling of hearing aids in this State unless the
12 person has been issued a license by the Board or is an apprentice working under the supervision
13 of a ~~licensee~~ Registered Sponsor. Except as hereinafter provided, each applicant for a license
14 shall pay a fee set by the Board, not to exceed two hundred fifty dollars (\$250.00), which fee
15 may be prorated by the Board, and shall show to the satisfaction of the Board that the applicant:

16 (1) Is a person of good moral character.

17 (2) Is 18 years of age or older.

18 (3) Has an education equivalent to a four-year course in an accredited high
19 school.

20 (4) Repealed by Session Laws 2007-406, s. 3, effective August 21, 2007.

21 (b) Except as hereinafter provided, no license shall be issued to a person until he has
22 successfully passed a qualifying examination administered by the Board.

23 (c) No license shall be issued to any person until the person has served as an apprentice
24 as set forth in G.S. 93D-9 for a period of at least one year; provided, that ~~this subsection~~ the
25 one-year apprenticeship requirement shall not apply to those ~~be~~ waived for persons qualified
26 under G.S. 93D-6 nor to those persons holding a license in Audiology issued by the North
27 Carolina Board of Examiners for Speech and Language Pathologist and Audiologist who have
28 undergone 250 hours of supervised activity fitting and selling hearing aids under the direct
29 supervision of a licensed hearing aid dispenser approved by the Board, or have met the
30 licensure requirements under Article 22 of Chapter 90 of the General Statutes and have worked
31 full time for one year fitting and selling hearing aids in the office of and under the direct
32 supervision of an otolaryngologist and have participated in 250 hours of Board supervised,
33 continuing professional education in fitting hearing aids. G.S. 93D-6; persons holding a
34 permanent license as an audiologist under Article 22 of Chapter 90 of the General Statutes who
35 have undergone 250 hours of supervised activity fitting or selling hearing aids in another state
36 or jurisdiction for the preceding three years; and persons who have worked full-time for one
37 year in the office of and under the direct supervision of an otolaryngologist fitting or selling
38 hearing aids."

39 SECTION 6. G.S. 93D-7 reads as rewritten:

40 "§ 93D-7. Statements of sale.

41 Every person fitting and selling a hearing aid, be it new or used, in the State of North
42 Carolina, at or before the time of delivery of the hearing aid shall render to the user and/or
43 purchaser a statement of sale to include the following:

44 (1) Date of delivery

45 (2) Condition of hearing aid; new, used, reconditioned

46 (3) Hearing aid identification number

47 (4) Name of manufacturer

48 (5) Price of hearing aid

49 (6) Charge for fitting and service

50 (7) Name of dealer and/or fitter

51 (8) Signature of customer."

1 **SECTION 7.** G.S. 93D-8(a) reads as rewritten:

2 "**§ 93D-8. Examination of applicants; issue of license certificate.**

3 (a) Every applicant for a license who is notified by the Board that he has fulfilled the
4 requirements of ~~G.S. 93D-5(a)~~, G.S. 93D-5, except those making application pursuant to
5 G.S. 93D-6, shall appear at a time, place and before such persons as the Board may designate,
6 to be examined by written and practical tests in order to demonstrate that ~~hethe applicant~~ is
7 qualified for the fitting and selling of hearing aids. The Board shall give one examination of the
8 type prescribed herein each year at a duly prescribed time and place, which shall be publicized
9 for at least 90 days in advance. Additional examinations may be given at the discretion of the
10 Board. The examination provided in this section shall not include questions requiring a medical
11 or surgical education but shall consist of:

12 (1) Tests of knowledge in the following areas as they pertain to the fitting of
13 hearing aids:

- 14 a. The basic physics of sound,
15 b. The human hearing mechanism, including the science of hearing and
16 the cause and rehabilitation of abnormal hearing and hearing
17 disorders, and
18 c. The structure and function of hearing aids.

19 (2) Tests of proficiency in the following techniques as they pertain to the fitting
20 of hearing aids:

- 21 a. Pure tone audiometry, including air conduction testing and bone
22 conduction testing,
23 b. Live voice and recorded voice speech audiometry, including speech
24 reception threshold testing and speech discrimination testing,
25 c. Effective masking,
26 d. Recording and evaluation of audiograms and speech audiometry to
27 determine hearing aid candidacy,
28 e. Selection and adaption of hearing aids and testing of hearing aids,
29 f. Taking earmold impressions, and
30 g. Such other skills as may be required for the fitting of hearing aids in
31 the opinion of the Board."

32 **SECTION 8.** G.S. 93D-9 reads as rewritten:

33 "**§ 93D-9. Registration of apprentices.**

34 (a) Any person age 17 or older may apply to the Board for registration as an apprentice.
35 Each applicant must be sponsored by a ~~hearing aid dealer and fitter licensed by the~~
36 ~~Board.~~ Registered Sponsor.

37 (b) Upon receiving an application accompanied by a fee in an amount set by the Board,
38 not to exceed one hundred dollars (\$100.00), the Board may register the applicant as an
39 apprentice, which shall entitle the applicant to fit and sell hearing aids under the supervision of
40 ~~a holder of a regular license.~~ Registered Sponsor.

41 (c) No applicant shall be registered as an apprentice by the Board under this section
42 unless the applicant shows to the satisfaction of the Board that the applicant is or will be
43 supervised and trained by a ~~hearing aid fitter and seller who holds a license.~~ Registered Sponsor.

44 (d) If a person 18 years of age or older who is registered as an apprentice under this
45 section does not take the next succeeding examination given after a minimum of one full year
46 of apprenticeship, the person's apprentice registration shall not be renewed, except for good
47 cause shown to the satisfaction of the Board.

48 (e) If a person who is registered as an apprentice takes and fails to pass the next
49 succeeding examination given after one full year of apprenticeship, the Board may renew the
50 apprenticeship license for a period of time to end 30 days after the results of the examination
51 given next after the date of renewal of said registration. The fee for renewal of apprenticeship

1 registration shall be set by the Board at an amount not to exceed one hundred fifty dollars
2 (\$150.00).

3 (f) The Board shall adopt rules implementing initial and renewal registration of
4 apprentices.

5 (g) The Board shall adopt rules implementing initial and renewal registration of
6 Registered Sponsors."

7 SECTION 9. G.S. 93D-10 reads as rewritten:

8 "**§ 93D-10. Registration and notice.**

9 The Board shall register each ~~apprentice~~Registered Sponsor, and each person to
10 whom it grants a license. The secretary-treasurer of the Board shall keep a record of the place
11 of business of all ~~licensees and licensees~~, Registered Sponsors, and apprentices. Any notice
12 required to be given by the Board to a person holding a license or ~~apprenticeship~~-registration
13 may be given by mailing to him at the last address received by the Board from him."

14 SECTION 10. G.S. 93D-12 reads as rewritten:

15 "**§ 93D-12. License to be displayed at office.**

16 Every person to whom a ~~license or apprenticeship~~license, apprenticeship certificate, or
17 sponsor registration is granted shall display the same in a conspicuous part of his office
18 wherein the fitting and selling of hearing aids is conducted, or shall have a copy of such license
19 ~~or apprenticeship certificate~~, or registration on his person and exhibit the same upon request
20 when fitting or selling hearing aids outside of his office."

21 SECTION 11. G.S. 93D-13 reads as rewritten:

22 "**§ 93D-13. Discipline, suspension, revocation of licenses and registrations; records.**

23 (a) The Board may in its discretion administer the punishment of private reprimand,
24 suspension of license or registration for a fixed period or revocation of license or registration as
25 the case may warrant in their judgment for any violation of the rules and regulations of the
26 Board or for any of the following causes:

27 (1) Repealed by Session Laws 2007-406, s. 5, effective August 21, 2007.

28 (2) Gross incompetence.

29 (3) Inability to perform the functions for which the person is licensed or
30 substantial impairment of the person's ability to perform the functions for
31 which the person is licensed by reason of physical or mental disability.

32 (4) Commission of a criminal offense indicating professional unfitness.

33 (5) The use of a false name or alias in his or her business.

34 (6) Conduct involving willful deceit.

35 (7) Conduct involving fraud or any other business conduct involving moral
36 turpitude.

37 (8) Advertising of a character or nature tending to deceive or mislead the public.

38 (9) Advertising declared to be unethical by the Board or prohibited by the code
39 of ethics established by the Board.

40 (10) Permitting another person to use his or her license.

41 (10a) Failure by a ~~licensee~~Registered Sponsor to properly supervise an apprentice
42 under his or her supervision.

43 (11) For violating any of the provisions of this Chapter.

44 (b) Board action in revoking or suspending a license or registration shall be in
45 accordance with Chapter 150B of the General Statutes. Any person whose license or
46 registration has been suspended for any of the grounds or reasons herein set forth, may, after
47 the expiration of 90 days but within two years, apply to the Board to have the same reissued;
48 upon a showing satisfactory to the Board that reissuance will not endanger the public health
49 and welfare, the Board may reissue a license to such person for a fee set by the Board, not to
50 exceed two hundred dollars (\$200.00). If application is made subsequent to two years from date
51 of suspension, reissuance shall be in accordance with the provisions of G.S. 93D-8.

1 (c) Records, papers, and other documents containing information collected or compiled
2 by or on behalf of the Board as a result of an investigation, inquiry, or interview conducted in
3 connection with registration, licensure, or a disciplinary matter shall not be considered public
4 records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of
5 charges, notice of hearing, or decision rendered by the Board in connection with a hearing is a
6 public record. However, information that identifies a consumer who has not consented to the
7 public disclosure of services rendered to the consumer by a person registered or licensed under
8 this Chapter shall be deleted from the public record. All other records, papers, and documents
9 containing information collected or compiled by or on behalf of the Board shall be public
10 records, provided that any information that identifies a consumer who has not consented to the
11 public disclosure of services rendered to the consumer is deleted."

12 SECTION 12. G.S. 93D-14 reads as rewritten:

13 "§ 93D-14. Persons not affected.

14 ~~This Chapter shall not prevent any person from engaging in the measuring of human~~
15 ~~hearing for the purpose of selection of hearing aids, provided such person or organization~~
16 ~~employing such person does not sell hearing aids or accessories thereto, nor shall this Chapter~~
17 ~~apply to any physician licensed to practice medicine or surgery in the State of North Carolina.~~
18 ~~Nothing in this Chapter shall permit a licensee hereunder to perform any practices or services~~
19 ~~set forth in Article 17 of Chapter 90 of the General Statutes of North Carolina.~~

20 (a) Nothing in this Chapter shall apply to a physician licensed to practice medicine or
21 surgery in the State of North Carolina.

22 (b) Any person who meets the requirements of having both a doctoral degree in
23 Audiology and holding a valid permanent license as an audiologist under Article 22 of Chapter
24 90 of the General Statutes of North Carolina is exempt from licensure under this Chapter. A
25 person who does not meet both requirements of having a doctoral degree in Audiology and
26 holding a valid permanent license as an audiologist under Article 22 of Chapter 90 of the
27 General Statutes of North Carolina must become a registered apprentice or be licensed by the
28 Board before fitting or selling hearing aids in the State of North Carolina.

29 (c) Nothing in this Chapter shall be construed to exempt an audiology assistant or
30 certified technician, working under the supervision of a licensee or a person exempt from
31 licensure under this Chapter, from being subject to the provisions of this Chapter. Such a
32 person, before engaging in fitting or selling hearing aids, as defined in this Chapter, must be
33 registered as an apprentice under a Registered Sponsor or be licensed by the Board.

34 (d) The provisions of this Chapter shall not apply to the activities and services of an
35 audiology student pursuing a course of study in an accredited college or university, if these
36 activities and services constitute a part of such person's course of study."

37 SECTION 13. The term of the member currently serving on the North Carolina
38 State Hearing Aid Dealers and Fitters Board who was appointed by the Governor from a list of
39 audiologists compiled by the North Carolina Speech and Hearing Association expires on the
40 effective date of this act. The Governor must appoint a person to fill this vacancy on the Board
41 who represents the interest of hearing aid consumers, in accordance with G.S. 93D-3, as
42 amended by this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 670 (Second Edition)

SHORT TITLE: Revise Membership/Hearing Aid Fitters Board.

SPONSOR(S): Senator Hartsell

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES					
NC State Hearing Aid Dealers and Fitters Board	(\$53,000)	(\$54,875)	(\$56,900)	(\$58,950)	(\$60,975)
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State Hearing Aid Dealers and Fitters Board					
EFFECTIVE DATE: This act is effective when it becomes law.					

BILL SUMMARY:

Senate Bill 670 amends GS 93D-3 to delete the requirement that one member of the board be an audiologist appointed from a list of nominees from the NC Speech and Hearing Association, and it requires that four members of the board be actively engaged in fitting and selling hearing aids and be licensed under GS Chapter 93D. The bill specifies that the terms of the two members on the board who are audiologists expire on the date the bill becomes law.

Senate Bill 670 amends GS 93D-2 to allow a person with a license under Article 22 of GS Chapter 90 and a doctoral degree in audiology to fit or sell hearing aids. It provides the same authorization to an apprentice working under such licensee (or those licensed by the North Carolina State Hearing Aid Dealers and Fitters Board) who is registered in accordance with GS 93D-9. The bill amends GS 93D-3(c)(14) to authorize the Board to set a fee of \$150 a year for the registration of persons not licensed under GS Chapter 93D providing supervision of apprentices registered under

GS 93D-9. The bill amends GS 93D-3(a) to require one member of the Board be a person with hearing loss.

ASSUMPTIONS AND METHODOLOGY:

According to the North Carolina State Hearing Aid Dealers and Fitters Board, approximately 200 of their 560 members possess a doctoral degree in audiology (AuD) and licensure in speech and language pathology or audiology. Under Senate Bill 670, these 200 members would no longer need to be licensed by the North Carolina State Hearing Aid Dealers and Fitters Board to fit or sell hearing aids.

If all 200 current members who possess a doctoral degree in audiology (AuD) and licensure in speech and language pathology or audiology chose not to be licensed by the North Carolina State Hearing Aid Dealers and Fitters Board, the Board's revenue would decrease by \$53,000 for FY11-12. The revenue figure is derived by multiplying the \$250.00 license renewal fee plus the \$15.00 continuing education reporting fee by the 200 current members who could possibly not renew their license. This amount has been grown by the North Carolina Health Services Employment growth rate.

SOURCES OF DATA: North Carolina State Hearing Aid Dealers and Fitters Board; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: May 17, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 670: Revise Membership/Hearing Aid Fitters Board

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Hartsell
Analysis of: Third Edition

Date: June 15, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *Senate Bill 670 authorizes persons possessing a doctoral degree in audiology (AuD) and licensed as an audiologist by the Board of Examiners for Speech and Language Pathologists and Audiologists to fit or sell hearing aids without obtaining a license from the North Carolina State Hearing Aid Dealers and Fitters Board and modifies the membership of the Board to reflect this change.*

CURRENT LAW: It is unlawful for a person to fit or sell hearing aids without being licensed to do so by the North Carolina State Hearing Aid Dealers and Fitters Board.

In addition to this Board, there exists the Board of Examiners for Speech and Language Pathologists and Audiologists. This Board licenses speech pathologists and audiologists independently.

The licensing chapter for audiologists, Article 22 of Chapter 90 of the General Statutes, specifically provides that its licensing requirements do not apply to a person licensed by the North Carolina State Hearing Aid Dealers and Fitters Board and it more specifically provides that nothing in the Article may be construed to prevent a person licensed by the Hearing Aid Dealers and Fitters Board from the practice of fitting and selling hearing aids. The licensing chapter for hearing aid dealers and fitters, Chapter 93D of the General Statutes, does not contain a similar provision.

BILL ANALYSIS: Senate Bill 670 would provide that a person who is licensed as an audiologist by the Board of Examiners for Speech and Language Pathologists and Audiologists and possesses a doctoral degree in audiology (AuD) is authorized to fit or sell hearing aids and supervise the fitting and selling of hearing aids by properly registered apprentices without obtaining a license from the North Carolina State Hearing Aid Dealers and Fitters Board.

It would also make the following conforming changes throughout the licensure chapter for hearing aid dealers and fitters consistent with this exemption:

- It would allow a person to serve as an apprentice under the supervision of a Registered Sponsor- a defined term which includes qualified audiologist and qualified Board licensees.
- It would require Registered Sponsor that supervises an apprentice to register with the Hearing Aid Dealers and Fitters Board and pay a registration fee of \$150 a year.
- It would change the membership of the Board. Under the current law, one member of the seven member board must be an audiologist recommended by the North Carolina Speech and Hearing Association. The bill would replace this appointment with one that would represent the interest of hearing aid consumers. The appointee must be a person with a hearing loss.

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

Shawn Parker and Cindy Avrette, both with the Research Division, substantially contributed to this summary.

S670-SMTM-56(e3) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

#7

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 6.15.11

S. B. No. 436

Amendment No. 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE

Rep. Stam
Sen.)

1 moves to amend the bill on page 1, line S 2-3

2 () WHICH CHANGES THE TITLE

3 by deleting the words:

4 "THE QUALIFIED BUSINESS VENTURE TAX CREDIT
5 SUNSET AND TO EXTEND";

7 and on page 1, lines 7-9, by deleting
8 the lines & renumbering the remaining
9 section accordingly.

SIGNED Stam

ADOPTED

FAILED _____

TABLED _____

1 enforcement officers can easily recognize the registration plate or sticker and the fact that the
2 vehicle upon which the plate or sticker is affixed must be operated off the roads, streets, and
3 highways of this State.

4 (d) All all-terrain vehicles or motorcycles registered for off-road use are subject to the
5 following title and registration fees:

6 (1) Registration fees. – The fee on an all-terrain vehicle or motorcycle registered
7 for off-road use shall be fifteen dollars (\$15.00).

8 (2) Title fees. – The fee for a title on an all-terrain vehicle or motorcycle
9 registered for off-road use shall be twenty-five dollars (\$25.00). The revenue
10 from the title fee shall be retained by the Wildlife Resources Commission to
11 operate the registration and titling system for off-road vehicles required to be
12 registered pursuant to G.S. 113-278.

13 (e) There is no requirement that an all-terrain vehicle or motorcycle registered for
14 off-road use has insurance on the vehicle or that the owner provides proof of financial
15 responsibility prior to the vehicle being registered.

16 (f) The Wildlife Resources Commission must collect sales and use tax, and any other
17 tax required to be collected pursuant to Chapter 105 of the General Statutes, on an all-terrain
18 vehicle or motorcycle being registered for off-road use and submit it to the Department of
19 Revenue. A credit will be allowed in accordance with G.S. 105-164.6(c) if the sales and use tax
20 was paid at the time of purchase and the owner provides acceptable proof of payment at the
21 time of registration."

22 **SECTION 3.** This act becomes effective January 1, 2013.
23



HOUSE BILL 882: ATV & Motorcycles Off-Road Fund

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Crawford
Analysis of: First Edition

Date: June 15, 2011
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 882 would require certain all-terrain vehicles (ATVs) and motorcycles intended for off-road use to be registered and titled with the Wildlife Resources Commission.*

BILL ANALYSIS:

Section 1 requires all-terrain vehicles (ATV) and motorcycles, except for those exempt from registration under Chapter 20 or those used primarily for agricultural purposes or by law enforcement, fire, rescue, and emergency medical personnel, to be registered with the Wildlife Resources Commission if the ATV or motorcycle meets all of the following criteria:

- It is not otherwise required to be registered.
- It was manufactured in the year 2005 or later.
- It is intended for off-road operation.

Section 2 sets out the requirements for registering and titling ATVs and motorcycles for off-road use.

The owner of the vehicle must provide the following at the time of registration:

- The Product Identification Number or Vehicle Identification Number; and
- A manufacturers certificate of origin or title, or an inspection and indemnity bond.

The following registration and title fees apply:

- The registration fee for an ATV or motorcycle is \$15.
- The fee for a title on an ATV or motorcycle is \$25.

The owner of the ATV or motorcycle is not required to have insurance or provide proof of financial responsibility.

The Wildlife Resources Commission must issue a registered ATV or motorcycle a registration plate or sticker that is different in color or design from those issued by the Division of Motor Vehicles so that it can be readily recognized by law enforcement.

The Commission is also responsible for collecting any taxes required under Chapter 105 for these types of vehicles. If the applicant paid the sales and use tax to a dealer in North Carolina, proof of payment will be acceptable proof. If the vehicle was purchased outside North Carolina, the Commission is required to collect applicable sales and use tax and submit it to the Department of Revenue.

EFFECTIVE DATE: The act would become effective January 1, 2013.

Wendy Ray, counsel to House Transportation, substantially contributed to this summary.

H882-SMSV-87(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

3

SENATE BILL 743
Health Care Committee Substitute Adopted 5/24/11
House Committee Substitute Favorable 6/14/11

Short Title: Encourage Volunteer Health Care Providers. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE PROVISION OF MEDICAL SERVICES TO INDIGENT PERSONS BY PROVIDING FOR A RETIRED LIMITED VOLUNTEER LICENSE AND BY BROADENING THE APPLICABILITY OF A LIMITED VOLUNTEER LICENSE AND BY LIMITING LIABILITY FOR NONPROFIT COMMUNITY HEALTH REFERRAL SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-12.1A reads as rewritten:

"§ 90-12.1A. Limited volunteer license.

(a) The Board may issue a "military limited volunteer license" to an applicant who:

- (1) Has a license to practice medicine and surgery in another ~~state;~~ state; ~~and~~
- (2) Produces a letter from the state of licensure indicating the ~~applicant is~~ applicant's license is active and in good standing; ~~and standing.~~
- (3) ~~Is authorized to treat personnel enlisted in a branch of the United States armed services or veterans.~~

(b) ~~The Board may issue a "retired limited volunteer license" to an applicant who is a retired physician and has allowed his or her license to practice medicine and surgery in this State or another state to become inactive.~~

(c) ~~A physician holding a limited license under this section shall comply with the continuing medical education requirements pursuant to rules adopted by the Board.~~

(d) The Board shall issue a limited license under this section within 30 days after an applicant provides the Board with information satisfying the requirements of this section.

(e) The holder of a limited license under this section may practice medicine and surgery only at clinics that specialize in the treatment of indigent patients. The holder of the limited license may not receive compensation for services rendered at clinics specializing in the care of indigent patients.

(e1) The holder of a limited volunteer license shall practice medicine and surgery within this State for no more than 30 days per calendar year.

(f) The holder of a limited license issued pursuant to this section who practices medicine or surgery at places other than clinics that specialize in the treatment of indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each offense. The Board, in its discretion, may revoke the limited license after due notice is given to the holder of the limited license.



1 (g) The Board may, by rule, require an applicant for a limited license under this section
2 to comply with other requirements or submit additional information the Board deems
3 appropriate."

4 SECTION 2. Article 1 of Chapter 90 of the General Statutes is amended by adding
5 a new section to read:

6 "§ 90-12.1B. Retired limited volunteer license.

7 (a) The Board may issue a "retired limited volunteer license" to an applicant who is a
8 physician and who has allowed his or her license to practice medicine and surgery in this State
9 or another state to become inactive.

10 (b) A physician holding a limited license under this section shall comply with the
11 continuing medical education requirements pursuant to rules adopted by the Board.

12 (c) The holder of a limited license under this section may practice medicine and surgery
13 only at clinics that specialize in the treatment of indigent patients. The holder of the limited
14 license may not receive compensation for services rendered at clinics specializing in the care of
15 indigent patients.

16 (d) The Board shall issue a limited license under this section within 30 days after an
17 applicant provides the Board with information satisfying the requirements of this section.

18 (e) The holder of a limited license issued pursuant to this section who practices
19 medicine or surgery at places other than clinics that specialize in the treatment of indigent
20 patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less
21 than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each offense. The
22 Board, in its discretion, may revoke the limited license after due notice is given to the holder of
23 the limited license.

24 (f) The Board may, by rule, require an applicant for a limited license under this section
25 to comply with other requirements or submit additional information the Board deems
26 appropriate."

27 SECTION 3. G.S. 90-12.4 reads as rewritten:

28 "§ 90-12.4. § 90-12.4A Physician assistant limited volunteer license.

29 (a) ~~The Board shall issue a limited volunteer license which shall authorize a physician~~
30 ~~assistant to perform medical acts, tasks, and functions without payment or other compensation~~
31 ~~if the physician assistant meets one of the following to an applicant who:~~

32 (1) ~~Holds a current license or registration in another state and submits proof of~~
33 ~~this status to the Board state; and~~

34 (2) ~~Holds a current license in this State and is not currently employed as a~~
35 ~~physician assistant. Produces a letter from the state of licensure indicating the~~
36 ~~applicant's license or registration is active and in good standing.~~

37 (3) ~~Is a member of the United States armed services or is employed by the~~
38 ~~Veterans' Administration or another federal agency.~~

39 (b) The Board shall issue a limited license under this section within 30 days after the
40 applicant provides the Board with information satisfying the requirements of this section.

41 (c) The holder of a limited license may perform medical acts, tasks, or functions as a
42 physician assistant only at clinics that specialize in the treatment of indigent patients. The
43 holder of a limited license may not receive payment or other compensation for services
44 rendered at clinics specializing in the care of indigent patients. The holder of a limited
45 volunteer license shall practice as a physician assistant within this State for no more than 30
46 days per calendar year.

47 (d) Before initiating the performance of medical acts, tasks, or functions as a physician
48 assistant licensed under this section, the physician assistant shall provide the Board the name,
49 address, and telephone number of the physician licensed under this Article who will supervise
50 the physician assistant in the clinic specializing in the care of indigent patients.

1 (e) The holder of a limited license issued pursuant to this section who practices as a
2 physician assistant at places other than clinics that specialize in the treatment of indigent
3 patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined not less
4 than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each offense. The
5 Board, in its discretion, may revoke the limited license after due notice is given to the holder of
6 the limited license.

7 (f) The Board may, by rule, require an applicant for a limited license under this section
8 to comply with other requirements or submit additional information the Board deems
9 appropriate."

10 **SECTION 4.** Article 1 of Chapter 90 of the General Statutes is amended by adding
11 a new section to read:

12 **"§ 90-12.4B. Physician Assistant retired limited volunteer license.**

13 (a) The Board may issue a "retired limited volunteer license" to an applicant who is a
14 physician assistant and who has allowed his or her license to become inactive.

15 (b) A physician assistant holding a retired limited volunteer license under this section
16 shall comply with the continuing medical education requirements pursuant to rules adopted by
17 the Board.

18 (c) The holder of a retired limited volunteer license under this section may perform
19 medical acts, tasks, or functions as a physician assistant only at clinics that specialize in the
20 treatment of indigent patients. The holder of a retired limited volunteer license may not receive
21 compensation for services rendered at clinics specializing in the care of indigent patients.

22 (d) The Board shall issue a retired limited volunteer license under this section within 30
23 days after an applicant provides the Board with information satisfying the requirements of this
24 section.

25 (e) The holder of a retired limited volunteer license issued pursuant to this section who
26 practices as a physician assistant at places other than clinics that specialize in the treatment of
27 indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be fined
28 not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each offense.
29 The Board, in its discretion, may revoke the limited license after due notice is given to the
30 holder of the limited license.

31 (f) The Board may, by rule, require an applicant for a retired limited volunteer license
32 under this section to comply with other requirements or submit additional information the
33 Board deems appropriate."

34 **SECTION 5.** G.S. 90-13.1 reads as rewritten:

35 **"§ 90-13.1. License fees.**

36 (a) Each applicant for a license to practice medicine and surgery in this State under
37 either G.S. 90-9.1 or G.S. 90-9.2 shall pay to the North Carolina Medical Board an application
38 fee of three hundred fifty dollars (\$350.00).

39 (b) Each applicant for a limited license to practice in a medical education and training
40 program under G.S. 90-12.01 shall pay to the Board a fee of one hundred dollars (\$100.00).

41 (c) An applicant for a limited volunteer license under G.S. 90-12.1A or G.S. 90-12.1B
42 shall not pay a fee.

43 (d) A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a duplicate
44 license.

45 (e) All fees shall be paid in advance to the North Carolina Medical Board, to be held in
46 a fund for the use of the Board.

47 (f) For the initial and annual licensure of an anesthesiologist assistant, the Board may
48 require the payment of a fee not to exceed one hundred fifty dollars (\$150.00)."

49 **SECTION 6.** G.S. 90-13.2 reads as rewritten:

50 **"§ 90-13.2. Registration every year with Board.**

1 (a) Every person licensed to practice medicine by the North Carolina Medical Board
2 shall register annually with the Board within 30 days of the person's birthday.

3 (b) A person who registers with the Board shall report to the Board the person's name
4 and office and residence address and any other information required by the Board, and shall
5 pay an annual registration fee of one hundred seventy-five dollars (\$175.00), except those who
6 have a limited license to practice in a medical education and training program approved by the
7 Board for the purpose of education or training shall pay a registration fee of one hundred
8 twenty-five dollars ~~(\$125.00) and (\$125.00)~~, those who have a retired limited volunteer license
9 pursuant to G.S. 90-12.1B shall pay an annual registration fee of twenty-five dollars ~~(\$25.00).~~
10 (\$25.00), and those who have a limited volunteer license pursuant to G.S. 90-12.1A shall pay
11 no annual registration fee. However, licensees who have a limited license to practice for the
12 purpose of education and training under G.S. 90-12.01 shall not be required to pay more than
13 one annual registration fee for each year of training.

14 (c) A physician who is not actively engaged in the practice of medicine in North
15 Carolina and who does not wish to register the license may direct the Board to place the license
16 on inactive status.

17 (d) A physician who is not actively engaged in the practice of medicine in North
18 Carolina and who does not wish to register the license may direct the Board to place the license
19 on inactive status.

20 (e) A physician who fails to register as required by this section shall pay an additional
21 fee of fifty dollars (\$50.00) to the Board. The license of any physician who fails to register and
22 who remains unregistered for a period of 30 days after certified notice of the failure is
23 automatically inactive. The Board shall retain jurisdiction over the holder of the inactive
24 license.

25 (f) Except as provided in ~~G.S. 90-12.1A, G.S. 90-12.1B,~~ a person whose license is
26 inactive shall not practice medicine in North Carolina nor be required to pay the annual
27 registration fee.

28 (g) Upon payment of all accumulated fees and penalties, the license of the physician
29 may be reinstated, subject to the Board requiring the physician to appear before the Board for
30 an interview and to comply with other licensing requirements. The penalty may not exceed the
31 maximum fee for a license under G.S. 90-13.1."

32 **SECTION 7. G.S. 90-21.16 reads as rewritten:**

33 **"§ 90-21.16. Volunteer health care professionals; liability limitation.**

34 (a) This section applies as follows:

- 35 (1) Any volunteer medical or health care provider at a facility of a local health
36 department or at a nonprofit community health center,
- 37 (2) Any volunteer medical or health care provider rendering services to a patient
38 referred by a local health department as defined in ~~G.S. 130A-2(5)~~
39 ~~or~~ G.S. 130A-2(5), nonprofit community health center, or nonprofit
40 community health referral service at the provider's place of employment,
- 41 (3) Any volunteer medical or health care provider serving as medical director of
42 an emergency medical services (EMS) ~~agency, agency, or~~
- 43 (4) ~~Any retired physician holding a "Limited Volunteer License" under~~
44 ~~G.S. 90-12.1A, or~~
- 45 (5) Any volunteer medical or health care provider licensed or certified in this
46 State who provides services within the scope of the provider's license or
47 certification at a free clinic facility,

48 who receives no compensation for medical services or other related services rendered at the
49 facility, center, agency, or clinic, or who neither charges nor receives a fee for medical services
50 rendered to the patient referred by a local health ~~department or department,~~ nonprofit
51 community health center, or nonprofit community health referral service at the provider's

1 place of employment shall not be liable for damages for injuries or death alleged to have
2 occurred by reason of an act or omission in the rendering of the services unless it is established
3 that the injuries or death were caused by gross negligence, wanton conduct, or intentional
4 wrongdoing on the part of the person rendering the services. The free clinic, local health
5 department facility, nonprofit community health center, nonprofit community health referral
6 service, or agency shall use due care in the selection of volunteer medical or health care
7 providers, and this subsection shall not excuse the free clinic, health department facility,
8 community health center, or agency for the failure of the volunteer medical or health care
9 provider to use ordinary care in the provision of medical services to its patients.

10 (b) Nothing in this section shall be deemed or construed to relieve any person from
11 liability for damages for injury or death caused by an act or omission on the part of such person
12 while rendering health care services in the normal and ordinary course of his or her business or
13 profession. Services provided by a medical or health care provider who receives no
14 compensation for his or her services and who voluntarily renders such services at the provider's
15 place of employment, facilities of free clinics, local health departments as defined in
16 G.S. 130A-2, nonprofit community health centers, or as a volunteer medical director of an
17 emergency medical services (EMS) agency, are deemed not to be in the normal and ordinary
18 course of the volunteer medical or health care provider's business or profession.

19 (c) As used in this section, a "free clinic" is a nonprofit, 501(c)(3) tax-exempt
20 organization organized for the purpose of providing health care services without charge or for a
21 minimum fee to cover administrative costs and that maintains liability insurance covering the
22 acts and omissions of the free clinic and any liability pursuant to subsection (a) of this section.

23 (d) A nonprofit community health referral service that refers low-income patients to
24 physicians for free services is not liable for the acts or omissions of the physician in rendering
25 service to that patient if the ~~physician maintains professional liability coverage for that~~
26 ~~service.~~ nonprofit community health referral service maintains liability insurance covering the
27 acts and omissions of the nonprofit health referral service and any liability pursuant to
28 subsection (a) of this section.

29 (e) As used in this section, a "nonprofit community health referral service" is a
30 nonprofit, 501(c)(3) tax-exempt organization organized to provide for no charge the referral of
31 low-income, uninsured patients to volunteer health care providers who provide health care
32 services without charge to patients."

33 **SECTION 8.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: Senate Bill 743 (Second Edition)

SHORT TITLE: Encourage Volunteer Health Care Providers.

SPONSOR(S): Senator Goolsby

FISCAL IMPACT

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

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES

No Fiscal Impact

EXPENDITURES

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Medical Board

EFFECTIVE DATE: This act is effective when it becomes law

BILL SUMMARY:

Senate Bill 743 amends GS 90-12.1A, authorizing the NC Medical Board (Board) to issue a "limited volunteer license" (rather than a military limited volunteer license) to an applicant with a license to practice medicine and surgery in another state who shows a letter establishing active licensure in the other state (deletes requirement that the person be authorized to treat personnel enlisted in the U.S. armed services or veterans). It adds that a limited volunteer license holder may not practice medicine and surgery within NC for more than 30 days per calendar year. The bill amends GS 90-13.2, specifying that limited volunteer license holders will pay no registration fee.

The bill deletes requirement that limited license holders comply with continuing medical education requirements. It deletes a provision related to retired limited volunteer licenses, and instead enacts new GS 90-21.1B, authorizing the Board to issue a "retired limited volunteer license" to an applicant who is a physician with an inactive license to practice medicine and surgery issued by NC or another state. Senate Bill 743 requires retired limited volunteer license holders to practice only at clinics treating indigent patients, and makes a violation of this provision a Class 3 misdemeanor, with a fine not less than \$25 and not more than \$50 for each offense.

ASSUMPTIONS AND METHODOLOGY:

Senate Bill 743 expands the pool of possible limited volunteer licensees by removing the requirement that the licensee must be authorized to treat personnel enlisted in the U.S. armed services or veterans. It also eliminates the \$25 annual registration fee for those who have a limited volunteer license. However, it keeps that \$25 annual registration fee for those who have a retired limited volunteer license.

The North Carolina Medical Board estimates that there have only been five persons with a military limited volunteer license, ever. None of these are currently licensed. Since no licensees would be impacted by the elimination of the \$25 annual registration fee, there would be no loss in annual revenue.

SOURCES OF DATA: North Carolina Medical Board

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 1, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices



SENATE BILL 743: Encourage Volunteer Health Care Providers

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Goolsby
Analysis of: Third Edition

Date: June 15, 2011
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *Senate Bill 743 modifies the requirements and fee provisions for a limited volunteer license to practice medicine as a physician or as a physician assistant at clinics that specialize in the treatment of indigent patients.*

CURRENT LAW: The North Carolina Medical Board may issue a 'military limited volunteer license' and a 'retired limited volunteer license' to physicians. In both instances, the holder of the license may practice medicine and surgery only at clinics that specialize in the treatment of indigent patients and the holder may not receive compensation for the services rendered. A holder of the license who practices at places other than clinics that specialize in the treatment of indigent patients is guilty of a Class 3 misdemeanor. For physician assistants, the North Carolina Medical Board may issue a limited volunteer license for members of the US armed services or employee of the Veterans' Administration or another federal agency.

The holder of a limited license does not have to pay an application fee of \$350 or annual registration fee of \$175. The holder of the limited license does pay an annual registration fee of \$25.

BILL ANALYSIS: Senate Bill 743 broadens the applicability of a 'military limited volunteer license' by removing the requirement that an applicant must be authorized to treat personnel enlisted in the United States armed services. Senate Bill 743 still requires the applicant must be licensed to practice medicine in good standing in another state. The name of the license is changed to reflect the removal of the military connection. The bill retains the requirement that the holder of this license may only practice in a clinic that specializes in the treatment of indigent patients, but it limits the practice under the license to no more 30 days per calendar year. The holder of this license does not have to pay either an application fee or an annual registration fee.

The bill removes the provisions regarding a 'retired limited volunteer license' from G.S. 90A-12.1A and places them in a new G.S. 90A-12.1B. The bill does not change the requirements for this license, the limitations of this license, or the applicable fees associated with this license. The holder of this license must be a physician that has allowed his or her license in this or another state to practice medicine to become inactive. The holder of the license may only practice in clinics that specialize in the treatment of indigent patients and may not receive compensation for those services. The holder of the license must comply with continuing medical education requirements and other rules adopted by the Board and pay a \$25 annual registration fee. As under current law, it is a Class 3 misdemeanor for a retired limited volunteer licensee to practice medicine at places other than clinics that specialize in the treatment of indigent patients.

Senate Bill 743 provides limited volunteer licenses and retired limited volunteer licenses for physician assistants.

Non-profit community health referral services have limited liability for the acts and omissions of the physician referred to by the service provided the physician maintains appropriate liability insurance, Senate Bill 743 provides limited liability protections to a non-profit community health referral services for the acts and omissions of the physician if *the service* maintains appropriate liability service (similar to the provision for free clinics).

Senate Bill 743

Page 2

Shawn Parker and Cindy Averette, both with the Research Division, substantially contributed to this summary.

S743-SMTM-55(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 556

Short Title: Public Disclosure Charitable Solicitations. (Public)

Sponsors: Senators McKissick; Atwater, D. Berger, Bingham, Brock, Graham, Kinnaird, Meredith, Purcell, Rabon, Stein, and Vaughan.

Referred to: Finance.

April 12, 2011

A BILL TO BE ENTITLED
AN ACT TO AMEND THE CHARITABLE SOLICITATIONS ACT TO ENSURE PUBLIC
DISCLOSURE ON COLLECTION RECEPTACLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131F-2 reads as rewritten:

"§ 131F-2. Definitions.

The following definitions apply in this Chapter:

(4a) "Collection Receptacle" means an unattended box, bin, canister, or other similar container used for the solicitation and collection of clothing and household goods and other miscellaneous items.

(12a) "Maintenance" means to keep in working order in order to ensure that something continues to work properly and includes regular checks and the completion of any required repairs and adjustments.

SECTION 2. G.S. 131F-2(18) is amended by adding a new sub-subdivision to

read:

"e. Placing or maintaining a collection receptacle in public view for the purpose of collecting donated clothing, household items, and other items for resale."

SECTION 3. G.S. 131F-9 is amended by adding a new subsection to read:

"(d) Collection Receptacle Disclosure. – Any person who is required to obtain a license under any provision of this Chapter and who is soliciting donated clothing, household items, and other items for resale through the use of a collection receptacle shall display on all sides of each collection receptacle a permanent sign or label with the name of the charitable organization or sponsor for whom the solicitation is made and the phone number or electronic mail address of a contact at the charitable organization or sponsor. The sign or label shall be placed on all sides of the collection receptacle with the required information printed in letters that are no less than three inches in height and no less than one-half inch in width and in a color that contrasts with the color of the collection receptacle so that the sign or label is clearly visible. Upon request, the charitable organization or sponsor must provide the donor with documentation of its tax exempt status and license issued under this Chapter."

SECTION 4. Chapter 131F of the General Statutes is amended by adding a new section to read:

"§ 131F-10. Disclosure requirements for other organizations.



1 Any person who is not a charitable organization or sponsor and who places or maintains a
2 collection receptacle in public view for the purpose of collecting donated clothing, household
3 items, and other items for resale shall display on all sides of each collection receptacle a
4 permanent sign or label with the phone number or electronic mail address of a contact for the
5 person and the following statement: "This is not a charity. Donations made here support a
6 for-profit business and are not tax deductible." The sign or label shall be placed on all sides of
7 the collection receptacle with the required information printed in letters that are no less than
8 three inches in height and no less than one-half inch in width and in a color that contrasts with
9 the color of the collection receptacle so that the sign or label is clearly visible. Upon request,
10 the person must provide the donor with documentation of its license issued under this Chapter."

11 **SECTION 5.** Nothing in this act is intended to limit the authority of units of local
12 government to impose additional requirements beyond those set forth in this act.

13 **SECTION 6.** This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

3

SENATE BILL 94*
Finance Committee Substitute Adopted 2/23/11
Finance Committee Substitute #2 Adopted 6/9/11

Short Title: Allocation of Renewable Energy Tax Credit. (Public)

Sponsors:

Referred to:

February 22, 2011

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A BILL TO BE ENTITLED
AN ACT TO ALLOW THE RENEWABLE ENERGY TAX CREDIT TO BE ALLOCATED
BY A PASS-THROUGH ENTITY TO ITS OWNERS AND TO CHANGE THE
DEFINITION OF COST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.15(2) reads as rewritten:

"§105-129.15. Definitions.

The following definitions apply in this Article:

...

(2) Cost. – In the case of property owned or leased by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, ~~cost is another pursuant to a lease agreement entered into on or before December 31, 2011, the taxpayer may elect to determine cost as value as~~ determined pursuant to G.S. ~~105-130.4(j)(2), unless the property is renewable energy property for which the taxpayer claims either a federal energy credit under section 48 of the Code or a federal grant in lieu of that credit and makes a lease pass-through election under the Code. In this circumstance, the cost of the leased renewable energy property is the cost determined under the Code.~~105-130.4(j)(2).

...."

SECTION 2. G.S. 105-129.16A is amended by adding a new subsection to read:

"(a1) Allocation. – Notwithstanding G.S. 105-131.8 and G.S. 105-169.15, a pass-through entity that qualifies for the credit allowed by this section may allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as determined under the Code at the end of the taxable year in which the renewable energy property is placed into service, is at least forty percent (40%) of the amount of credit allocated to that owner. An owner to whom a credit is allocated is allowed the credit as if the owner had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2012.





North Carolina General Assembly
House Committee on Finance

Minutes

June 16, 2011

The House Committee on Finance met on Thursday, June 16, 2011 at 6:55 pm in Room 1228 of the Legislative Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chair Lewis; and Representatives Alexander, Brawley, Carney, Collins, Cotham, Hackney, Hall, Jordan, Luebke, McGee, McGuirt, Moffitt, Rhyne, Ross, Samuelson, and Stone. Also present were Sergeant-at-Arms John Brandon, Fred Hines, Carlton Adams and Garland Shephard. Staff persons present included Cindy Averette, Trina Griffin and Greg Roney. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

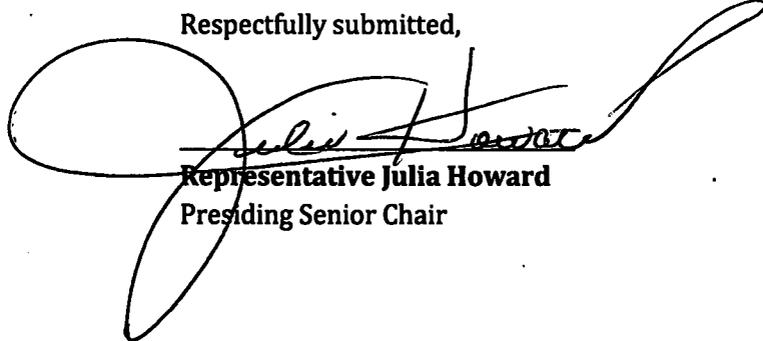
Chairperson Howard called the meeting to order at 6:55 pm.

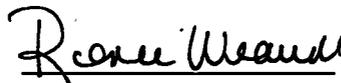
The first bill to be heard by the Committee was **SB 27 Involuntary Annexation Moratorium** (see **attachment 3**). Chairperson Howard recognized Representative Setzer who moved to adopt the proposed committee substitute for the purpose of discussion. The motion carried. The Chair recognized Representative LaRoque to explain the proposed committee substitute. The Chair then recognized Representative Setzer who moved that SB 27 be given a favorable report to the proposed committee substitute, unfavorable report to the original bill. The motion carried.

The final bill before the Committee was **SB 267 Rev Laws Tech, Clarify., & Admin. Chngs** (see **attachment 4**). Chairperson Howard recognized Representative Setzer who moved that SB 267 be given a favorable report. The motion carried.

There being no further business presently before the Committee, Chairperson Howard adjourned the meeting at 6:58 pm.

Respectfully submitted,


Representative Julia Howard
Presiding Senior Chair


Renee Weaver
Clerk, House Committee on
Finance

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 27 A BILL TO BE ENTITLED AN ACT TO ADOPT A MORATORIUM ON
INVOLUNTARY ANNEXATIONS.

With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

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

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

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

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 267 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

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 _____.

#1

AGENDA
House Finance Committee

Thursday, June 16, 2011
During House Recess
Room 1228 LB
Chaired by: Representative Julia Howard

Call to Order

Introduction of Pages

Bills:

SB 27 Involuntary Annexation Moratorium
Senators Brock, Newton, Goolsby

SB 267 Rev Laws Tech, Clarify., & Admin. Chngs.
Senators Clodfelter, Hartsell

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE FINANCE

DATE: JUNE 16, 2011 Room: 1228

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: Fred Hines

4. Name: Garland Shephard

2. Name: John Brandon

5. Name: _____

3. Name: Carlton Adams

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

June 16, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daria Fenton	Co of Charlotte
Kelli Kolura	NCLM
Karen Ray	NCMA
Pete Harris	NC Commerce
Math Gray	NCR
W. David Cr	DLC + Assoc
Dore Heen	mm
Math Welf	Parker
Mitch Peeke	NCFB
JR	PHH
Gary Robertson	AP

VISITOR REGISTRATION SHEET

House Finance

June 16, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Jules Wh	NEMMC
Janet Jones	NCHH
Kari Kivshoff	PCNR
John Peterson	NEOA
Cady Thomas	NEAR
Colleen Fochman	KLG
Jami	

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 27

Finance Committee Substitute Adopted 2/22/11

Finance Committee Substitute #2 Adopted 3/1/11

PROPOSED HOUSE COMMITTEE SUBSTITUTE S27-PCS85229-LB-77

Short Title: Local Annexations Subject to 60% Petition.

(Local)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SPECIFIED LOCAL PENDING INVOLUNTARY ANNEXATIONS
BE SUBJECT TO A PETITION TO DENY THE ANNEXATION BY PROPERTY
OWNERS OF AT LEAST SIXTY PERCENT OF THE PARCELS LOCATED IN THE
AREA.

The General Assembly of North Carolina enacts:

SECTION 1. The following involuntary annexations are suspended effective June 1, 2011, and shall not become effective until completion of a petition to disallow the annexation process described in Section 2 of this act.

- (1) Kinston annexation area, as described in House Bill 5, First Edition, 2011 Regular Session.
- (2) Lexington annexation area, as described in House Bill 37, First Edition, 2011 Regular Session.
- (3) Rocky Mount annexation area, as described in House Bill 56, First Edition, 2011 Regular Session.
- (4) Wilmington annexation area, as described in House Bill 180, First Edition, 2011 Regular Session.
- (5) Asheville/Biltmore Lake annexation area, as described in House Bill 236, First Edition, 2011 Regular Session.
- (6) Marvin annexation area, as described in RS-2008-02-02, a resolution of the Village of Marvin Council.
- (7) Southport annexation area, known as "Area A" and "Area B," as described in City of Southport Annexation ordinance, adopted June 9, 2011.
- (8) Ayden annexation area, as described in Ayden Ordinance No. 08-09-07 as modified by any applicable Consent Order and Memoranda of Understanding.
- (9) Fayetteville Gates Four annexation area, as described in House Bill 231, First Edition, 2011 Regular Session.

SECTION 2. Pending Annexation/Petition to Deny Annexation Ordinance. – The annexations described in Section 1 of this act shall be subject to the following petition to deny annexation process:



* S 2 7 - P C S 8 5 2 2 9 - L B - 7 7 *

- 1 (1) Within 30 days of the effective date of this act, the county tax assessor shall
2 prepare a list of the real property parcels within the area to be annexed and a
3 list of the owners of the parcels, and forward the list to the board of elections
4 in the county where a majority of the parcels proposed for annexation are
5 located. The board of elections shall prepare petitions for property owners of
6 the real property located within the area to sign opposing the annexation
7 ordinance.
- 8 (2) A petition shall include the names of the property owners of the parcel of
9 real property listed individually, a signature line for each owner, and a
10 statement that the person signing is petitioning to deny the annexation.
- 11 (3) The board of elections shall mail a petition to the address of record for those
12 real property owners within five business days of receipt from the county tax
13 assessor of the list.
- 14 (4) The board of elections shall provide two methods by which property owners
15 of the real property located within the area described in the annexation
16 ordinance may sign a petition form prepared by the board of elections (i) in
17 person or (ii) by submitting the signed petition form by mail. The board of
18 elections shall also accept signatures signed on a petition form prepared by
19 the board of elections, but collected by another, if that petition form is
20 returned to the board of elections in a sealed container.
- 21 (5) If the signed petition is one that was mailed and the signer is not the same as
22 the preprinted name on the form, the signed petition shall be notarized and
23 accompanied by a copy of the legal authority for the signature of the person
24 signing a petition.
- 25 (6) If a petition is returned as undeliverable to the board of elections, the board
26 of elections shall send the petition return receipt requested. If the petition is
27 returned again, the board of elections shall not include that property owner
28 in the total number of eligible property owners.
- 29 (7) The board of elections shall accept signatures on the petition until 130 days
30 after mailing the petitions under subdivision (3) of this section.
- 31 (8) The determination of the results by the board of elections of the petition
32 period shall be observed by three property owners from the area proposed
33 for annexation, chosen by lot by the board of elections from among those
34 who request to serve in this role, and three persons designated by the
35 municipality. A majority of the property owners of a single parcel of real
36 property must sign the petition before the board of elections may count that
37 parcel as having submitted a petition to deny annexation.
- 38 (9) Within 10 business days after the close of the signature period, the board of
39 elections shall certify to the municipal governing body the number of
40 petitions signed by property owners of the real property located within the
41 area to be annexed.
- 42 (10) If the board of elections delivers to the municipal governing board petitions
43 signed by property owners of at least sixty percent (60%) of the parcels
44 located within the area to be annexed as provided in this section, the
45 annexation shall be terminated, and the municipality may not adopt a
46 resolution of consideration for the area described in the annexation
47 ordinance for at least 36 months.
- 48 (11) The municipality shall reimburse the board of elections the costs of the
49 petition process required under this section.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 267*
Finance Committee Substitute Adopted 6/9/11
Third Edition Engrossed 6/15/11

Short Title: Rev Laws Tech, Clarify., & Admin. Chngs.

(Public)

Sponsors:

Referred to:

March 9, 2011

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A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES
TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

BUSINESS AND EXCISE TAXES

SECTION 1. Section 31.7(e) of S.L. 2010-31 reads as rewritten:

"SECTION 31.7.(e) G.S. 105-37.1(a)(1), as amended by subsection (a) of this section, becomes effective ~~August 1, 2010~~, February 1, 2009, and applies retroactively to charges for admission received before that date or on or after that date. G.S. 105-37.1(a)(2), as amended by subsection (a) of this section, becomes effective January 1, 2011, and applies to admission tickets sold on or after that date. The remainder of this section is effective when it becomes law."

SECTION 2.(a) G.S. 105-113.4 reads as rewritten:

"§ 105-113.4. Definitions.

The following definitions apply in this Article:

(1) Affiliate. – A person who directly or indirectly controls, is controlled by, or is under common control with another person.

(1a) Affiliated manufacturer. – A manufacturer licensed under G.S. 105-113.12 who is an affiliate of a manufacturer licensed under G.S. 105-113.12.

~~(1)~~(1b) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

~~(1a)~~(1c) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

...

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, and is not a retail dealer. ~~An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.~~



1 "

2 **SECTION 2.(b)** G.S. 105-113.10 reads as rewritten:

3 "**§ 105-113.10. Manufacturers ~~shipping to distributors exempt~~ exempt from paying tax.**

4 **(a) Shipping to Other Distributors.** – Any manufacturer shipping cigarettes to other
5 distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and
6 upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes
7 levied in this Part. No manufacturer may be relieved of the requirement to be licensed as a
8 distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate
9 user.

10 **(b) Shipping for Affiliated Manufacturer.** – A manufacturer may, upon application to
11 the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved
12 of paying the taxes levied in this Part on cigarettes that are manufactured by an affiliated
13 manufacturer and temporarily stored at and shipped from its facilities."

14 **SECTION 2.(c)** G.S. 105-113.21(b) reads as rewritten:

15 **"(b) Refund.** – A distributor in possession of packages of stale or otherwise unsalable
16 cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer as
17 provided in this subsection and apply to the Secretary for refund of the tax. The application
18 shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from
19 the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant.
20 The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes.
21 The distributor must return the cigarettes to the manufacturer of the cigarettes or to the
22 affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve as the
23 manufacturer's agent for the purposes of validating quantities and disposing of unsalable
24 cigarettes."

25 **SECTION 3.** G.S. 105-120.2(f) is repealed.

26 **SECTION 4.** G.S. 105-129.50 is amended by adding a new subdivision to read:

27 "**§ 105-129.50. Definitions.**

28 The definitions in section 41 of the Code apply in this Article. In addition, the following
29 definitions apply in this Article:

30 **(1) Development tier one area.** – Defined in G.S. 143B-437.08.

31 "

32 **SECTION 5.** G.S. 105-130.4(t2) and G.S. 105-122(c1)(3) are repealed.

33 **SECTION 6.** G.S. 105-41(a)(8) and (a)(9) read as rewritten:

34 **"(a)** Every individual in this State who practices a profession or engages in a business
35 and is included in the list below must obtain from the Secretary a statewide license for the
36 privilege of practicing the profession or engaging in the business. A license required by this
37 section is not transferable to another person. The tax for each license is fifty dollars (\$50.00).

38 ...

39 **(8)** A real estate ~~broker or a real estate salesman~~ broker as defined in
40 G.S. 93A-2. A real estate broker ~~or a real estate salesman~~ who is also a real
41 estate appraiser is required to obtain only one license under this section to
42 cover both activities.

43 **(9)** A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser
44 who is also a real estate broker ~~or a real estate salesman~~ is required to obtain
45 only one license under this section to cover both activities."

46 **SECTION 7.** G.S. 105-113.82(a) reads as rewritten:

47 **"(a) Amount.** – The Secretary must distribute annually a percentage of the net amount of
48 excise taxes collected on the sale of malt beverages and wine during the preceding 12-month
49 period ending March 31 to the counties or cities in which the retail sale of these beverages is
50 authorized in the entire county or city. ~~For purposes of this subsection, the term "net amount"~~

1 ~~means gross collections less refunds and amounts credited to the Department of Commerce~~
2 ~~under G.S. 105-113.81A. The percentages to be distributed are as follows:~~

- 3 (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty and
4 forty-seven hundredths percent (20.47%).
5 (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), forty-nine
6 and forty-four hundredths percent (49.44%).
7 (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), eighteen
8 percent (18%)."

9 **SECTION 8.** G.S. 105-125(b) reads as rewritten:

10 "(b) Certain Investment Companies. – A corporation doing business in North Carolina
11 that meets one or more of the following conditions may, in determining its ~~basis capital stock,~~
12 surplus, and undivided profits base for franchise tax, deduct the aggregate market value of its
13 investments in the stocks, bonds, debentures, or other securities or evidences of debt of other
14 corporations, partnerships, individuals, municipalities, governmental agencies, or governments:

- 15 (1) A regulated investment company. – A regulated investment company is an
16 entity that qualifies as a regulated investment company under section 851 of
17 the Code.
18 (2) A REIT, unless the REIT is a captive REIT. – The terms "REIT" and
19 "captive REIT" have the same meanings as defined in G.S. 105-130.12."

20 **SECTION 9.** G.S. 105-127(f) reads as rewritten:

21 "(f) After the end of the income year in which a domestic corporation is dissolved
22 pursuant to Part 1 of Article 14 of Chapter 55 of the General Statutes, the corporation is no
23 longer subject to the tax levied in this Article unless the Secretary of Revenue finds that the
24 corporation has engaged in business activities in this State not appropriate to winding up and
25 liquidating its business and affairs."

26 **SECTION 10.** G.S. 105-228.8(e) reads as rewritten:

27 "(e) This section shall not apply to special purpose obligations or assessments based on
28 premiums imposed in connection with particular kinds of insurance, to the special purpose
29 regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on
30 premiums. ~~For purposes of this section, seventy five percent (75%) of the one and thirty three~~
31 ~~hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to~~
32 ~~fire and lightning coverage shall not be a special purpose obligation or assessment or a~~
33 ~~dedicated special purpose tax within the meaning of this subsection."~~

34 **PERSONAL TAXES**

35 **SECTION 11.** Section 4 of S.L. 2011-5 reads as rewritten:

36 "**SECTION 4.** This act is effective when it becomes ~~law.~~ law and applies to the estates of
37 decedents dying on or after January 1, 2011. Notwithstanding Section 1 of this act, any
38 amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North
39 Carolina taxable income for the 2010 taxable year become effective for taxable years beginning
40 on or after January 1, 2011."

41 **SECTION 12.(a)** If House Bill 200, 2011 Regular Session, becomes law, then
42 G.S. 105-134.1(19), as repealed in that act, is reenacted.

43 **SECTION 12.(b)** If House Bill 200, 2011 Regular Session, becomes law, then
44 G.S. 105-134.6(a1) and (a2), as enacted in that act, read as rewritten:

45 "(a1) Personal Exemption. – In calculating North Carolina taxable income, a taxpayer
46 may deduct an exemption amount equal to the amount listed in the table below based on the
47 taxpayer's filing status and adjusted gross income. The taxpayer is allowed the same ~~number~~
48 ~~of personal exemptions claimed~~ allowed under section 151 of the Code for the taxable year.

50	Filing Status	Adjusted Gross Income	Personal Exemption
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1	Married, filing jointly	Up to \$100,000	\$2,500
2		Over \$100,000	\$2,000
3	Head of Household	Up to \$80,000	\$2,500
4		Over \$80,000	\$2,000
5	Single	Up to \$60,000	\$2,500
6		Over \$60,000	\$2,000
7	Married, filing separately	Up to \$50,000	\$2,500
8		Over \$50,000	\$2,000

9 (a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may
 10 deduct either the standard deduction amount listed in the table below for that taxpayer's filing
 11 status or the itemized deductions amount ~~elected~~ claimed under section 63 of the Code. A
 12 taxpayer may not deduct both the standard deduction amount and the itemized deductions
 13 amount. In the case of a married couple filing separate returns, a taxpayer may not deduct the
 14 standard deduction amount if the taxpayer's spouse claims itemized deductions for State
 15 purposes.

16 A taxpayer that deducts the standard deduction amount under this subsection and is entitled
 17 to an additional deduction amount under section 63(f) of the Code for the aged or blind may
 18 deduct an additional amount under this subsection. The additional amount the taxpayer may
 19 deduct is six hundred dollars (\$600.00) in the case of an individual who is married and seven
 20 hundred fifty dollars (\$750.00) in the case of an individual who is not married and is not a
 21 surviving spouse. The taxpayer is allowed the same number of additional amounts that the
 22 taxpayer claimed under the Code for the taxable year.

24	Filing Status	Standard Deduction
25	Married, filing jointly	\$6,000
26	Head of Household	4,400
27	Single	3,000
28	Married, filing separately	3,000."

29 SECTION 12.(c) If House Bill 200, 2011 Regular Session, becomes law, then
 30 G.S. 105-134.6(b)(22), as enacted in that act, reads as rewritten:

31 "(22) ~~The first~~ An amount not to exceed fifty thousand dollars (\$50,000) of net
 32 business income the taxpayer receives during the taxable year. In the case of
 33 a married couple filing a joint return where both spouses receive or incur net
 34 business income, the maximum dollar amounts apply separately to each
 35 spouse's net business income, not to exceed a total of one hundred thousand
 36 dollars (\$100,000). For purposes of this subdivision, the term "business
 37 income" does not include income that is considered passive income under
 38 the Code."

39 SECTION 12.(d) If House Bill 200, 2011 Regular Session, becomes law, then
 40 G.S. 105-134.6(c)(3) reads as rewritten:

41 "(3) Any amount deducted from gross income under section 164 of the Code as
 42 state, local, or foreign income ~~tax or tax~~, as state or local general sales ~~tax~~
 43 tax, or as qualified motor vehicle tax to the extent that the taxpayer's total
 44 itemized deductions deducted under the Code for the taxable year exceed the
 45 standard deduction allowable to the taxpayer under ~~the Code reduced by the~~
 46 amount the taxpayer is required to add to taxable income under subdivision
 47 (4) of this subsection. subsection (a2) of this section."

48 SECTION 12.(e) If House Bill 200, 2011 Regular Session, becomes law, then
 49 G.S. 105-134.6(c)(12) is repealed.

50 SECTION 12.(f) This section is effective for taxable years beginning on or after
 51 January 1, 2012.

1 **SECTION 13.** G.S. 105-134.6(d)(8) reads as rewritten:

2 "(d) Other Adjustments. – The following adjustments to taxable income shall be made in
3 calculating North Carolina taxable income:

4 ...

5 (8) For taxable years 2011 through 2013, a taxpayer who made an addition
6 under subdivision (7) of this subsection may deduct ~~one-third~~ the following
7 amounts:

8 a. For a taxpayer who made an addition under sub-subdivision (7)a. of
9 this subsection, one-third of the taxpayer's net operating loss
10 absorbed on the taxpayer's 2003, 2004, 2005, and 2006 and 2005
11 federal returns under section 172(b)(1)(H) or section 810(b)(4) of the
12 Code, with the exception of the portion of the net operating
13 loss of an eligible small business absorbed on the taxpayer's 2003,
14 2004, and 2005 federal returns.

15 b. For a taxpayer who made an addition under sub-subdivision (7)b. of
16 this subsection, one-third of the taxpayer's net operating loss
17 absorbed on the taxpayer's 2004, 2005, and 2006 federal returns
18 under section 172(b)(1)(H) or section 810(b)(4) of the Code, with the
19 exception of the portion of the net operating loss of an eligible small
20 business absorbed on the taxpayer's 2004, 2005, and 2006 federal
21 returns."

22 **SECTION 14.** Reserved.

23
24 **SALES AND USE TAX AND ARTICLE 5F TAXES**

25 **SECTION 15.(a)** G.S. 105-164.3(25), (27), (27b), and (30a) reads as rewritten:

26 **"§ 105-164.3. Definitions.**

27 The following definitions apply in this Article:

28 ...

29 (25a) Over-the-counter drug. – A drug that can be dispensed under federal law
30 without a prescription and is required by 21 C.F.R. § ~~210.66~~ 201.66 to have
31 a label containing a "Drug Facts" panel and a statement of its active
32 ingredients.

33 ...

34 (27) Prepaid telephone calling service. – Prepaid ~~wireline~~ calling service or
35 prepaid wireless calling service.

36 ...

37 (27b) Prepaid ~~wireline~~ calling service. – A right that meets all of the following
38 requirements:

39 a. Authorizes the exclusive purchase of ~~wireline~~ telecommunications
40 service.

41 b. Must be paid for in advance.

42 c. Enables the origination of calls by means of an access number,
43 authorization code, or another similar means, regardless of whether
44 the access number or authorization code is manually or electronically
45 dialed.

46 d. Is sold in units or dollars whose number or dollar value declines with
47 use and is known on a continuous basis.

48 ...

49 (30a) Professional motorsports racing team. – A racing team that satisfies all of the
50 following conditions:

51 a. The team is operated for profit.

- 1 b. ~~A majority of the revenues of the team is derived from sponsorship~~
 2 ~~of the racing team and prize money. The team does not claim a~~
 3 ~~deduction under section 183 of the Code.~~
 4 c. The team competes in at least sixty-six percent (66%) of the races
 5 sponsored in a race series in a single season by a motorsports
 6 sanctioning body."

7 **SECTION 15.(b)** G.S. 105-164.3 is amended by adding a new subdivision to read:

8 "**(33b) Related member.** – Defined in G.S. 105-130.7A."

9 **SECTION 15.(c)** G.S. 105-164.14A(a)(4) and (a)(5) read as rewritten:

10 "**§ 105-164.14A. Economic incentive refunds.**

11 (a) Refund. – The following taxpayers are allowed an annual refund of sales and use
 12 taxes paid under this Article:

13 ...
 14 (4) Motorsports team or sanctioning body. – A professional motorsports racing
 15 ~~team or a team, a motorsports sanctioning body-body, or a related member of~~
 16 such a team or body is allowed a refund of the sales and use tax paid by it in
 17 this State on aviation fuel that is used to travel to or from a motorsports
 18 event in this State, to travel to a motorsports event in another state from a
 19 location in this State, or to travel to this State from a motorsports event in
 20 another state. For purposes of this subdivision, a "motorsports event"
 21 includes a motorsports race, a motorsports sponsor event, and motorsports
 22 testing. This subdivision is repealed for purchases made on or after January
 23 1, 2011.

24 (5) Professional motorsports team. – A professional motorsports racing team or
 25 a related member of a team is allowed a refund of fifty percent (50%) of the
 26 sales and use tax paid by it in this State on tangible personal property, other
 27 than tires or accessories, that comprises any part of a professional
 28 motorsports vehicle. For purposes of this subdivision, "motorsports
 29 accessories" includes instrumentation, telemetry, consumables; and paint.
 30 This subdivision is repealed for purchases made on or after January 1, 2014."

31 **SECTION 15.(d)** Subsection (b) this section and G.S. 105-164.14A(a)(4), as
 32 amended by subsection (c) of this section, apply retroactively to purchases made on or after
 33 January 1, 2005. G.S. 105-164.14A(a)(5), as amended by subsection (c) of this section, applies
 34 retroactively to purchases made on or after July 1, 2007.

35 **SECTION 16.** G.S. 105-164.4(a)(3) reads as rewritten:

36 (3) A tax at the general rate applies to the gross receipts derived from the rental
 37 of an accommodation. The tax does not apply to (i) a private residence or
 38 cottage that is rented for fewer than 15 days in a calendar year or to year; (ii)
 39 an accommodation rented to the same person for a period of 90 or more
 40 continuous days-days; or (iii) an accommodation arranged or provided to a
 41 person by a school, camp, or similar entity where a tuition or fee is charged
 42 to the person for enrollment in the school, camp, or similar entity.

43 Gross receipts derived from the rental of an accommodation include the
 44 sales price of the rental of the accommodation. The sales price of the rental
 45 of an accommodation is determined as if the rental were a rental of tangible
 46 personal property. The sales price of the rental of an accommodation
 47 marketed by a facilitator includes charges designated as facilitation fees and
 48 any other charges necessary to complete the rental.

49 A person who provides an accommodation that is offered for rent is
 50 considered a retailer under this Article. A facilitator must report to the
 51 retailer with whom it has a contract the sales price a consumer pays to the

1 facilitator for an accommodation rental marketed by the facilitator. A retailer
 2 must notify a facilitator when an accommodation rental marketed by the
 3 facilitator is completed and, within three business days of receiving the
 4 notice, the facilitator must send the retailer the portion of the sales price the
 5 facilitator owes the retailer and the tax due on the sales price. A facilitator
 6 that does not send the retailer the tax due on the sales price is liable for the
 7 amount of tax the facilitator fails to send. A facilitator is not liable for tax
 8 sent to a retailer but not remitted by the retailer to the Secretary. Tax
 9 payments received by a retailer from a facilitator are held in trust by the
 10 retailer for remittance to the Secretary. A retailer that receives a tax payment
 11 from a facilitator must remit the amount received to the Secretary. A retailer
 12 is not liable for tax due but not received from a facilitator. The requirements
 13 imposed by this subdivision on a retailer and a facilitator are considered
 14 terms of the contract between the retailer and the facilitator.

15 A person who, by written contract, agrees to be the rental agent for the
 16 provider of an accommodation is considered a retailer under this Article and
 17 is liable for the tax imposed by this subdivision. The liability of a rental
 18 agent for the tax imposed by this subdivision relieves the provider of the
 19 accommodation from liability. A rental agent includes a real estate broker, as
 20 defined in G.S. 93A-2.

21 The following definitions apply in this subdivision:

- 22 a. Accommodation. – A hotel room, a motel room, a residence, a
 23 cottage, or a similar lodging facility for occupancy by an individual.
- 24 b. Facilitator. – A person who is not a rental agent and who contracts
 25 with a provider of an accommodation to market the accommodation
 26 and to accept payment from the consumer for the accommodation."

27 **SECTION 17. G.S. 105-164.4C(h)(5) reads as rewritten:**

28 "(h) Definitions. – The following definitions apply in this section:

- 29 ...
- 30 (5) Postpaid calling service. – A telecommunications service that is charged on a
 31 call-by-call basis and is obtained by making payment at the time of the call
 32 either through the use of a credit or payment mechanism, such as a bank
 33 card, travel card, credit card, or debit card, or by charging the call to a
 34 telephone number that is not associated with the origination or termination
 35 of the telecommunications service. A postpaid calling service includes a
 36 service that meets all the requirements of a prepaid ~~wireline~~ telephone
 37 calling service, except the exclusive use requirement.

38"

39 **SECTION 18. G.S. 105-164.13(12), (26a), (33), (38), and (49) read as rewritten:**

40 **"§ 105-164.13. Retail sales and use tax.**

41 The sale at retail and the use, storage, or consumption in this State of the following tangible
 42 personal property, digital property, and services are specifically exempted from the tax imposed
 43 by this Article:

- 44 ...
- 45 (12) Sales of any of the following items:
 - 46 a. ~~Prosthetic devices~~ devices for human use.
 - 47 b. Mobility enhancing equipment sold on a prescription.
 - 48 c. Durable medical equipment sold on prescription.
 - 49 d. Durable medical supplies sold on prescription.

50 ...

1 (26a) Food sold not for profit by a public school cafeteria to a child care center
 2 that participates in the Child and Adult Care Food Program of the
 3 Department of ~~Public Instruction~~ Health and Human Services.

4 ...
 5 (33a) Tangible personal property sold by a retailer to a purchaser within or without
 6 this State, when the property is delivered by the retailer in this State to a
 7 common carrier or to the United States Postal Service for delivery to the
 8 purchaser or the purchaser's designees outside this State and the purchaser
 9 does not subsequently use the property in this State.

10 ...
 11 (38) Food and other items lawfully purchased under the Food Stamp Program, 7
 12 U.S.C. § 2011, and supplemental foods lawfully purchased with a food
 13 instrument issued under the Special Supplemental ~~Food~~ Nutrition Program,
 14 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution
 15 by the Special Supplemental ~~Food~~ Nutrition Program.

16 ...
 17 (49) Installation charges when the charges are separately ~~stated~~ stated on the
 18 invoice at the time of sale."

19 **SECTION 19.** G.S. 105-164.13D(a) reads as rewritten:

20 "(a) The taxes imposed by this Article do not apply to the Energy Star qualified products
 21 listed in this section if sold between 12:01 A.M. on the first Friday of November and 11:59
 22 P.M. the following Sunday. The qualified products are:

- 23 (1) Clothes washers.
- 24 (2) Freezers and refrigerators.
- 25 (3) Central air conditioners and room air conditioners.
- 26 (4) Air-source heat ~~pumps and geothermal heat pumps~~.
- 27 (5) Ceiling fans.
- 28 (6) Dehumidifiers.
- 29 (7) Programmable thermostats."

30 **SECTION 20.(a)** G.S. 105-164.14A(a)(1) and (a)(4), as amended by this act, read
 31 as rewritten:

32 **"§ 105-164.14A. Economic incentive refunds.**

33 (a) Refund. – The following taxpayers are allowed an annual refund of sales and use
 34 taxes paid under this Article:

- 35 (1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund
 36 of the sales and use tax paid by it on fuel in excess of two million five
 37 hundred thousand dollars (\$2,500,000). The amount of sales and use tax paid
 38 does not include a refund allowed to the interstate passenger air carrier under
 39 G.S. 105-164.14(a). This subdivision is repealed for purchases made on or
 40 after ~~January 1, 2011~~ January 1, 2013.

- 41 ...
 42 (4) Motorsports team or sanctioning body. – A professional motorsports racing
 43 team, a motorsports sanctioning body, or a related member of such a team or
 44 body is allowed a refund of the sales and use tax paid by it in this State on
 45 aviation fuel that is used to travel to or from a motorsports event in this
 46 State, to travel to a motorsports event in another state from a location in this
 47 State, or to travel to this State from a motorsports event in another state. For
 48 purposes of this subdivision, a "motorsports event" includes a motorsports
 49 race, a motorsports sponsor event, and motorsports testing. This subdivision
 50 is repealed for purchases made on or after ~~January 1, 2011~~ January 1, 2013.

51"

1 **SECTION 20.(b)** This section applies retroactively to purchases made on or after
2 January 1, 2011.

3 **SECTION 21.** G.S. 105-164.16(d) reads as rewritten:

4 "(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who
5 purchases the items listed in this subsection ~~tangible personal property other than a boat or an~~
6 ~~aircraft, digital property, or a service~~ outside the State for a nonbusiness purpose is due on an
7 annual basis. For an individual who is not required to file an individual income tax return under
8 Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the
9 calendar year and a use tax return is due by the following April 15. For an individual who is
10 required to file an individual income tax return, the annual reporting period ends on the last day
11 of the individual's income tax year, and the use tax must be paid on the income tax return as
12 provided in G.S. 105-269.14. The items are:

13 (1) Tangible personal property other than a boat or an aircraft.

14 (2) Digital property.

15 (3) A service."

16 **SECTION 22.** G.S. 105-187.51C(c) reads as rewritten:

17 "(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is
18 not timely made, then the rate provided under this section is forfeited. If the required level of
19 investment is timely made but any eligible machinery and equipment is not located and used at
20 an eligible datacenter, then the rate provided for that machinery and equipment under this
21 section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales
22 and use taxes avoided as a result of the forfeiture, computed at the ~~combined general rate~~
23 applicable State and local rates from the date the taxes would otherwise have been due, plus
24 interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the
25 lack of a timely investment required by this section, then interest is computed from the date the
26 sales or use tax would otherwise have been due. For all other forfeitures, interest is computed at
27 ~~the combined general rate~~ from the time as of which the machinery or equipment was put to a
28 disqualifying use. A credit is allowed against the State sales or use tax owed as a result of the
29 forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For
30 purposes of applying this credit, the fact that payment of the privilege tax occurred in a period
31 outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit
32 reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes
33 and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past
34 taxes and interest by the due date is subject to the provisions of G.S. 105-236."

35 **SECTION 23.** A facilitator is not liable for an overcollection or undercollection of
36 sales tax or local occupancy tax if the facilitator has made a good faith effort to comply with
37 the law and collect the proper amount of tax as the result of the change under Section 31.6 of
38 S.L. 2010-31 regarding a facilitator's collection and remittance obligations imposed under
39 G.S. 105-164.4(a)(3), 153A-155(c), and 160A-215(c). This applies only to the period
40 beginning January 1, 2011, and ending April 1, 2011.

41 **SECTION 24.** Section 9 of S.L. 2010-91 reads as rewritten:

42 "**SECTION 9.** Section 6 of this act becomes effective January 1, 2010. Section 7 of this act
43 is effective when it becomes law and applies retroactively to sales made on or after October 1,
44 2007. Section 8 of this act is effective when it becomes law, applies to all agreements in effect
45 on or entered into after that date, and expires January 1, 2013. The remainder of this act
46 becomes effective July 1, 2010, and applies to sales made on or after that date."

47 **SECTION 25.(a)** G.S. 105-164.6(c) reads as rewritten:

48 "(c) Credit. – A credit is allowed against the tax imposed by this section for the
49 following:

- 1 (1) The amount of sales or use tax paid on the item to this State. Payment of
2 sales or use tax to this State on an item by a retailer extinguishes the liability
3 of a purchaser for the tax imposed under this section.
- 4 (2) The amount of sales or use tax due and paid on the item to another state. If
5 the amount of tax paid to the other state is less than the amount of tax
6 imposed by this section, the difference is payable to this State. The credit
7 allowed by this subdivision does not apply to tax paid to a state that does not
8 grant a similar credit for sales or use taxes paid in North Carolina."

9 SECTION 25.(b) G.S. 105-187.52 reads as rewritten:

10 "**§ 105-187.52. Administration.**

11 (a) Administration. – The privilege taxes imposed by this Article are in ~~addition to lieu~~
12 of the State use tax. Except as otherwise provided in this Article, the collection and
13 administration of these taxes is the same as the State use tax imposed by Article 5 of this
14 Chapter.

15 (b) Credit. – A credit is allowed against the tax imposed by this Article for the amount
16 of a sales or use tax, privilege or excise tax, or substantially equivalent tax due and paid to
17 another state. The credit allowed by this subsection does not apply to tax paid to another state
18 that does not grant a similar credit for the privilege tax paid in North Carolina.

19 (c) Exemption. – State agencies are exempted from the privilege taxes imposed by this
20 Article."

21 SECTION 26.(a) G.S. 105-164.14 is amended by adding a new subsection to read:

22 "(p) Not an Overpayment. – Taxes for which a refund is allowed under this section are
23 not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

24 SECTION 26.(b) G.S. 105-164.14A is amended by adding a new subsection to
25 read:

26 "(d) Not an Overpayment. – Taxes for which a refund is allowed under this section are
27 not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

28 SECTION 26.(c) G.S. 105-164.14B is amended by adding a new subsection to
29 read:

30 "(g) Not an Overpayment. – Taxes for which a refund is allowed under this section are
31 not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

32 SECTION 27. G.S. 105-164.15A(a)(1) reads as rewritten:

33 "(a) Services. – The effective date of a tax change for a service taxable under this Article
34 is administered as follows:

- 35 (1) For a service that is provided and billed on a monthly or other periodic basis:
36 a. A new tax or a tax rate increase applies to the first billing period that
37 is at least 30 days after enactment and that starts on or after the
38 effective date. For a service billed after it is provided, the first billing
39 period starts on the effective date. For a service billed before it is
40 provided, the first billing period starts on the first day of the month
41 after the effective date.
42 b. A tax repeal or a tax rate decrease applies to bills rendered on or after
43 the effective date."

44 SECTION 28. G.S. 105-164.28 reads as rewritten:

45 "**§ 105-164.28. Certificate of ~~resale exemption~~.**

46 (a) Seller's Responsibility. – A seller who accepts a certificate of ~~resale exemption~~
47 from a purchaser has the burden of proving that the sale was not a retail sale unless all of the
48 following conditions are met:

- 49 (1) For a sale made in person, the certificate is signed by the purchaser and
50 states the purchaser's name, address, registration number, and type of
51 business.

- 1 (2) For a sale made in person, the item sold is the type of item typically sold by
2 the type of business stated on the certificate.
- 3 (3) For a sale made over the Internet or by other remote means, the seller
4 obtains the purchaser's name, address, registration number, and type of
5 business and maintains this information in a retrievable format in its records.
- 6 (b) Purchaser's Liability. – A purchaser who does not resell an item purchased under a
7 certificate of ~~resale exemption~~ is liable for any tax subsequently determined to be due on the
8 sale."

9 SECTION 29. G.S. 105-164.4B is amended by adding a new subsection to read:

10 "(f) Digital Property. – A purchaser receives digital property when the purchaser takes
11 possession of the property or makes first use of the property, whichever comes first."

12 EXCISE TAX ON CONVEYANCES

13 SECTION 30.(a) G.S. 105-228.37 reads as rewritten:

14 "§ 105-228.37. Refund of overpayment of tax.

15 (a) Refund Request. – A taxpayer who pays more tax than is due under this Article may
16 request a refund of the overpayment by filing a written request for a refund with the board of
17 county commissioners of the county where the tax was paid. The request must be filed within
18 six months after the date the tax was paid and must explain why the taxpayer believes a refund
19 is due.

20 (b) Hearing by County. – A board of county commissioners must conduct a hearing on
21 a request for ~~refund in accordance with the procedures that apply to a hearing held by a board~~
22 ~~of equalization and review on an appeal concerning the listing or appraisal of property. If~~
23 ~~refund. Within 60 days after a timely request for a refund has been filed and at least 10 days~~
24 ~~before the date set for the hearing, the board must notify the taxpayer in writing of the time and~~
25 ~~place at which the hearing will be conducted. The date set for the hearing must be within 90~~
26 ~~days after the timely request for a hearing was filed or at a later date mutually agreed upon by~~
27 ~~the taxpayer and the board. The board must make a decision on the requested refund within 90~~
28 ~~days after conducting a hearing under this subsection. the board decides that a refund is due, it~~
29 ~~must refund the county's portion of the overpayment, together with any applicable interest, to~~
30 ~~the taxpayer. If the board finds that no refund is due, the written decision of the board must~~
31 ~~inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission.~~

32 (c) ~~Review by Commission.~~ Process if Refund Granted. – If the board of
33 commissioners decides that a refund is due, it must refund the overpayment, together with any
34 applicable interest, to the taxpayer and inform the Department of the refund. The Department
35 may assess the taxpayer for the amount of the refund in accordance with G.S. 105-241.9 if the
36 Department disagrees with the board's decision. The procedure in G.S. 105-290 for the appeal
37 to the Property Tax Commission of a decision of a board of equalization and review concerning
38 the listing or appraisal of property applies to the appeal of a denial by a board of county
39 commissioners of a request for a refund of tax paid under this Article. If the Commission
40 determines that a refund is due, the board of county commissioners must refund the county's
41 portion of the overpayment, together with any applicable interest, to the taxpayer. A decision of
42 the Commission is binding on the Secretary and on a board of county commissioners.

43 (d) ~~Judicial Review.~~ Process if Refund Denied. – ~~A decision of the Property Tax~~
44 ~~Commission is subject to judicial review in accordance with G.S. 7A-29. If the board of~~
45 ~~commissioners finds that no refund is due, the written decision of the board must inform the~~
46 ~~taxpayer that the taxpayer may request a departmental review of the denial of the refund in~~
47 ~~accordance with the procedures set out in G.S. 105-241.11.~~

48 (e) Recording Correct Deed. – Before a tax is refunded, the taxpayer must record a new
49 instrument reflecting the correct amount of tax due. If no tax is due because an instrument was
50 recorded in the wrong county, then the taxpayer must record a document stating that no tax was
51

1 owed because the instrument being corrected was recorded in the wrong county. The taxpayer
2 must include in the document the names of the grantors and grantees and the deed book and
3 page number of the instrument being corrected.

4 When a taxpayer records a corrected instrument, the taxpayer must inform the register of
5 deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the
6 register of deeds a copy of the decision granting the refund that shows the correct amount of tax
7 due. The correcting instrument must include the deed book and page number of the instrument
8 being corrected. The register of deeds must notify the county finance officer and the Secretary
9 when the correcting instrument has been recorded.

10 (f) Interest. – An overpayment of tax bears interest at the rate established in
11 G.S. 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an
12 overpayment 30 days after the request for a refund is filed by the taxpayer with the board of
13 county commissioners."

14 **SECTION 30.(b)** G.S. 105-228.30(b) reads as rewritten:

15 "(b) The register of deeds of each county must remit the proceeds of the tax levied by
16 this section to the county finance officer. The finance officer of each county must credit
17 one-half of the proceeds to the county's general fund and remit the remaining one-half of the
18 proceeds, less taxes refunded and the county's allowance for administrative expenses, to the
19 Department of Revenue on a monthly basis. A county may retain two percent (2%) of the
20 amount of tax proceeds allocated for remittance to the Department of Revenue as compensation
21 for the county's cost in collecting and remitting the State's share of the tax. Of the funds
22 remitted to it pursuant to this section, the Department of Revenue must credit seventy-five
23 percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and
24 twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7."

25 26 GENERAL ADMINISTRATION

27 **SECTION 31.(a)** G.S. 105-228.90(b) is amended by adding a new subdivision to
28 read:

29 "(b) Definitions. – The following definitions apply in this Article:

30 ...
31 (4b) NAICS. – The North American Industry Classification System adopted by
32 the United States Office of Management and Budget as of December 31,
33 2007.

34"

35 **SECTION 31.(b)** G.S. 105-129.81(13) and (18) read as rewritten:

36 "**§ 105-129.81. Definitions.**

37 The following definitions apply in this Article:

38 ...
39 (13) Information technology and services. – An industry in one of the
40 following: following, as defined by NAICS:

41 a. Internet service providers, Web search portals, and data processing
42 subsector 518 as defined by NAICS. Data processing industry group
43 518.

44 b. Software publishers industry group 5112 as defined by NAICS. 5112.

45 c. Computer systems design and related services industry group 5415 as
46 defined by NAICS. 5415.

47 d. An Internet activity included in industry group 519130.

48 ...
49 (18) NAICS. – The North American Industry Classification System adopted by
50 the United States Office of Management and Budget as of December 31,
51 2002. Defined in G.S. 105-228.90.

- 1 "
- 2 **SECTION 31.(c)** G.S. 105-164.3(23a) reads as rewritten:
- 3 "(23a) NAICS. – ~~The North American Industry Classification System adopted by~~
4 ~~the United States Office of Management and Budget as of December 31,~~
5 ~~2007. Defined in G.S. 105-228.90."~~
- 6 **SECTION 32.** G.S. 105-236(a)(2) reads as rewritten:
- 7 "(a) Penalties. – The following civil penalties and criminal offenses apply:
- 8 ...
- 9 (2) Failure to Obtain a License. – For failure to obtain a license before engaging
10 in a business, trade or profession for which a license is required, the
11 Secretary shall assess a penalty equal to five percent (5%) of the amount
12 prescribed for the license per month or fraction thereof until paid, not to
13 exceed twenty-five percent (25%) of the amount so prescribed, but in any
14 event shall not be less than five dollars (\$5.00). In cases in which the
15 ~~taxpayer~~ taxpayer, after written notification by the Department, fails to
16 obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the
17 Secretary may assess a penalty of one thousand dollars (\$1,000).
- 18 "
- 19 **SECTION 33.(a)** G.S. 105-256(a)(9) reads as rewritten:
- 20 "(a) Publications. – The Secretary shall prepare and publish the following:
- 21 ...
- 22 (9) A final decision of the Secretary in a contested tax case. ~~The Secretary must~~
23 ~~redact identifying taxpayer information from a final decision prior to~~
24 ~~publication."~~
- 25 **SECTION 33.(b)** G.S. 105-259(b)(27) reads as rewritten:
- 26 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
27 access to tax information in the course of service to or employment by the State may not
28 disclose the information to any other person except as provided in this subsection. Standards
29 used or to be used for the selection of returns for examination and data used or to be used for
30 determining the standards may not be disclosed for any purpose. All other tax information may
31 be disclosed only if the disclosure is made for one of the following purposes:
- 32 ...
- 33 (27) To provide a report publication required under this Chapter."
- 34 **SECTION 33.(c)** G.S. 150B-21.17(a)(5) is repealed.
- 35 **SECTION 34.** G.S. 105-241.9(b) reads as rewritten:
- 36 "(b) Time Limit. – The Secretary must propose an assessment within the statute of
37 limitations for proposed assessments unless the taxpayer waives the limitations period ~~in~~
38 ~~writing~~ before it expires by agreeing in writing to extend the period. A taxpayer may waive the
39 limitations period for either a definite or an indefinite time. If the taxpayer waives the
40 limitations period, the Secretary may propose an assessment at any time within the time
41 extended by the waiver."
- 42 **SECTION 35.** G.S. 105-256(a)(7) is repealed.
- 43 **SECTION 36.** Section 24.18(g) of S.L. 2006-66 reads as rewritten:
- 44 "**SECTION 24.18.(g)** This section is effective for taxable years beginning on or after
45 January 1, 2006, and expires for taxable years beginning on or after ~~January 1, 2011.~~ January 1,
46 2013."
- 47 **SECTION 37.** G.S. 105-228.90(a) reads as rewritten:
- 48 "(a) Scope. – This Article applies to all of the following:
- 49 (1) Subchapters I, V, and VIII of this Chapter, to the Chapter.
- 50 (2) The annual report filing requirements of G.S. 55-16-22, to the
51 G.S. 55-16-22.

- 1 (3) The primary forest product assessment levied under Article 12 of Chapter
2 113A of the General Statutes, ~~and to Statutes.~~
3 (4) The inspection taxes levied under Article 3 of Chapter 119 of the General
4 Statutes.
5 (5) Chapter 105A of the General Statutes."
6 SECTION 38. G.S. 105-164.41 is repealed.
7 SECTION 39. Reserved.

PROPERTY TAX

10 SECTION 40. G.S. 105-330.4 is amended by adding a new subsection to read:

11 "(d) Tax payments submitted by mail are deemed to be received as of the date shown on
12 the postmark affixed by the United States Postal Service. If no date is shown on the postmark
13 or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed
14 to be received when the payment is received in the office of the tax collector. In any dispute
15 arising under this subsection, the burden of proof is on the taxpayer to show that the payment
16 was timely made."

17 SECTION 41. G.S. 105-333(14) reads as rewritten:

"§ 105-333. Definitions.

19 The following definitions apply in this Article unless the context requires a different
20 meaning:

- 21 ...
- 22 (14) Public service company. – A railroad company, a pipeline company, a gas
23 company, an electric power company, an electric membership corporation, a
24 telephone company, a telegraph company, a bus line company, an airline
25 company, or a motor freight carrier company. The term also includes any
26 company performing a public service that is regulated by the United States
27 Department of Energy, the United States Department of Transportation, the
28 Federal Communications Commission, the Federal Aviation Agency, or the
29 North Carolina Utilities Commission, except that the term does not include a
30 water company, providers of mobile telecommunications service as defined
31 in G.S. 105-164.3, a cable television company, or a radio or television
32 broadcasting company."

33 SECTION 42.(a) The prefatory language for Section 65 of S.L. 2008-134 reads as
34 rewritten:

35 "Section 13 of S.L. 2005-294, as amended by Section 31.5 of S.L. 2006-259 and ~~Section~~
36 ~~22(e)~~Section 22(b) of S.L. 2007-527, reads as rewritten:"

37 SECTION 42.(b) Section 22(a) of S.L. 2010-95 is repealed.

38 SECTION 42.(c) Section 22(e) of S.L. 2010-95 reads as rewritten:

39 "SECTION 22.(e) Section 79 of S.L. 2008-134, as amended by Section 25(b) of S.L.
40 2009-445, reads as rewritten:

41 "SECTION 79. Sections 16 through 60 of this act become effective January 1, 2009.
42 Except as otherwise provided, the remainder of this act is effective when it becomes law.
43 ~~Section 63 of this act is repealed July 1, 2011.~~ Section 63 of this act is repealed July 1, 2013."

44 SECTIONS 43-44. Reserved.

LOCAL GOVERNMENT SALES AND USE TAX

47 SECTION 45. G.S. 105-467(a) reads as rewritten:

48 "(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax
49 at the rate of one percent (1%) of the ~~transactions listed in this subsection. The sales tax~~
50 ~~authorized by this Article does not apply to sales that are taxable by the State under~~
51 ~~G.S. 105-164.4 but are not specifically included in this subsection.~~ following:

- 1 (1) ~~A retailer's net taxable sales and gross receipts that are The sales price of~~
2 ~~tangible personal property~~ subject to the general rate of sales tax imposed by
3 the State under ~~G.S. 105-164.4(a)(1) and (a)(4b).~~ G.S. 105-164.4.
- 4 (2) ~~The gross receipts derived from the lease or rental of tangible personal~~
5 ~~property when the lease or rental of the property is subject to the general rate~~
6 ~~of sales tax imposed by the State under G.S. 105-164.4(a)(2).~~
- 7 (3) ~~The gross receipts derived from the rental of any room or other~~
8 ~~accommodations subject to the general rate of sales tax imposed by the State~~
9 ~~under G.S. 105-164.4(a)(3).~~
- 10 (4) ~~The gross receipts derived from services rendered by laundries, dry cleaners,~~
11 ~~and other businesses subject to the general rate of sales tax imposed by the~~
12 ~~State under G.S. 105-164.4(a)(4).~~
- 13 (5) The sales price of food that is not otherwise exempt from tax pursuant to
14 G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to
15 G.S. 105-164.13B.
- 16 (5a) The sales price of a bundled transaction that includes food subject to tax
17 under subdivision (5) of this subsection, if the price of the food exceeds ten
18 percent (10%) of the price of the bundle. A retailer must determine the price
19 of food in a bundled transaction in accordance with G.S. 105-164.4D.
- 20 (5b) The sales price of bread, rolls, and buns that are sold at a bakery thrift store
21 and are exempt from State tax under G.S.105-164.13(27a).
- 22 (6) ~~The sales price of prepaid telephone calling service taxed as tangible~~
23 ~~personal property under G.S. 105-164.4(a)(4d).~~
- 24 (7) ~~The gross receipts derived from providing satellite digital audio radio service~~
25 ~~subject to the general rate of tax under G.S. 105-164.4(a)(6a)."~~

26
27 **MISCELLANEOUS**

28 **SECTION 46.** Section 8 of S.L. 2006-209 reads as rewritten:

29 "**SECTION 8.** As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the ~~Division of~~
30 ~~Legislative Drafting and Codification-Legislative Services Office~~ to reletter or renumber
31 section subdivisions includes the authority to renumber all the subdivisions in G.S. 20-79.4(b)
32 in sequential and alphabetical order and to eliminate mixed number-letter subdivision
33 designations. ~~This section expires July 1, 2011."~~

34 **SECTION 47.(a)** G.S. 58-70-35(a) reads as rewritten:

35 "(a) Upon the filing of the application and information required by this Article, the
36 applicant shall pay a nonrefundable fee of one thousand dollars (\$1,000), and no permit may be
37 issued until this fee is paid. Fees collected under this subsection shall be ~~used in paying the~~
38 ~~expenses incurred in connection with the consideration of such applications and the issuance of~~
39 ~~such permits credited to the Insurance Regulatory Fund created under G.S. 58-6-25."~~

40 **SECTION 47.(b)** G.S. 143-143.10(a) reads as rewritten:

41 "(a) There is created the North Carolina Manufactured Housing Board within the
42 Department. The Board shall be composed of 11 members as follows:

- 43 (1) The Commissioner of Insurance or the Commissioner's designee.
- 44 (2) A manufactured home manufacturer.
- 45 (3) A manufactured home dealer.
- 46 (4) A representative of the banking and finance industry.
- 47 (5) A representative of the insurance industry.
- 48 (6) A manufactured home supplier.
- 49 (7) A set-up contractor.
- 50 (8) Two representatives of the general public.

1 (9) A person who is employed with a HUD-approved housing counseling
2 agency in the State.

3 (10) An accountant.

4 The Commissioner or the Commissioner's designee shall chair the Board. The Governor
5 shall appoint to the Board the manufactured home manufacturer and the manufactured home
6 dealer. The General Assembly upon the recommendation of the Speaker of the House of
7 Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative
8 of the banking and finance industry, the employee of a HUD-approved housing counseling
9 agency, and the representative of the insurance industry. The General Assembly upon the
10 recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121
11 shall appoint to the Board the manufactured home supplier, the accountant, and the set-up
12 contractor. The Commissioner shall appoint two representatives of the general public. Except
13 for the representatives from the general public and the persons appointed by the General
14 Assembly, each member of the Board shall be appointed by the appropriate appointing
15 authority from a list of nominees submitted to the appropriate appointing authority by the
16 Board of Directors of the North Carolina Manufactured Housing Institute. At least three
17 nominations shall be submitted for each position on the Board. The members of the Board shall
18 be residents of the State.

19 The members of the Board shall serve for terms of three years. In the event of any vacancy
20 of a position appointed by the Governor or Commissioner, the appropriate appointing authority
21 shall appoint a replacement in the same manner as provided for the original appointment to
22 serve the remainder of the unexpired term. Vacancies in appointments made by the General
23 Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the
24 appropriate appointing authority shall appoint a replacement to serve the remainder of the
25 unexpired term. Such appointment shall be made in the same manner as provided for the
26 original appointment. No member of the Board shall serve more than two consecutive,
27 three-year terms.

28 The members of the Board designated in subdivisions (8), (9), and (10) of this subsection
29 shall have no current or previous financial interest connected with the manufactured housing
30 industry. No member of the Board shall participate in any proceeding before the Board
31 involving that member's own business.

32 Each member of the Board, except the Commissioner and any other State employee, shall
33 receive per diem and allowances as provided with respect to occupational licensing boards by
34 G.S. 93B-5. ~~All per diem and travel expenses shall be paid exclusively out of the fees received
35 by the Board as authorized by this Part. In no case shall any salary, expense, or other obligation
36 of the Board be charged against the General Fund of the State of North Carolina. All moneys
37 and receipts shall be kept in a special fund by and for the use of the Board for the exclusive
38 purpose of carrying out the provisions of this Part. At the end of the fiscal year, the Board shall
39 retain fifteen percent (15%) of the unexpended funds collected and received during that year.
40 The remaining eighty five percent (85%) of these funds shall be credited to the General
41 Fund. Fees collected by the Board under this Article shall be credited to the Insurance
42 Regulatory Fund created under G.S. 58-6-25."~~

43 **SECTIONS 48-49.** Reserved.

44
45 **EFFECTIVE DATE**

46 **SECTION 50.** Except as otherwise provided, this act is effective when it becomes
47 law.



North Carolina General Assembly
House Committee on Finance

Minutes

June 17, 2011

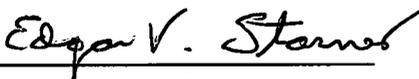
The House Committee on Finance met on Friday, June 17, 2011 at 1:14 pm in Room 1228 of the Legislative Building. The following members were present: Chairpersons Howard, Starnes, Setzer and Folwell; Representatives Alexander, Brandon, Brawley, Carney, Collins, Hackney, Hall, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Moore, Rhyne, Ross, Samuelson, Stam, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Carlton Adams, R. L. Carter and Ken Kirby. Staff persons present included Cindy Averette, Barry Boardman, Trina Griffin, Greg Roney and Jonathan Tart. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

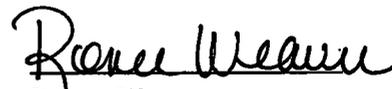
Chairman Starnes called the meeting to order at 1:14 pm.

HB 619 Forced Combinations (see **attachment 3**) was the bill before the Committee. Chairman Starnes recognized staff members Cindy Averette, Barry Boardman and Jonathan Tart to explain the bill and the four accompanying amendments received from the Senate for concurrence. The Chair then recognized Canaan Huie with the North Carolina Department of Revenue who assisted with answering member's questions. The Chair recognized Representative Stone who moved that the House do concur on HB 619 as amended. The Chair recognized Representative Luebke who called for a division. Chairman Starnes called for a show of hands on the motion for concurrence. The vote being 15 affirmative and 8 against. The motion carried.

There being no further business presently before the Committee, Chairman Starnes adjourned the meeting at 1:46 pm.

Respectfully submitted,


Representative Edgar Starnes
Presiding Chair


Renee Weaver
Clerk, House Committee on
Finance

Renee Weaver (House Staff Clerk)

From: Rep. Julia Howard
Sent: Friday, June 17, 2011 4:44 PM
To: Renee Weaver (House Staff Clerk)
Subject: FW: H619 as amended in the Senate

Nake a copy for YOUR Finance folder. J

From: Barry Boardman (Fiscal Research)
Sent: Friday, June 17, 2011 03:16 PM
To: Rep. Julia Howard; Rep. Edgar Starnes; Rep. Mitchell Setzer
Cc: Rep. Paul Stam; Jonathan Tart (Fiscal Research); Cindy Avrette (Research)
Subject: H619 as amended in the Senate

Dear Finance Chairs,

We did not get a chance to respond to Mr. Huie's \$32 million estimate of the impact of enacting the bill and would like to do so now. It should be noted that the \$32 million he referred to would represent a potential **increase** in revenues for the biennium rather than a loss. The biennium consensus revenue forecast **does not** include in the tax base any agreements that the department may have entered into with taxpayers during resolution initiatives. Therefore, FRD's position is that any money not collected during the next biennium as a result of H619, as amended, means revenues will not increase above the budgeted amount.

Best regards,

Barry

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 619 A BILL TO BE ENTITLED AN ACT TO SPECIFY THE SECRETARY OF REVENUE'S AUTHORITY TO ADJUST THE NET INCOME OF A CORPORATION OR TO REQUIRE A CORPORATION TO FILE A COMBINED RETURN.

With recommendation that the House concur as amended.

(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 _____.

AGENDA
House Finance Committee

Friday, June 17, 2011
During House Recess
Room 1228
Chaired by: Representative Julia Howard

Call to Order

Introduction of Pages

Bill:

HB 619 Forced Combinations

Representatives Howard, McLawhorn, Carney, Ingle

Adjournment

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

June 17, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Michelle Frazier	MF+S
Elizabeth Robinson	NORMA
Forrest William	Governor's Office
Butch Gunnells	NCBA
A. Shewell	NC med Soc/MIH
Bruce Casler	ALCOA
<i>[Signature]</i>	<i>[Signature]</i>
Gene Ainsworth	A & A
Duwood Pughingham	US
Mitch Leonard	SEANL
Jo Goodman	JC CHAMBER
Chuck Stone	SEANL

VISITOR REGISTRATION SHEET

House Finance

June 17, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>[Signature]</i>	<i>Gen. Asso.</i>
Alicia Warner	Nelson Mullins
<i>Wendy T...</i>	NACCC
<i>John Havelin</i>	MFAS
<i>Michael Houser</i>	NR DOR
<i>Lancey Thie</i>	NR DOR
<i>K. Blamm</i>	FLA
<i>Dennis Burko</i>	MMU @
<i>Tom Cores</i>	TNC
<i>Dan Crawford</i>	NLLCU
<i>B. NBBL7</i>	WM

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

6-17-11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawk	Duke Energy
Matt Maxwell	NCSBA
Dann Motton	CTL
Andrew Cafe	NC Sheriffs Assn.
JAIME KING	NCEL
Lori Ann Harris	LATA
Eddie Caldwell	NC Sheriffs' Assn.
Bill Rowe	NC Justice Center
Matthew Gilman	DST
Sohari	DST

VISITOR REGISTRATION SHEET

House Finance

June 17, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	K. M. A.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

3

HOUSE BILL 619
Committee Substitute Favorable 5/26/11
Senate Finance Committee Substitute Adopted 6/8/11

Short Title: Forced Combinations.

(Public)

Sponsors:

Referred to:

April 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO SPECIFY THE SECRETARY OF REVENUE'S AUTHORITY TO ADJUST
3 THE NET INCOME OF A CORPORATION OR TO REQUIRE A CORPORATION TO
4 FILE A COMBINED RETURN.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. G.S. 105-130.6 is repealed.
7 SECTION 2. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended
8 by adding a new section to read:
9 **"§ 105-130.5A. Secretary's authority to adjust net income or require a combined return.**
10 (a) Notice. – When the Secretary has reason to believe that any corporation so conducts
11 its trade or business in such manner as to fail to accurately report its State net income properly
12 attributable to its business carried on in the State through the use of transactions that lack
13 economic substance or are not at fair market value between members of an affiliated group of
14 entities, the Secretary may, upon written notice to the corporation, require any information
15 reasonably necessary to determine whether the corporation's intercompany transactions have
16 economic substance and are at fair market value and for the accurate computation of the
17 corporation's State net income properly attributable to its business carried on in the State. The
18 corporation must provide the information requested within 90 days of the date of the notice.
19 (b) Adjust Net Income. – If upon review of the information provided, the Secretary
20 finds as a fact that the corporation's intercompany transactions lack economic substance or are
21 not at fair market value, the Secretary may redetermine the State net income of the corporation
22 properly attributable to its business carried on in the State under this section by (i) adding back,
23 eliminating, or otherwise adjusting intercompany transactions to accurately compute the
24 corporation's State net income properly attributable to its business carried on in the State, or, if
25 such adjustments are not adequate under the circumstances to redetermine State net income, (ii)
26 requiring the corporation to file a return that reflects the net income on a combined basis of all
27 members of its affiliated group that are conducting a unitary business. The Secretary shall
28 consider and be authorized to use any reasonable method proposed by the corporation for
29 redetermining its State net income attributable to its business carried on in the State. In
30 determining whether the corporation's intercompany transactions lack economic substance or
31 are not at fair market value, the Secretary shall consider each taxable year separately.
32 (c) Combined Return. – If the Secretary finds as a fact that a combined return is
33 required, the Secretary may, upon written notice to the corporation, require the corporation to
34 submit the combined return, and the corporation shall submit the combined return within 60
35 days of the date of the notice. The submission by the corporation of the combined return
36 required by the Secretary shall not be deemed to be a return or construed as an agreement by



1 the corporation that an assessment based on the combined return is correct or that additional tax
2 is due by the Secretary's deadline for submitting the combined return. The Secretary or the
3 corporation may propose a combination of fewer than all members of the unitary group, and the
4 Secretary shall be authorized to consider whether such proposed combination is a reasonable
5 means of redetermining State net income; provided, however, the Secretary shall not require a
6 combination of fewer than all members of the unitary group without the consent of the
7 corporation.

8 (d) Written Statement of Findings. – If the Secretary makes an adjustment or requires a
9 combined return under this section, the Secretary shall provide the corporation with a written
10 statement containing detail of the facts, circumstances, and reasons for which the Secretary has
11 found as a fact that the corporation did not accurately report its State net income properly
12 attributable to its business carried on in the State and the Secretary's proposed method for
13 computation of the corporation's State net income.

14 (e) Members of Affiliated Group. – The Secretary may require a combined return under
15 this section regardless of whether the members of the affiliated group are or are not doing
16 business in this State.

17 (f) Economic Substance. – A transaction has economic substance if (i) the transaction,
18 or the series of transactions of which the transaction is a part, has one or more reasonable
19 business purposes other than the creation of State income tax benefits and (ii) the transaction,
20 or the series of transactions of which the transaction is a part, has economic effects beyond the
21 creation of State income tax benefits. In determining whether a transaction has economic
22 substance, all of the following apply:

- 23 (1) Reasonable business purposes and economic effects include, but are not
24 limited to, any material benefit from the transaction other than State income
25 tax benefits not allowable under subdivision (3) of this subsection.
- 26 (2) In determining whether to require a combined return, whether the transaction
27 has economic effects beyond the creation of State income tax benefits may
28 be satisfied by demonstrating material business activity of the entities
29 involved in the transaction.
- 30 (3) If State income tax benefits resulting from a transaction, or a series of
31 transactions of which the transaction is a part, are consistent with legislative
32 intent, such State income tax benefits shall be considered in determining
33 whether such transaction has business purpose and economic substance.
- 34 (4) Centralized cash management of an affiliated group as defined in subsection
35 (i) of this section shall not constitute evidence of an absence of economic
36 substance.
- 37 (5) Achieving a financial accounting benefit shall not be taken into account as a
38 reasonable business purpose for entering into a transaction if the origin of
39 such financial accounting benefit is a reduction of State income tax.

40 (g) Allocation of Income and Deductions. – In determining whether transactions
41 between members of the affiliated group of entities are not at fair market value, the Secretary
42 shall apply the standards contained in the regulations adopted under section 482 of the Code.

43 (h) Apportionment. – If the Secretary requires a combined return under this section, the
44 combined State net income of the corporation and the members of the affiliated group of
45 entities shall be apportioned to this State by use of an apportionment formula that accurately
46 reports the State net income properly attributable to the corporation's business carried on in the
47 State and which fairly reflects the apportionment formula in G.S. 105-130.4 applicable to the
48 corporation and each member of the affiliated group included in the combined return.

49 (i) Affiliated Group Defined. – For purposes of this section, an affiliated group is a
50 group of two or more corporations or noncorporate entities in which more than fifty percent
51 (50%) of the voting stock of each member corporation or ownership interest of each member

1 noncorporate entity is directly or indirectly owned or controlled by a common owner or
2 owners, either corporate or noncorporate, or by one or more of the member corporations or
3 noncorporate entities. Nothing in this subsection shall be construed to limit or negate the
4 Secretary's authority to add back, eliminate, or otherwise adjust intercompany transactions
5 involving the listed entities to accurately compute the corporation's State net income properly
6 attributable to its business carried on in the State, as provided in subsection (b) of this section.

7 The following entities shall not be included in a combined return:

8 (1) A corporation not required to file a federal income tax return.

9 (2) An insurance company, other than a captive insurance company, (i) which is
10 subject to tax under Article 8B of this Chapter, (ii) whose premiums are
11 subject to tax under Article 21 of Chapter 58 or a similar tax in another state,
12 or (iii) which is licensed as a reinsurance company. A "captive insurance
13 company" means an insurer that is part of an affiliated group where the
14 insurer receives more than fifty percent (50%) of its net written premiums or
15 other amounts received as compensation for insurance from members of the
16 affiliated group.

17 (3) A corporation exempt from taxation under section 501 of the Code.

18 (4) An S corporation.

19 (5) A foreign corporation as defined in section 7701 of the Code, other than a
20 domestic branch thereof.

21 (6) A partnership, limited liability company, or other entity not taxed as a
22 corporation.

23 (7) A corporation with at least eighty percent (80%) of its gross income from all
24 sources in the tax year being active foreign business income as defined in
25 section 861(c)(1)(B) of the Code in effect as of July 1, 2009.

26 (i) Proposed Assessment or Refund. – If the Secretary redetermines the State net
27 income of the corporation in accordance with this section by adjusting the State net income of
28 the corporation or requiring a combined return, the Secretary shall issue a proposed assessment
29 or refund upon making such redetermination. The procedures for a proposed assessment or a
30 refund in Article 9 of Chapter 105 shall be applicable to proposed assessments and refunds
31 made under this section.

32 (k) Penalties. – If a combined return required by this section is not timely submitted by
33 a corporation, then the corporation is subject to the penalties provided in G.S. 105-236(a)(3).
34 Penalties shall not be imposed on an assessment under this section except as expressly
35 authorized in this section and in G.S. 105-236(a)(5)f.

36 (l) Advice. – A corporation may request in writing from the Secretary specific advice
37 regarding whether a redetermination of the corporation's State net income or a combined return
38 would be required under this section under certain facts and circumstances. The Secretary may
39 request information from the taxpayer that is required to provide the specific advice. The
40 Secretary shall provide the specific advice within 120 days of the receipt of the requested
41 information from the taxpayer. G.S. 105-264 governs the effect of this advice.

42 (m) Extension. – The Secretary and the taxpayer may extend any time limit contained in
43 this section by mutual agreement.

44 (n) Other Tax Adjustments. – Nothing in this section shall be construed to limit or
45 negate the Secretary's authority to make tax adjustments as otherwise permitted by law.

46 (o) Appeals. – If the corporation appeals a final determination by the Department under
47 this section to the Office of Administrative Hearings in a contested tax case, the administrative
48 law judge shall review de novo (i) whether the separate income tax returns submitted by the
49 taxpayer fail to report State net income properly attributable to its business carried on in this
50 State through the use of intercompany transactions that lack economic substance or are not at
51 fair market value between members of an affiliated group of entities; (ii) whether the

1 Department's means of determining the corporation's State net income under this section is an
2 appropriate means of determining the corporation's State net income properly attributable to
3 this State; and (iii) if a combined return is required by the Department, whether adjustments
4 other than requiring the corporation to file a return on a combined basis are adequate under the
5 circumstances to redetermine State net income."

6 SECTION 3. G.S. 105-130.15(a) reads as rewritten:

7 "(a) The net income of a corporation shall be computed in accordance with the method
8 of accounting it regularly employs in keeping its books. The method must be consistent with
9 respect to both income and deductions. ~~If this method does not clearly reflect the income, the~~
10 ~~computation shall be made in accordance with a method that, in the Secretary's opinion, does~~
11 ~~clearly reflect the income, but deductions and~~ shall follow as nearly as practicable the federal
12 practice, unless contrary to the context and intent of this Part.

13 The Secretary may adopt the rules and regulations and any guidelines administered or
14 established by the Internal Revenue Service unless contrary to any provisions of this Part."

15 SECTION 4. G.S. 105-130.16 reads as rewritten:

16 "§ 105-130.16. Returns.

17 (a) Return.—Every corporation doing business in this State must file with the Secretary
18 an income tax return showing specifically the items of gross income and the deductions
19 allowed by this Part and any other facts the Secretary requires to make any computation
20 required by this Part. The return of a corporation must be signed by its president,
21 vice-president, treasurer, or chief financial officer. The officer signing the return must furnish
22 an affirmation verifying the return. The affirmation must be in the form required by the
23 Secretary.

24 (b) ~~Correction of Distortions.—When the Secretary has reason to believe that any~~
25 ~~corporation so conducts its trade or business in such manner as to either directly or indirectly~~
26 ~~distort its true net income and the net income properly attributable to the State, whether by the~~
27 ~~arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby~~
28 ~~the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on~~
29 ~~business under a substantially common control, the Secretary may require any facts the~~
30 ~~Secretary considers necessary for the proper computation of the entire net income and the net~~
31 ~~income properly attributable to the State, and in determining these computations, the Secretary~~
32 ~~must have regard to the fair profit that would normally arise from the conduct of the trade or~~
33 ~~business.~~

34 (c) ~~Other Corrections.—When any corporation liable to taxation under this Part~~
35 ~~conducts its business in such a manner as to either directly or indirectly benefit the members or~~
36 ~~stockholders thereof or any person interested in the business by selling its products or goods or~~
37 ~~commodities in which it deals at less than the fair price which might be obtained therefor, or~~
38 ~~when a corporation, a substantial portion of whose capital stock is owned either directly or~~
39 ~~indirectly by another corporation, acquires and disposes of the products of the corporation so~~
40 ~~owning a substantial portion of its stock in such a manner as to create a loss or improper net~~
41 ~~income for either of the corporations, or when a corporation, owning directly or indirectly a~~
42 ~~substantial portion of the stock of another corporation, acquires and disposes of the products of~~
43 ~~the corporation of which it so owns a substantial portion of the stock in such manner as to~~
44 ~~create a loss or improper net income for either of the corporations, the Secretary may determine~~
45 ~~the amount of taxable income of the such corporations for the calendar or fiscal year, having~~
46 ~~due regard to the reasonable profits which, but for such arrangement or understanding, might or~~
47 ~~could have been obtained by the corporations liable to taxation under this Part from dealing in~~
48 ~~such products, goods or commodities."~~

49 SECTION 5. G.S. 105-236(a)(5)f. reads as rewritten:

50 "(a) Penalties. — The following civil penalties and criminal offenses apply:

51 ...

1 (5) Negligence. –

2 ...
3 f. Consolidated or combined return. – The amount of tax shown as due
4 on a consolidated or combined return filed at the request of the
5 Secretary under Part 1 of Article 4 of this Chapter is not considered a
6 deficiency and is not subject to this subdivision unless one or more of
7 the following applies:

- 8 1. The return is an amended consolidated or combined return
9 that includes the same corporations as the initial consolidated
10 or combined return filed at the request of the Secretary. In
11 this case the deficiency is the extent to which the amount
12 shown as due on the amended return exceeds the amount
13 shown as due on the initial return.
- 14 2. ~~The Secretary has adopted permanent rules in accordance~~
15 ~~with G.S. 105-262 that describe the facts and circumstances~~
16 ~~under which the Secretary will require a consolidated or~~
17 ~~combined return under G.S. 105-130.6, and the Secretary~~
18 ~~requires the taxpayer to file a consolidated or combined~~
19 ~~return under that statute because the taxpayer's facts and~~
20 ~~circumstances meet those described in the rules.~~
- 21 3. Pursuant to a written request from a taxpayer, the Secretary
22 has provided written advice to that taxpayer stating that the
23 Secretary will require a consolidated or combined return
24 under the facts and circumstances set out in the request, and
25 the Secretary requires a taxpayer to file a consolidated or
26 combined return under ~~G.S. 105-130.6~~ G.S. 105-130.5A
27 because the taxpayer's facts and circumstances meet those
28 described in the written advice."

29 **SECTION 6.** G.S. 105-264 is amended by adding a new subsection to read:

30 "(d) Fee. – The Secretary may charge a fee for providing specific written advice at the
31 request of a taxpayer. The fee is a receipt of the Department and must be applied to the costs of
32 providing the specific advice. The proceeds of the fee must be credited to a special account
33 within the Department and do not revert but remain in the special account until spent by the
34 Department for the costs of providing the specific advice. The Secretary may adopt a tiered fee
35 structure based on the taxpayer's income or gross receipts, the relative complexity of the advice
36 requested, or the tax schedule for which advice is requested. The fee shall not be less than one
37 hundred dollars (\$100.00) or more than five thousand dollars (\$5,000). The fee may be waived
38 by the Secretary."

39 **SECTION 7.** The date by which the Department must issue a final determination
40 under G.S. 105-241.14 for any request for review pending as of the effective date of this act
41 under G.S. 105-130.6 is extended until June 30, 2012.

42 **SECTION 8.** This act is effective when it becomes law and applies to assessments
43 and requests for refunds which have not become final by the issuance of a final decision of the
44 Department of Revenue in a contested case commenced at the Office of Administrative
45 Hearings pursuant to G.S. 105-241.15 as of the effective date of this act. This act does not
46 apply to taxes and penalties that are the subject of pending litigation in the General Court of
47 Justice as of the effective date of this act and shall not be construed to affect the interpretation
48 of any statute that is the subject of pending litigation in the General Court of Justice or an
49 appeal from a final decision by the Court of General Justice, or to affect any other aspect of
50 such pending litigation.

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 619

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H619-AMC-28 [v.2]

Page 1 of 1

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

Date June 16 2011

Senator Rucho
~~Apodaca~~

- 1 moves to amend the bill on page 3, line 45, by rewriting that line to read:
- 2 "negate the Secretary's authority to make tax adjustments as otherwise permitted by law, except
- 3 that the Secretary shall not make adjustments pursuant to this section that limit a corporation's
- 4 options for reporting royalty payments under G.S. 105-130.7A."

SIGNED R. A. Rucho
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 47-1 FAILED _____ TABLED _____
Sarah Clapp
6.16.11





ADOPTED

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 619

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H619-ATM-12 [v.1]

Page 1 of 1

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

Date June 16, 2011

Senator Rudis

- 1 moves to amend the bill on page 5, line 45 through page 6, line 2, by rewriting the lines to read:
- 2 "SECTION 7. The Revenue Laws Study Committee may review the law enacted
- 3 by this act and recommend any changes needed. The Committee may also recommend to the
- 4 2012 Regular Session of the 2011 General Assembly the extent to which the law enacted by
- 5 this act should apply to pending assessments and requests for refunds.
- 6 SECTION 8. Sections 1 through 6 of this act become effective January 1, 2012,
- 7 and Sections 2 and 5 of this act apply to assessments proposed for taxable years beginning on
- 8 or after that date. The remainder of this act is effective when it becomes law."

SIGNED Rudis
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 48-0 FAILED _____ TABLED _____

Sarah Clapp
6.16.11



* H 6 1 9 - A T M - 1 2 - V - 1 *

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 619

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H619-ARB-55 [v.2]

Page 1 of 1

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

Date 6-16 2011

Senator Jackson

- 1 moves to amend the bill on page 3, lines 12 through 16, by rewriting the lines to read:
- 2. "(iii) which is licensed as a reinsurance company, (iv) which is a life
- 3 insurance company as defined in Section 816 of the Code, or (v) which is an
- 4 insurance company subject to tax imposed by Section 831 of the Code. A
- 5 "captive insurance company" means an insurer that is part of an affiliated
- 6 group where the insurer receives more than fifty percent (50%) of its net
- 7 written premiums or other amounts received as compensation for insurance
- 8 from members of the affiliated group."

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

48-0

FAILED

TABLED

Sarah Claytor

6.16.11



* H 6 1 9 - A R B - 5 5 - V - 2 *

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 619

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

H619-ARB-46 [v.2]

Page 1 of 1

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

Date June 16, 2011

Senator Clary

- 1 moves to amend the bill on page 1, line 34, by rewriting the line to read:
- 2 "submit the combined return, and the corporation shall submit the combined return within 90"
- 3
- 4 And on page 2, line 13, by rewriting the line to read:
- 5 "computation of the corporation's State net income no later than 90 days following the issuance
- 6 of a proposed assessment as provided in this section."

SIGNED Debbie G. Clary
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 48-0 FAILED _____ TABLED _____
Sarah Clapp
6-16-11



H619-ARB-46-V-2



HOUSE BILL 619: Forced Combinations

2011-2012 General Assembly

Committee:	House Finance	Date:	June 17, 2011
Introduced by:	Reps. Howard, McLawhorn, Carney, Ingle	Prepared by:	Cindy Avrette & Dan Ettefagh
Analysis of:	Third Edition, with 4 unengrossed amendments		Committee Counsel

BILL SUMMARY: *House Bill 619 is before House Finance for a recommendation on whether or not the House should concur in the Senate Finance Committee Substitute, as amended. The Senate removed the contents of House Bill 619, which were ultimately included in the budget (S.L. 2011-145) and replaced them with provisions that change the Secretary of Revenue's authority to adjust the income of a multistate corporation or require it to file a combined return when the Secretary determines that the corporation conducts its business in a way that fails to accurately reflect its income attributable to North Carolina.*

The bill would become effective January 1, 2012, and apply to proposed assessments for taxable years beginning on or after January 1, 2012. The bill also provides that the provisions of the bill will be reviewed by the Revenue Laws Study Committee and it may recommend any changes needed to the law and may recommend whether the provisions of the new law should apply to pending assessments.

CURRENT LAW: Under current law, North Carolina is a single-entity filing state, meaning that a multistate corporation must determine its State net income as if it filed a separate return for federal income tax purposes. G.S. 105-130.14 prohibits a corporation from filing a consolidated or combined return in NC unless specifically directed by the Secretary to do so. Under G.S. 105-130.6, the Secretary can require a corporation to file a combined return with other parent, subsidiary, or affiliated corporations when the Department believes the corporation's net income attributable to this State is not accurately reflected on its separate filing return. After the Secretary directs, a corporation has 60 days to file a combined return before being subject to penalties if the taxpayer has not requested a hearing on the tax liability used as the basis for the penalty. The Secretary was directed in 2010 to adopt rules that describe when the Secretary would require the filing of a consolidated or combined return. A corporation must file a consolidated return when the rule adopted by the Department requires or, pursuant to a written request from the corporation, the Secretary provided written advice to the corporation stating that the Secretary will require a combined return. The Department has not adopted any rules in this area.

BILL ANALYSIS: House Bill 619 repeals G.S. 105-130.6 and replaces it with G.S. 105-130.5A, which provides the following:

- If the Secretary has reason to believe a corporation's business conduct causes it to inaccurately report net income attributable to its business in NC, the Secretary may give notice to and require any information necessary from the corporation to determine whether its intercompany transactions have economic substance¹ and are at FMV between affiliated members.² The corporation has 90 days to comply.

¹ Economic substance exists where transaction/s have both 1/+ reasonable business purposes AND economic effects, other than tax benefits. Reasonable business purposes and economic effects include any material benefit other than tax benefits that are not consistent with legislative intent. A showing that a transaction has economic effect beyond tax benefit may be satisfied by demonstrating material business activity of the entities involved. Centralized cash management of an affiliated

Research Division
O. Walker Reagan, Director
(919) 733-2578

House Bill 619

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- If the Secretary reviews the provided information and finds as fact that the intercompany transactions lack economic substance or were not at FMV, the Secretary may redetermine the State net income of the corporation by (i) adjusting the intercompany transactions to accurately reflect State net income or (ii) requiring the corporation to file a combined return for all members of its affiliated group conducting a unitary business.³ If either option is utilized, the Secretary must provide the corporation with a written statement containing details of the rationale supporting the findings of fact as to inaccurate reporting and as to the Secretary's proposed computational method of income.
- If the Secretary finds as fact that a combined return is required, the Secretary may give written notice and require the submission of a combined return within 90 days of the notice. The submission does not act as an admission of liability, and the Secretary or corporation may propose a combination of fewer members.
- In determining whether transactions between members of the affiliated group of entities are at FMV, the Secretary must apply the standards contained in Section 482 of the Code.
- If a combined return is require, the combined net income of the corporation and affiliated members must be apportioned in a way that fairly reflects the current apportionment formula applicable to the corporation and each included affiliated member in determining State income tax.
- Properly required returns not timely submitted result in penalties.
- A corporation may request in writing specific advice regarding whether a redetermination of net income or a combined return would be required under listed facts, and the Secretary may request additional information to fulfill the request. Advice must be provided within 120 days of receipt of the request. The Secretary may charge a fee for providing advice, which are credited to an account in the Department and do not revert to the GF. The fee must be between \$100 and \$5000 unless waived by the Secretary.
- The Secretary may extend the time limits contained in G.S. 105-130.5A, by mutual agreement.
- Appeals of the Secretary's determination are to OAH, with the ALJ reviewing, de novo, (i) whether the separate income tax returns fail to report State net income property due to transactions that lack economic substance or are not of FMV between affiliated members, (ii) whether the Department's determination of net income is appropriate to properly determine State-attributable corporate income, and (iii) where a combined return is required, whether adjustments other than requiring the combined return are adequate to redetermine State net income.

EFFECTIVE DATE: The act becomes effective January 1, 2012, and applies to proposed assessments for taxable years beginning on or after January 1, 2012.

group, alone, is not evidence of an absence of economic substance, and a financial accounting benefit is not a reasonable business purpose, alone, if the origin is a reduction of income tax.

² An affiliated group is 2/+ corporations or noncorporate entities in which more than 50% of the voting stock/ownership interest of each member is directly or indirectly owned or controlled by a common owner or owners, excluding (i) corporations not required to file a federal income tax return; (ii) certain insurance companies; (iii) 501 tax-exempt corporations; (iv) S corporations; (v) foreign corporations under section 7701 of the Code; (vi) a partnership, LLC, or other entity not taxed as a corporation; and (vii) a corporation with at least 80% of its gross income from all sources in the tax from active foreign business income.

³ This authority exists even if all members of the affiliated group are not doing business in the State.

House Bill 619

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H619-SMRB-109(e3) v3

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: June 17, 2011

TO: Rep. Stam, Rep. Howard, Rep. Starnes, Rep. Setzer

FROM: Barry Boardman, Jonathan Tart
Fiscal Research Division

RE: House Bill 619 as amended and passed by the Senate

FISCAL IMPACT					
	Yes ()	No (x)	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:	See assumptions and methodology				
EXPENDITURES:					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
EFFECTIVE DATE:	Effective January 1, 2012, and applies to assessments proposed for taxable years beginning on or after that date				

BILL SUMMARY: House Bill 619 as passed by the Senate includes four amendments. The amendments provide for the following:

- North Carolina corporate taxpayers that license intangible property from a related corporation can elect to have the affiliate file a return and pay tax based on its activity or add the deduction taken for royalty payments back in calculating its North Carolina taxable income. Under current law, the Department of Revenue conducts examinations of corporations filing under this royalty reporting option to ensure that the transactions have economic substance and that they are at arms-length. Amendment one negates the Department's authority to require these corporations to file a combined return or adjust their transactions when the Department concludes that the transactions between the affiliates lack economic substance or are not at arm's length.
- Amendment two provides that Sections 1 through 6 of the bill become effective for January 1, 2012, and that Sections 2 and 5 apply to assessments proposed for taxable years beginning on or after that date. The amendment also allows the Revenue Laws Study Committee to review the provisions enacted by House Bill 619 and to recommend to the General Assembly the extent to which the law should apply to pending assessments and requests for refund.
- Amendment three conforms the definition of a captive insurance company to provisions of the Internal Revenue Code
- Amendment four alters the reporting time periods for the Department and the taxpayer.

ASSUMPTIONS AND METHODOLOGY: House Bill 619 as amended only affects assessments for taxable years beginning on or after January 1, 2012. Therefore, any fiscal impact resulting from the amended bill is not estimated to impact this biennium.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None



North Carolina General Assembly
House Committee on Finance

Minutes

September 12, 2011

The House Committee on Finance met on Monday, September 12, 2011 at 12:30 pm in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chairs Lewis, McComas and Wainwright; and Representatives Brawley, Carney, Collins, Cotham, Faison, Hall, Jordan, Luebke, McCormick, McGee, Moffitt, Moore, Rhyne, Ross, Samuelson, Stone, Warren, Weiss and Womble. Also present were Sergeant-at-Arms John Brandon, Fred Hines, RL Carter, Young Bde and Jesse Hayes. The Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1**.

Chairperson Howard called the meeting to order at 12:50 pm and recognized the five (5) pages present: (1) Zachary Price of Mecklenburg County sponsored by Representative Moore; (2) William T. Rothwell of Halifax County sponsored by Representative Bryant; (3) Victoria Lambret of Harnett County sponsored by Representative Lewis; (4) Lorenzo Rothwell of Halifax County sponsored by Representative Bryant and (5) Elitza Koutceva of Orange County sponsored by Representative Stam.

Informational meeting regarding:

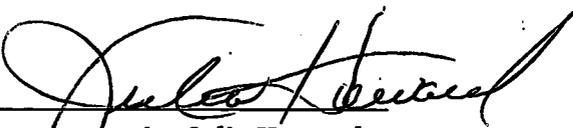
Summary of Proposed Technical Corrections to Session Law (HB619)

Recognized - Canaan Huie - Department of Revenue. Correction requested by Dept. of Revenue. HB619 placed some limitation on Secretary's authority to force combinations. It required the Secretary to make a finding in order to force the combination that inner company transactions either lacked economic substance or were not at fair market value. The department concluded the same authority to force a combination was the same authority to allow a combination, allowing a tax payer to continue to file combined return without the secretary having to make a finding that their inner company transactions lacked economic substance or were not at fair market value.

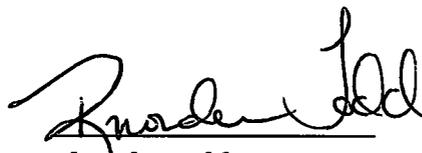
Chairman Julia Howard - The technical corrections will be incorporated into the conference report SB580. This request was made by Governor Perdue and Secretary David Hoyle.

There being no further business presently before the Committee, Chairperson Howard adjourned the meeting at 1:00 pm.

Respectfully submitted,



Representative Julia Howard
Presiding Senior Chair



Rhonda Todd
Clerk, House Committee on
Finance



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

August 31, 2011

The Honorable Phil Berger, President Pro Tempore
North Carolina Senate
16 W. Jones Street, Room 2008
Raleigh, NC 27601-2808

Dear President Pro Tempore Berger:

I am writing to ask you to consider the attached legislation during the special session beginning on September 12. This simple amendment to H 619 will provide clarity with respect to the Secretary's authority to allow a taxpayer to file a combined return with no unintended consequences. At the Governor's request, the staff at the Department of Revenue worked closely with representatives of the business community and the legislative staff to draft this amendment. I know of no opposition to this legislation and will support it throughout the legislative process. It should be enacted as soon as possible to provide clarity to taxpayers so that they may evaluate their options accordingly.

I appreciate your consideration of this matter and am happy to answer any questions you may have.

Sincerely,

David W. Hoyle
Secretary

DWH:jkm

c: Senator Bob Rucho
Representative Julia Howard

P.O. Box 871, Raleigh, North Carolina 27602-0871

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

BEVERLY EAVES PERDUE
GOVERNOR

September 8, 2011

The Honorable Thom Tillis
North Carolina House of Representatives
16 W. Jones Street, Room 2304
Raleigh, North Carolina 27601-1096

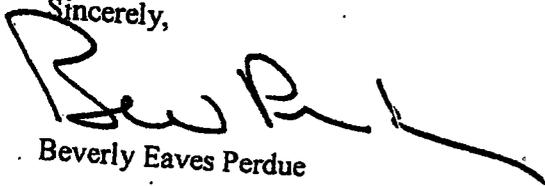
Dear Speaker Tillis:

Secretary of Revenue David Hoyle has provided you with proposed legislation that would clarify the Secretary's authority to allow a taxpayer to file a combined return.

I support the changes, and if the Secretary's proposed language is enacted during the General Assembly's reconvening on September 12, I intend to sign it into law.

Thank you for your consideration of this matter. Staff at the Department of Revenue will be happy to answer any questions you may have.

Sincerely,


Beverly Eaves Perdue

cc: Members of the North Carolina House of Representatives

Summary of Proposed Technical Corrections to Session Law 2011-390 (HB 619)

Following the enactment of Session Law 2011-390 ("Forced Combination Bill"), the North Carolina Department of Revenue expressed concern that approximately 130+ existing settlement agreements entered into with corporations during the 2009 Resolution Initiative may not be valid after 12/31/2011 because of the wording of those agreements and the changes to the Secretary of Revenue's authority to require corporations to file a combined tax return contained in Session Law 2011-390 that will be effective on that date. The Department also noted that, based on its interpretation of HB 619, the effective date of the repeal and modifications of the existing forced combination statutes G.S. 105-130.6, G.S. 105-130.15 and 105-130.16 should be changed to prevent a lapse of the Secretary's authority to require combined returns for taxable years prior to 1/1/12. The Governor and the Department have requested that the statutes be amended to address these concerns.

Section 1 – clarifies the Secretary's authority to enter into settlement agreements under the new statutory rules for requiring forced combinations by adding a paragraph to new statute 105-130.5A. The new paragraph allows "voluntary redeterminations" whereby the Secretary of Revenue and a corporation may jointly agree to a reasonable, alternative tax return filing methodology that accurately reports the corporation's state net income for taxable years beginning on or after 1/1/12 without a finding that intercompany transactions lack of economic substance or are not at fair market value.

Section 2 – clarifies that the existing statutes 105-130.6, 105-130.15, and 105-130.16 are of full force and effect for taxable years beginning prior to 1/1/12 and that the new statutory rules for forced combinations contained in 105-130.5A are effective for tax years beginning on or after 1/1/12.

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John Goodman	NC CHAMBER
Harry Reed	MWC
Thomas Moore	Edwin Moore
Elizabeth Robinson	NCRMA
Will Culpepper	NVA
Gary Harris	NCPOM
John Palumbo	NCAAA
Dy Hong	NCPOM
Paul Bone	Bone's Asso.
DANIEL BAUM	TROUTMAN SANDERS
Jaime King	NCEI
Andy Eller	NCRMA

DATES	9/12/11														
Rep. Johnathan Rhyné SAINÉ	F														
Rep. Deborah Ross	✓														
Rep. Ruth Samuelson	✓														
Rep. Paul Stam															
Rep. Mike Stone	✓														
Rep. Harry Warren															
Rep. Jennifer Weiss	✓														
Rep. Larry Womble	✓														

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Section 2 – clarifies that the existing statutes 105-130.6, 105-130.15, and 105-130.16 are of full force and effect for taxable years beginning prior to 1/1/12 and that the new statutory rules for forced combinations contained in 105-130.5A are effective for tax years beginning on or after 1/1/12.

Ernie Parker (Rep. Julia Howard)

From: Dianne Russell (House Legislative Assistants Director)
From: Monday, September 12, 2011 12:03 PM
To: Rep. Julia Howard
Subject: <NCGA> House Finance Committee Meeting Notice for Mon, 09-12-2011 at 12:30 pm

NORTH CAROLINA HOUSE OF REPRESENTATIVES

COMMITTEE MEETING NOTICE

AND

2011-2012 SESSION

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

DAY & DATE: Monday, September 12, 2011

TIME: 12:30 pm

LOCATION: 544 LOB

COMMENTS: Meeting is scheduled for 12:30 pm or following the first recess of the House session.

Respectfully,

Representative Howard, Chair

Representative Folwell, Chair

Representative Setzer, Chair

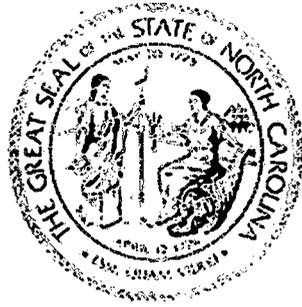
Representative Starnes, Chair

...ereby certify this notice was filed by the committee assistant at the following offices at
12 PM o'clock on September 12, 2011.

Principal Clerk

Reading Clerk – House Chamber

Dianne Russell (Committee Assistant)



HOUSE COMMITTEE ON FINANCE

2012 Short Session

Book 1 of 1

Representative Julia C. Howard, Senior Chair

Andrew Henson, Committee Assistant

NOTE

Due to Andrew Henson leaving his role as House Finance Committee Clerk before the preparation of this committee book, these documents were prepared by Neal Inman, Summer Intern for Rep. Howard's Office for the 2012 Short Session. Some documents prepared by Andrew Henson were unable to be located. If any assistance is needed, please contact Rep. Howard's Office, the House Legislative Assistants' Office, or the House Principal Clerk's Office.

HOUSE FINANCE COMMITTEE 2012 SHORT SESSION

MEMBERSHIP LIST

Rep. Julia C. Howard, Senior Chair

Rep. Edgar Starnes, Co-Chair

Rep. Mitchell Setzer, Co-Chair

Rep. Dale Folwell, Co-Chair

Rep. David Lewis, Vice Chair

Rep. Danny McComas, Vice-Chair

Rep. William Wainwright, Vice Chair

Rep. Kelly Alexander

Rep. Marcus Brandon

Rep. Bill Brawley

Rep. Becky Carney

Rep. Jeff Collins

Rep. Tricia Cotham

Rep. Bill Faison

Rep. Joe hackney

Rep. Larry Hall

Rep. Dewey Hill

Rep. Jonathan Jordan

Rep. Paul Luebke

Rep. Darrell McCormick

Rep. William McGee

Rep. Frank McGuirt

Rep. Tim Moffitt

Rep. Tim Moore

Rep. Deborah Ross

Rep. Jason Saine

Rep. Ruth Samuelson

Rep. Paul Stam

Rep. Mike Stone

Rep. Harry Warren

Rep. Jennifer Weiss

Rep. Larry Womble



North Carolina General Assembly
House Committee on Finance

Minutes

May 23, 2012

The House Committee on Finance met on Wednesday, May 23, 2012, at 9:00 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Folwell, Setzer and Lewis; Vice-Chairs McComas and Wainwright; and Representatives K. Alexander, Brawley, Carney, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, T. Moore, Ross, Saine, Samuelson, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, Jesse Hayes and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Starnes called the meeting to order and recognized Representative Howard to present **HB 1028, A BILL TO BE ENTITLED AN ACT TO REQUIRE THE NORTH CAROLINA APPRAISAL BOARD TO REPORT THE RECORDS OF APPRAISAL MANAGEMENT COMPANIES TO THE NORTH CAROLINA DEPARTMENT OF REVENUE**. By motion of Representative McGee, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Weiss moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

The next matter of business was **HB 1015, A BILL TO BE ENTITLED AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEE, THE ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE, AND THE INSURANCE REGULATORY CHARGE**. Representative Howard explained the bill. An explanation was given regarding the fiscal note attached to the bill. Representative McGee moved for a favorable report. Motion passed.

There being no further business presently before the Committee, the meeting adjourned at 9:36 am.

Rep. Edgar Starnes, Presiding Chair


Andrew Henson, Committee Clerk

VISITOR REGISTRATION SHEET

House Finance Committee

May 23, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frasier	MF+S
Barbara Condon	BBCLR
KAREN RAY	NCMA
Paul Vogler	Improm Inc.
Bill Lowe	NC Justice Center
Mary Beth Wick	NC AFL-CIO
Sam Ober	TDC
JOE LANIER	NELSON MULLINS
Angy Ellen	NCPA
Allison Waller	Nelson Mullins
Daniel Amburn	NCRMA

VISITOR REGISTRATION SHEET

House Finance Committee

May 23, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
David McKeown	NCAR
DAVID Barnes	PS
Ben Schaubert	NCSBA
Flatten Robinson	NORMA
Michelle Hicks, OPE@GOD	Eastern Band of Cherokee Indians
John Tucker	Moore & Van Allen
Joe McClees	McClees Consult
Lumie Crowe	JDA
Ashleigh Thornton	MWC

VISITOR REGISTRATION SHEET

House Finance Committee

May 23, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Solari	DSJ
Eric Waynes	NCDOR
Mitch Leonard	SEANC
Katherine Joyce	NCASA
Patience Wale	NCASA
Burt Asaico	NCDOI
Matt Wilcox	Civitas
Kerry Hankin	Duce
Ashley Hilliard	House Intern
Susanna Hailey	K&L Gates
Jan Taylor	NCBID

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1028*

Short Title: Appraisal Mgmt Co Reported to Dept of Revenue. (Public)

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

Referred to: Finance.

May 22, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE NORTH CAROLINA APPRAISAL BOARD TO REPORT
3 THE RECORDS OF APPRAISAL MANAGEMENT COMPANIES TO THE NORTH
4 CAROLINA DEPARTMENT OF REVENUE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 93E-2-9 is amended by adding the following new subsection to
7 read:

8 "§ 93E-2-9. Records.

9 (a) The Board shall maintain a list of all applicants for registration under this Article
10 that includes for each applicant the date of application, the name and primary business location
11 of the applicant, and whether the registration was granted or refused.

12 (b) The Board shall maintain a current roster showing the names and places of business
13 of all registered appraisal management companies that lists the appraisal management
14 companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of
15 the Board; (ii) contain information regarding all orders or other action taken against the
16 company, its officers, and other persons; and (iii) be open to public inspection.

17 (b1) The Board shall report annually to the Department of Revenue the following
18 information about registered appraisal management companies:

19 (1) Name and name used to do business in the State.

20 (2) Main address of company.

21 (3) Name and address of agent for service of process in the State if not
22 domiciled in the State.

23 (4) Legal structure, such as domestic corporation, foreign corporation, domestic
24 partnership, or foreign partnership.

25 (5) Employer identification number or social security number.

26 (6) Secretary of State identification number if required.

27 (c) Every registered appraisal management company shall maintain the accounts,
28 correspondence, memoranda, papers, books, and other records related to services provided by
29 the appraisal management company as prescribed in rules adopted by the Board, including in
30 electronic form. All records shall be preserved for five years unless the Board, by rule,
31 prescribes otherwise for particular types of records.

32 (d) If the information contained in any document filed with the Board is or becomes
33 inaccurate or incomplete in any material respect, the appraisal management company shall
34 promptly file a correcting amendment to the information contained in the document."



* H 1 0 2 8 - V - 1 *

1 **SECTION 2.** Section 1 of this act becomes effective December 1, 2012. The
2 remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 1028*
Committee Substitute Favorable 5/23/12

Short Title: Appraisal Mgmt Co Reported to Dept of Revenue.

(Public)

Sponsors:

Referred to:

May 22, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA APPRAISAL BOARD TO REPORT
THE RECORDS OF APPRAISAL MANAGEMENT COMPANIES TO THE NORTH
CAROLINA DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93E-2-9 is amended by adding the following new subsection to
read:

"§ 93E-2-9. Records.

(a) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, and whether the registration was granted or refused.

(b) The Board shall maintain a current roster showing the names and places of business of all registered appraisal management companies that lists the appraisal management companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of the Board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

(b1) The Board shall report annually by December 31 to the Department of Revenue the following information about registered appraisal management companies:

(1) Name and name used to do business in the State.

(2) Main address of company.

(3) Name and address of agent for service of process in the State if not domiciled in the State.

(4) Legal structure, such as domestic corporation, foreign corporation, domestic partnership, or foreign partnership.

(5) Employer identification number or social security number.

(6) Secretary of State identification number if required.

(c) Every registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company as prescribed in rules adopted by the Board, including in electronic form. All records shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular types of records.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document."

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





North Carolina General Assembly
House Committee on Finance

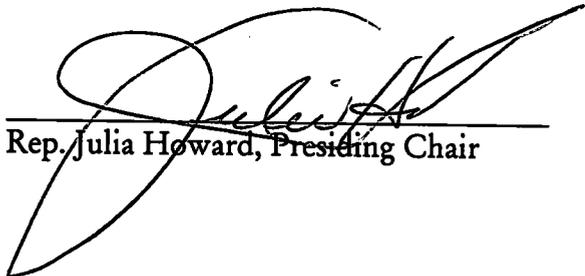
Minutes

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May 24, 2012

The House Committee on Finance met on Thursday, May 24, 2012, at 9:00 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chairs McComas, Lewis and Wainwright; and Representatives K. Alexander, Brandon, Carney, Collins, Cotham, Hackney, Hall, Hill, Jordan, McCormick, McGee, McGuirt, Moffitt, Ross, Saine, Stam, Stone, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, and Jesse Hayes. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Howard called the meeting to order and recognized Representative Stam to present **HB 947, A BILL TO BE ENTITLED AN ACT TO PROVIDE MONETARY COMPENSATION TO PERSONS ASEXUALIZED OR STERILIZED UNDER THE AUTHORITY OF THE EUGENICS BOARD OF NORTH CAROLINA**. By motion of Representative Stam, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Ross moved for a favorable report to the committee substitute, unfavorable to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on APPROPRIATIONS. Motion passed.

There being no further business presently before the Committee, the meeting adjourned at 9:50 am.


Rep. Julia Howard, Presiding Chair


Andrew Henson, Committee Clerk

AGENDA
House Finance Committee

Thursday, May 24, 2012
Room 544 LOB
9:00 a.m.
Chaired by: Representative Julia Howard

Call to Order

Introduction of Pages

Bills:

HB 947 Eugenics Compensation Program
Representatives Womble, Tillis, Parmon, and Stam

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: MAY 24, 2012 Room: 544

*Name: Matt Gilgo

County: Pender

Sponsor: Carolyn Justice

*Name: Anderson Moore

County: Ashe

Sponsor: Jordan

*Name: Caycee Justus

County: Henderson

Sponsor: Tim Moffitt

*Name: Cody Justus

County: Henderson

Sponsor: Moffitt

*Name: Hunter Martin

County: Orange

Sponsor: Insko

Name: Elliott Grant

County: Durham

Sponsor: Micex

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: _____

2. Name: JOHN BRANDON

5. Name: _____

Name: JESSE HAYES

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance Committee

May ²⁴~~23~~, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Michael Hedgpeth	LOB
Fran Lawrence	DST
Tony Solari	DST
Estherine Davis	E Davis & Assoc
Chuck Allen	US AIRWAYS
Sarah Koontz	State Archives - DCR
Cory Dunn	Disability Rights NC
Hope Chodwick	Rep Jordan LG
Whitney Christensen	NCRLA
Kathy Hawkes	Duke Energy

2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 947 A BILL TO BE ENTITLED AN ACT TO PROVIDE MONETARY COMPENSATION TO PERSONS ASEXUALIZED OR STERILIZED UNDER THE AUTHORITY OF THE EUGENICS BOARD OF NORTH CAROLINA.

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

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 947*

Short Title: Eugenics Compensation Program. (Public)

Sponsors: Representatives Womble, Tillis, Parmon, and Stam (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary, if favorable, Finance, if favorable, Appropriations.

May 16, 2012

A BILL TO BE ENTITLED

AN ACT TO PROVIDE MONETARY COMPENSATION TO PERSONS ASEXUALIZED
OR STERILIZED UNDER THE AUTHORITY OF THE EUGENICS BOARD OF
NORTH CAROLINA.

Whereas, it is the policy and intent of this State to provide compensation for certain individuals who were lawfully asexualized or sterilized under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937; and

Whereas, the General Assembly recognizes that the State has no legal liability for these asexualization or sterilization procedures and that any applicable statutes of limitations have long since expired for the filing of any claims against the State for injuries caused; and

Whereas, the General Assembly wishes to make restitution for injustices suffered and unreasonable hardships endured by the asexualization or sterilization of individuals at the direction of the State between 1933 and 1974; and

Whereas, the General Assembly intends that compensation paid under this act shall not be subject to State or federal income taxation nor considered for eligibility purposes for State or federal public assistance; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 30. Eugenics Asexualization and Sterilization Compensation Program.

"§ 143B-426.50. Definitions.

As used in this Part, the following definitions apply:

- (1) Claimant. – An individual on whose behalf a claim is made for compensation as a qualified recipient under this Part.
- (2) Commission. – The North Carolina Industrial Commission.
- (3) Office. – The Office of Justice for Sterilization Victims.
- (4) Qualified recipient. – An individual who was asexualized or sterilized under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937, and who was living on March 1, 2010.

"§ 143B-426.51. Compensation payments.

(a) A claimant determined to be a qualified recipient under this Part shall receive compensation in the amount of fifty thousand dollars (\$50,000) from funds appropriated to the Department of State Treasurer for these purposes.



* H 9 4 7 - V - 1 *

1 (b) A qualified recipient may assign compensation received pursuant to subsection (a)
2 of this section to a trust established for the benefit of the qualified recipient.

3 **"§ 143B-426.52. Claims for compensation for asexualization or sterilization.**

4 (a) An individual shall be entitled to compensation as provided for in this Part if a claim
5 is submitted on behalf of that individual in accordance with this Part on or before December 31,
6 2015, and that individual is subsequently determined by a preponderance of the evidence to be
7 a qualified recipient.

8 (b) A claim under this section shall be submitted to the Office. The claim shall be in a
9 form, and supported by appropriate documentation and information, as required by the
10 Commission. A claim may be submitted on behalf of a claimant by a person lawfully
11 authorized to act on the individual's behalf. A claim may be submitted by the personal
12 representative of an individual who dies on or after March 1, 2010. The Office shall file the
13 submitted claim to the Commission.

14 (c) The Commission shall determine the eligibility of a claimant to receive the
15 compensation authorized by this Part in accordance with G.S. 143B-426.53. The Commission
16 shall notify the claimant in writing of the Commission's determination regarding the claimant's
17 eligibility.

18 (d) The Commission shall adopt rules for the determination of eligibility and the
19 processing of claims.

20 **"§ 143B-426.53. Industrial Commission determination.**

21 (a) The Commission shall determine whether a claimant is eligible for compensation as
22 a qualified recipient under this Part. The Commission shall have all powers and authority
23 granted under Article 31 of Chapter 143 of the General Statutes with regard to claims filed
24 pursuant to this Part.

25 (b) A deputy commissioner shall be assigned by the Commission to make initial
26 determinations of eligibility for compensation under this Part. The deputy commissioner shall
27 review the claim and supporting documentation submitted on behalf of a claimant and shall
28 make a determination of eligibility. If the claim is not approved, the deputy commissioner shall
29 set forth in writing the reasons for the disapproval and notify the claimant.

30 (c) A claimant whose claim is not approved under subsection (b) of this section may
31 submit to the Commission additional documentation in support of the individual's claim and
32 request a redetermination by the deputy commissioner.

33 (d) A claimant whose claim is not approved under subsection (b) or (c) of this section
34 shall have the right to request a hearing before the deputy commissioner. The hearing shall be
35 conducted in accordance with rules of the Commission. For claimants who are residents of this
36 State, at the request of the claimant, the hearing shall be held in the county of residence of the
37 claimant. For claimants who are not residents of this State, the hearing shall be held at a
38 location determined by the deputy commissioner. The claimant shall have the right to be
39 represented, including the right to be represented by counsel, present evidence, and call
40 witnesses. The deputy commissioner who hears the claim shall issue a written decision of
41 eligibility which shall be sent to the claimant.

42 (e) Upon the issuance of a decision by the deputy commissioner under subsection (d) of
43 this section, the claimant may file notice of appeal with the Commission within 30 days of the
44 date notice of the deputy commissioner's decision is given. Such appeal shall be heard by the
45 Commission, sitting as the full Commission, on the basis of the record in the matter and upon
46 oral argument. The full Commission may amend, set aside, or strike out the decision of the
47 deputy commissioner and may issue its own findings of fact, conclusions of law, and decision.
48 The Commission shall notify all parties concerned in writing of its decision.

49 (f) A claimant may appeal the decision of the full Commission to the Court of Appeals
50 within 30 days of the date notice of the decision of the full Commission is given. Appeals under

1 this section shall be in accordance with the procedures set forth in G.S. 143-293 and
2 G.S. 143-294.

3 (g) If at any stage of the proceedings the claimant is determined to be a qualified
4 recipient, the Commission shall give notice to the claimant and to the Office of the State
5 Treasurer, and the State Treasurer shall make payment of compensation to the qualified
6 recipient.

7 (h) Costs under this section shall be taxed to the State.

8 **"§ 143B-426.54. Office of Justice for Sterilization Victims.**

9 (a) There is created in the Department of Administration the Office of Justice for
10 Sterilization Victims.

11 (b) At the request of a claimant or a claimant's legal representative, the Office shall
12 assist an individual who may be a qualified recipient to determine whether the individual
13 qualifies for compensation under this Part. The Office may assist an individual filing a claim
14 under this Part and collect documentation in support of the claim. With the claimant's consent,
15 the Office may represent and advocate for the claimant before the Commission, and may assist
16 the claimant with any good faith further appeal of an adverse decision on a claim.

17 (c) The Office shall plan and implement an outreach program to attempt to notify
18 individuals who may be possible qualified recipients.

19 **"§ 143B-426.55. Confidentiality.**

20 Records of all inquiries of eligibility, claims, and payments under this Part shall be
21 confidential and not public records under Chapter 132 of the General Statutes.

22 **"§ 143B-426.56. Compensation excluded as income, resources, or assets.**

23 (a) Any payment made under this section is not subject to income tax as provided in
24 G.S. 105-134.6(b)(23), nor to be considered income or assets for purposes of determining the
25 eligibility for, or the amount of, any benefits or assistance under any State or local program
26 financed in whole or in part with State funds.

27 (b) Pursuant to G.S. 108A-26.1, the Department of Health and Human Services shall do
28 the following:

29 (1) Provide income, resource, and asset disregard to an applicant for or recipient
30 of public assistance who receives compensation under this Part. The amount
31 of the income, resource, and asset disregard shall be equal to the total
32 compensation paid to the individual from the Eugenics Sterilization
33 Compensation Fund.

34 (2) Provide resource protection by reducing any subsequent recovery by the
35 State under G.S. 108A-70.5 from a deceased recipient's estate for payment of
36 Medicaid-paid services by the amount of resource disregard given under
37 subdivision (1) of this subsection.

38 (3) Adopt rules to implement the provisions of subdivisions (1) and (2) of this
39 subsection.

40 **"§ 143B-426.57. Limitation of liability.**

41 Nothing in this Part shall revive or extend any statute of limitations that may otherwise
42 have expired prior to July 1, 2012. The State's liability arising from any cause of action related
43 to any asexualization or sterilization performed pursuant to an order of the Eugenics Board of
44 North Carolina shall be limited to the compensation authorized by this Part."

45 SECTION 2. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

46 "(23) The amount paid to the taxpayer during the taxable year from the Eugenics
47 Sterilization Compensation Fund in the Office of the State Treasurer as
48 compensation to a qualified recipient under the Eugenics Asexualization and
49 Sterilization Compensation Program under Part 30 of Article 9 of Chapter
50 143B of the General Statutes."

1 SECTION 3. Part 1 of Article 2 of Chapter 108A of the General Statutes is
2 amended by adding a new section to read:

3 **"§ 108A-26.1. Exclude compensation from the Eugenics Sterilization Compensation Fund**
4 **from income, resources, and assets for public assistance programs.**

5 With regard to compensation received pursuant to Part 30 of Article 9 of Chapter 143B of
6 the General Statutes, the provisions of G.S. 143B-426.56(b) shall apply to the Department."

7 SECTION 4. G.S. 132-1.23 reads as rewritten:

8 **"§ 132-1.23. Eugenics program records.**

9 (a) Records in the custody of the State, including those in the custody of the North
10 Carolina Office of Justice for Sterilization Foundation Victims, concerning the North Carolina
11 Eugenics Board of North Carolina's program are confidential and are not public records to the
12 extent they concern records, including the records identifying (i) persons-individuals impacted
13 by the program, (ii) persons-individuals, or their guardians or authorized agents-agents,
14 inquiring about the impact of the program on them-the individuals, or (iii) persons-persons, or
15 their guardians or authorized agents-agents, inquiring about the potential impact of the program
16 on others.

17 (b) Notwithstanding subsection (a) of this section, a person-an individual impacted by
18 the program may obtain that person's individual records under the program, and a guardian or
19 authorized agent of that person may also obtain them-program, or a guardian or authorized
20 agent of that individual, may obtain that individual's records under the program upon execution
21 of a proper release authorization.

22 (c) Notwithstanding subsections (a) and (b) of this section, minutes or reports of the
23 Eugenics Board of North Carolina, for which identifying information of the individuals
24 impacted by the program have been redacted, may be released to any person. As used in this
25 subsection, "identifying information" shall include the name, street address, birth day and
26 month, and any other information the State believes may lead to the identity of any individual
27 impacted by the program, or of any relative of an individual impacted by the program."

28 SECTION 5. There is established the Eugenics Sterilization Compensation Fund in
29 the Office of the State Treasurer. Compensation authorized under Part 30 of Article 9 of
30 Chapter 143B of the General Statutes shall be paid from this Fund. Funds appropriated to this
31 Fund shall not revert until all claims timely filed with the Industrial Commission under Part 30
32 of Article 9 of Chapter 143B of the General Statutes have been finally adjudicated and all
33 qualified recipients who timely submit claims are paid. The Fund is subject to the oversight of
34 the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

35 SECTION 6. The Department of Health and Human Services shall submit to the
36 Centers for Medicare and Medicaid Services by July 1, 2012, a State Plan Amendment for the
37 Medical Assistance Program and a State Plan Amendment for the Children's Health Insurance
38 Program to allow for income, resource, and asset disregard for compensation payments under
39 Part 30 of Article 9 of Chapter 143B of the General Statutes, the Eugenics Asexualization and
40 Sterilization Compensation Program, as enacted by Section 1 of this act.

41 SECTION 7. Of the funds appropriated for the 2012-2013 fiscal year to the
42 Department of the State Treasurer, the sum of ten million dollars (\$10,000,000) shall be used to
43 fund the Eugenics Sterilization Compensation Fund established under Section 5 of this act.

44 SECTION 8. Of the funds appropriated for the 2012-2013 fiscal year to the
45 Industrial Commission, the sum of one hundred eighty-four thousand dollars (\$184,000) shall
46 be used for the administration of Section 1 of this act.

47 SECTION 9. Of the funds appropriated for the 2012-2013 fiscal year to the
48 Department of Administration, the sum of six hundred fifty-four thousand dollars (\$654,000)
49 shall be used for the expenses of the Office of Justice for Sterilization Victims as set forth in
50 Section 1 of this act.

1 **SECTION 10.** The Department of Cultural Resources shall electronically scan and
2 index records of index cards and minutes of the Eugenics Board of North Carolina. The
3 Department of Administration, with the assistance of the Department of Cultural Resources,
4 shall establish an electronic searchable database of records of the Eugenics Board of North
5 Carolina, which shall be made available for the purpose of assisting in the identification of
6 claimants who may be qualified recipients under this act. Of the funds appropriated for the
7 2012-2013 fiscal year to the Department of Cultural Resources, the sum of fifty-seven thousand
8 dollars (\$57,000) shall be used for the electronic scanning and indexing of documents. Of the
9 funds appropriated for the 2012-2013 fiscal year to the Department of Administration, the sum
10 of one hundred fifty-five thousand dollars (\$155,000) shall be used for the creation and
11 maintenance of the database established under this section.

12 **SECTION 11.** It is the intent of this General Assembly that, to the extent the funds
13 appropriated by this act are insufficient to pay compensation to all qualified recipients under
14 this act, any future General Assembly will appropriate sufficient funds to compensate all
15 qualified recipients.

16 **SECTION 12.** Sections 6 and 12 of this act are effective when this act becomes
17 law. The remainder of this act becomes effective July 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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D

HOUSE BILL 947*
PROPOSED COMMITTEE SUBSTITUTE H947-PCS80352-TM-23

Short Title: Eugenics Compensation Program.

(Public)

Sponsors:

Referred to:

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO PROVIDE MONETARY COMPENSATION TO PERSONS ASEXUALIZED
OR STERILIZED UNDER THE AUTHORITY OF THE EUGENICS BOARD OF
NORTH CAROLINA.

Whereas, it is the policy and intent of this State to provide compensation for certain individuals who were lawfully asexualized or sterilized under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937; and

Whereas, the General Assembly recognizes that the State has no legal liability for these asexualization or sterilization procedures and that any applicable statutes of limitations have long since expired for the filing of any claims against the State for injuries caused; and

Whereas, the General Assembly wishes to make restitution for injustices suffered and unreasonable hardships endured by the asexualization or sterilization of individuals at the direction of the State between 1933 and 1974; and

Whereas, the General Assembly intends that compensation paid under this act shall not be subject to State or federal income taxation nor considered for eligibility purposes for State or federal public assistance; Now, therefore,
The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 30. Eugenics Asexualization and Sterilization Compensation Program.

"§ 143B-426.50. Definitions.

As used in this Part, the following definitions apply:

- (1) Claimant. – An individual on whose behalf a claim is made for compensation as a qualified recipient under this Part.
- (2) Commission. – The North Carolina Industrial Commission.
- (3) Office. – The Office of Justice for Sterilization Victims.
- (4) Qualified recipient. – An individual who was asexualized or sterilized under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937, and who was living on March 1, 2010.

"§ 143B-426.51. Compensation payments.



1 (a) A claimant determined to be a qualified recipient under this Part shall receive
2 lump-sum compensation in the amount of fifty thousand dollars (\$50,000) from funds
3 appropriated to the Department of State Treasurer for these purposes.

4 (b) A qualified recipient may assign compensation received pursuant to subsection (a)
5 of this section to a trust established for the benefit of the qualified recipient.

6 **"§ 143B-426.52. Claims for compensation for asexualization or sterilization.**

7 (a) An individual shall be entitled to compensation as provided for in this Part if a claim
8 is submitted on behalf of that individual in accordance with this Part on or before December 31,
9 2015, and that individual is subsequently determined by a preponderance of the evidence to be
10 a qualified recipient.

11 (b) A claim under this section shall be submitted to the Office. The claim shall be in a
12 form, and supported by appropriate documentation and information, as required by the
13 Commission. A claim may be submitted on behalf of a claimant by a person lawfully
14 authorized to act on the individual's behalf. A claim may be submitted by the personal
15 representative of an individual who dies on or after March 1, 2010. The Office shall file the
16 submitted claim to the Commission.

17 (c) The Commission shall determine the eligibility of a claimant to receive the
18 compensation authorized by this Part in accordance with G.S. 143B-426.53. The Commission
19 shall notify the claimant in writing of the Commission's determination regarding the claimant's
20 eligibility.

21 (d) The Commission shall adopt rules for the determination of eligibility and the
22 processing of claims.

23 **"§ 143B-426.53. Industrial Commission determination.**

24 (a) The Commission shall determine whether a claimant is eligible for compensation as
25 a qualified recipient under this Part. The Commission shall have all powers and authority
26 granted under Article 31 of Chapter 143 of the General Statutes with regard to claims filed
27 pursuant to this Part.

28 (b) A deputy commissioner shall be assigned by the Commission to make initial
29 determinations of eligibility for compensation under this Part. The deputy commissioner shall
30 review the claim and supporting documentation submitted on behalf of a claimant and shall
31 make a determination of eligibility. If the claim is not approved, the deputy commissioner shall
32 set forth in writing the reasons for the disapproval and notify the claimant.

33 (c) A claimant whose claim is not approved under subsection (b) of this section may
34 submit to the Commission additional documentation in support of the individual's claim and
35 request a redetermination by the deputy commissioner.

36 (d) A claimant whose claim is not approved under subsection (b) or (c) of this section
37 shall have the right to request a hearing before the deputy commissioner. The hearing shall be
38 conducted in accordance with rules of the Commission. For claimants who are residents of this
39 State, at the request of the claimant, the hearing shall be held in the county of residence of the
40 claimant. For claimants who are not residents of this State, the hearing shall be held in Wake
41 County at a location determined by the deputy commissioner. The claimant shall have the right
42 to be represented, including the right to be represented by counsel, present evidence, and call
43 witnesses. The deputy commissioner who hears the claim shall issue a written decision of
44 eligibility which shall be sent to the claimant.

45 (e) Upon the issuance of a decision by the deputy commissioner under subsection (d) of
46 this section, the claimant may file notice of appeal with the Commission within 30 days of the
47 date notice of the deputy commissioner's decision is given. Such appeal shall be heard by the
48 Commission, sitting as the full Commission, on the basis of the record in the matter and upon
49 oral argument. The full Commission may amend, set aside, or strike out the decision of the
50 deputy commissioner and may issue its own findings of fact, conclusions of law, and decision.
51 The Commission shall notify all parties concerned in writing of its decision.

1 (f) A claimant may appeal the decision of the full Commission to the Court of Appeals
2 within 30 days of the date notice of the decision of the full Commission is given. Appeals under
3 this section shall be in accordance with the procedures set forth in G.S. 143-293 and
4 G.S. 143-294.

5 (g) If at any stage of the proceedings the claimant is determined to be a qualified
6 recipient, the Commission shall give notice to the claimant and to the Office of the State
7 Treasurer, and the State Treasurer shall make payment of compensation to the qualified
8 recipient, a trust specified under G.S. 143B-426.51(b), or the estate of a qualified recipient, as
9 applicable.

10 (h) Decisions and determinations by the Commission favorable to the claimant shall be
11 final and not subject to appeal by the State.

12 (i) Costs under this section shall be taxed to the State.

13 **"§ 143B-426.54. Office of Justice for Sterilization Victims.**

14 (a) There is created in the Department of Administration the Office of Justice for
15 Sterilization Victims.

16 (b) At the request of a claimant or a claimant's legal representative, the Office shall
17 assist an individual who may be a qualified recipient to determine whether the individual
18 qualifies for compensation under this Part. The Office may assist an individual filing a claim
19 under this Part and collect documentation in support of the claim. With the claimant's consent,
20 the Office may represent and advocate for the claimant before the Commission, and may assist
21 the claimant with any good faith further appeal of an adverse decision on a claim.

22 (c) The Office shall plan and implement an outreach program to attempt to notify
23 individuals who may be possible qualified recipients.

24 **"§ 143B-426.55. Confidentiality.**

25 Records of all inquiries of eligibility, claims, and payments under this Part shall be
26 confidential and not public records under Chapter 132 of the General Statutes.

27 **"§ 143B-426.56. Compensation excluded as income, resources, or assets.**

28 (a) Any payment made under this section is not subject to income tax as provided in
29 G.S. 105-134.6(b)(23), nor to be considered income or assets for purposes of determining the
30 eligibility for, or the amount of, any benefits or assistance under any State or local program
31 financed in whole or in part with State funds.

32 (b) Pursuant to G.S. 108A-26.1, the Department of Health and Human Services shall do
33 the following:

34 (1) Provide income, resource, and asset disregard to an applicant for or recipient
35 of public assistance who receives compensation under this Part. The amount
36 of the income, resource, and asset disregard shall be equal to the total
37 compensation paid to the individual from the Eugenics Sterilization
38 Compensation Fund.

39 (2) Provide resource protection by reducing any subsequent recovery by the
40 State under G.S. 108A-70.5 from a deceased recipient's estate for payment of
41 Medicaid-paid services by the amount of resource disregard given under
42 subdivision (1) of this subsection.

43 (3) Adopt rules to implement the provisions of subdivisions (1) and (2) of this
44 subsection.

45 **"§ 143B-426.57. Limitation of liability.**

46 Nothing in this Part shall revive or extend any statute of limitations that may otherwise
47 have expired prior to July 1, 2012. The State's liability arising from any cause of action related
48 to any asexualization or sterilization performed pursuant to an order of the Eugenics Board of
49 North Carolina shall be limited to the compensation authorized by this Part."

50 **SECTION 2.** G.S. 105-134.6(b) is amended by adding a new subdivision to read:

1 "(23) The amount paid to the taxpayer during the taxable year from the Eugenics
2 Sterilization Compensation Fund in the Office of the State Treasurer as
3 compensation to a qualified recipient under the Eugenics Asexualization and
4 Sterilization Compensation Program under Part 30 of Article 9 of Chapter
5 143B of the General Statutes."

6 **SECTION 3.** Part 1 of Article 2 of Chapter 108A of the General Statutes is
7 amended by adding a new section to read:

8 **"§ 108A-26.1. Exclude compensation from the Eugenics Sterilization Compensation Fund**
9 **from income, resources, and assets for public assistance programs.**

10 With regard to compensation received pursuant to Part 30 of Article 9 of Chapter 143B of
11 the General Statutes, the provisions of G.S. 143B-426.56(b) shall apply to the Department."

12 **SECTION 4.** G.S. 132-1.23 reads as rewritten:

13 **"§ 132-1.23. Eugenics program records.**

14 (a) Records in the custody of the State, including those in the custody of the North
15 Carolina Office of Justice for Sterilization Foundation Victims, concerning the North Carolina
16 Eugenics Board of North Carolina's program are confidential and are not public records to the
17 extent they concern records, including the records identifying (i) persons—individuals impacted
18 by the program, (ii) persons—individuals, or their guardians or authorized agents—agents,
19 inquiring about the impact of the program on them, the individuals, or (iii) persons—persons, or
20 their guardians or authorized agents—agents, inquiring about the potential impact of the program
21 on others.

22 (b) Notwithstanding subsection (a) of this section, a person—an individual impacted by
23 the program may obtain that person's individual records under the program, and a guardian or
24 authorized agent of that person may also obtain them program, or a guardian or authorized
25 agent of that individual, may obtain that individual's records under the program upon execution
26 of a proper release authorization.

27 (c) Notwithstanding subsections (a) and (b) of this section, minutes or reports of the
28 Eugenics Board of North Carolina, for which identifying information of the individuals
29 impacted by the program have been redacted, may be released to any person. As used in this
30 subsection, "identifying information" shall include the name, street address, birth day and
31 month, and any other information the State believes may lead to the identity of any individual
32 impacted by the program, or of any relative of an individual impacted by the program."

33 **SECTION 5.** There is established the Eugenics Sterilization Compensation Fund in
34 the Office of the State Treasurer. Compensation authorized under Part 30 of Article 9 of
35 Chapter 143B of the General Statutes shall be paid from this Fund. Funds appropriated to this
36 Fund shall not revert until all claims timely filed with the Industrial Commission under Part 30
37 of Article 9 of Chapter 143B of the General Statutes have been finally adjudicated and all
38 qualified recipients who timely submit claims are paid. The Fund is subject to the oversight of
39 the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

40 **SECTION 6.** The Department of Health and Human Services shall submit to the
41 Centers for Medicare and Medicaid Services by July 1, 2012, a State Plan Amendment for the
42 Medical Assistance Program and a State Plan Amendment for the Children's Health Insurance
43 Program to allow for income, resource, and asset disregard for compensation payments under
44 Part 30 of Article 9 of Chapter 143B of the General Statutes, the Eugenics Asexualization and
45 Sterilization Compensation Program, as enacted by Section 1 of this act.

46 **SECTION 7.** Of the funds appropriated for the 2012-2013 fiscal year to the
47 Eugenics Reserve Fund, the sum of ten million dollars (\$10,000,000) shall be transferred to the
48 Eugenics Sterilization Compensation Fund established under Section 5 of this act.

49 **SECTION 8.** Of the funds appropriated for the 2012-2013 fiscal year to the
50 Eugenics Reserve Fund, the sum of one hundred eighty-four thousand dollars (\$184,000) shall
51 be transferred to the Industrial Commission for the administration of Section 1 of this act.

1 **SECTION 9.** Of the funds appropriated for the 2012-2013 fiscal year to the
2 Eugenics Reserve Fund, the sum of six hundred fifty-four thousand dollars (\$654,000) shall be
3 transferred to the Department of Administration for the expenses of the Office of Justice for
4 Sterilization Victims as set forth in Section 1 of this act.

5 **SECTION 10.** The Department of Cultural Resources shall electronically scan and
6 index records of index cards and minutes of the Eugenics Board of North Carolina. The
7 Department of Administration, with the assistance of the Department of Cultural Resources,
8 shall establish an electronic searchable database of records of the Eugenics Board of North
9 Carolina, which shall be made available for the purpose of assisting in the identification of
10 claimants who may be qualified recipients under this act. Of the funds appropriated for the
11 2012-2013 fiscal year to the Eugenics Reserve Fund, the sum of fifty-seven thousand dollars
12 (\$57,000) shall be transferred to the Department of Cultural Resources for the electronic
13 scanning and indexing of documents. Of the funds appropriated for the 2012-2013 fiscal year to
14 the Eugenics Reserve Fund, the sum of one hundred fifty-five thousand dollars (\$155,000) shall
15 be transferred to the Department of Administration for the creation and maintenance of the
16 database established under this section.

17 **SECTION 11.** It is the intent of this General Assembly that, to the extent the funds
18 appropriated by this act are insufficient to pay compensation to all qualified recipients under
19 this act, any future General Assembly will appropriate sufficient funds to compensate all
20 qualified recipients.

21 **SECTION 12.** Section 2 of this act is effective for taxes imposed for taxable years
22 beginning on or after January 1, 2012. Sections 6 and 12 of this act are effective when this act
23 becomes law. The remainder of this act becomes effective July 1, 2012.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 947-CSTM-23

DATE 5/24/12

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

(Rep.)
Sen.) Starnes

1 moves to amend the bill on page 1, line 31

2 () WHICH CHANGES THE TITLE

3 by by deleting the words "March 1, 2010." and
4 substituting the words "the date the claim
5 was filed." ;

7 and on page 2, lines 14-15, by rewriting
8 the lines to read:

9 "authorized to act on the individual's behalf.
10 The office shall file the"

SIGNED E. Starnes

ADOPTED _____ FAILED TABLED _____

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Finance

DATE: 5-

Room: 544

*Name: David Bradley

Jonathan Wolff

County: Wilson

Mecklenburg

Sponsor: Wainwright

Tillis

*Name: Stephanie Stevenson

County: Nash

Sponsor: Briant

*Name: Caroline Barmick

Brewick

County: Sampson

Sponsor: Brisson

*Name: Aysha Williams-Polite

A-sha

County: Forsyth

Sponsor: Parmon

*Name: Alston Bourne

County: Edgecombe

Sponsor: Tolson

House Sgt-At Arms:

1. Name: Fred Hines

4. Name: Carl Marullo

2. Name: Jesse Hays

5. Name: _____

3. Name: John Brandon

6. Name: _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

380,000 m
* Ross
* (Narrow) ←
D

H March 1, 2010
2 people
→

HOUSE BILL 947*

PROPOSED COMMITTEE SUBSTITUTE H947-CSTM-23 [v.2]

5/23/2012 6:28:03 PM

Short Title: Eugenics Compensation Program.

2015

* Ross

(Public)

Sponsors:

Referred to:

1974

May 17, 2012

1231-15

One
Pending
Amendment

()

()

A BILL TO BE ENTITLED

AN ACT TO PROVIDE MONETARY COMPENSATION TO PERSONS ASEXUALIZED OR STERILIZED UNDER THE AUTHORITY OF THE EUGENICS BOARD OF NORTH CAROLINA.

Whereas, it is the policy and intent of this State to provide compensation for certain individuals who were lawfully asexualized or sterilized under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937; and

Whereas, the General Assembly recognizes that the State has no legal liability for these asexualization or sterilization procedures and that any applicable statutes of limitations have long since expired for the filing of any claims against the State for injuries caused; and

Whereas, the General Assembly wishes to make restitution for injustices suffered and unreasonable hardships endured by the asexualization or sterilization of individuals at the direction of the State between 1933 and 1974; and

Whereas, the General Assembly intends that compensation paid under this act shall not be subject to State or federal income taxation nor considered for eligibility purposes for State or federal public assistance; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 30. Eugenics Asexualization and Sterilization Compensation Program.

§ 143B-426.50. Definitions.

As used in this Part, the following definitions apply:

(1) Claimant. – An individual on whose behalf a claim is made for compensation as a qualified recipient under this Part.

(2) Commission. – The North Carolina Industrial Commission.

(3) Office. – The Office of Justice for Sterilization Victims.

(4) Qualified recipient. – An individual who was asexualized or sterilized under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937, and who was living on March 1, 2010.

§ 143B-426.51. Compensation payments.

147 m
Sections
7 m - 3 yr

Jane



1 (a) A claimant determined to be a qualified recipient under this Part shall receive lump-
2 sum compensation in the amount of fifty thousand dollars (\$50,000) from funds appropriated to
3 the Department of State Treasurer for these purposes.

4 (b) A qualified recipient may assign compensation received pursuant to subsection (a)
5 of this section to a trust established for the benefit of the qualified recipient.

6 **"§ 143B-426.52. Claims for compensation for asexualization or sterilization.**

7 (a) An individual shall be entitled to compensation as provided for in this Part if a claim
8 is submitted on behalf of that individual in accordance with this Part on or before December 31,
9 2015, and that individual is subsequently determined by a preponderance of the evidence to be
10 a qualified recipient.

11 (b) A claim under this section shall be submitted to the Office. The claim shall be in a
12 form, and supported by appropriate documentation and information, as required by the
13 Commission. A claim may be submitted on behalf of a claimant by a person lawfully
14 authorized to act on the individual's behalf. A claim may be submitted by the personal
15 representative of an individual who dies on or after March 1, 2010. The Office shall file the
16 submitted claim to the Commission.

17 (c) The Commission shall determine the eligibility of a claimant to receive the
18 compensation authorized by this Part in accordance with G.S. 143B-426.53. The Commission
19 shall notify the claimant in writing of the Commission's determination regarding the claimant's
20 eligibility.

21 (d) The Commission shall adopt rules for the determination of eligibility and the
22 processing of claims.

23 **"§ 143B-426.53. Industrial Commission determination.**

24 (a) The Commission shall determine whether a claimant is eligible for compensation as
25 a qualified recipient under this Part. The Commission shall have all powers and authority
26 granted under Article 31 of Chapter 143 of the General Statutes with regard to claims filed
27 pursuant to this Part.

28 (b) A deputy commissioner shall be assigned by the Commission to make initial
29 determinations of eligibility for compensation under this Part. The deputy commissioner shall
30 review the claim and supporting documentation submitted on behalf of a claimant and shall
31 make a determination of eligibility. If the claim is not approved, the deputy commissioner shall
32 set forth in writing the reasons for the disapproval and notify the claimant.

33 (c) A claimant whose claim is not approved under subsection (b) of this section may
34 submit to the Commission additional documentation in support of the individual's claim and
35 request a redetermination by the deputy commissioner.

36 (d) A claimant whose claim is not approved under subsection (b) or (c) of this section
37 shall have the right to request a hearing before the deputy commissioner. The hearing shall be
38 conducted in accordance with rules of the Commission. For claimants who are residents of this
39 State, at the request of the claimant, the hearing shall be held in the county of residence of the
40 claimant. For claimants who are not residents of this State, the hearing shall be held in Wake
41 County at a location determined by the deputy commissioner. The claimant shall have the right
42 to be represented, including the right to be represented by counsel, present evidence, and call
43 witnesses. The deputy commissioner who hears the claim shall issue a written decision of
44 eligibility which shall be sent to the claimant.

45 (e) Upon the issuance of a decision by the deputy commissioner under subsection (d) of
46 this section, the claimant may file notice of appeal with the Commission within 30 days of the
47 date notice of the deputy commissioner's decision is given. Such appeal shall be heard by the
48 Commission, sitting as the full Commission, on the basis of the record in the matter and upon
49 oral argument. The full Commission may amend, set aside, or strike out the decision of the
50 deputy commissioner and may issue its own findings of fact, conclusions of law, and decision.
51 The Commission shall notify all parties concerned in writing of its decision.

1 (f) A claimant may appeal the decision of the full Commission to the Court of Appeals
2 within 30 days of the date notice of the decision of the full Commission is given. Appeals under
3 this section shall be in accordance with the procedures set forth in G.S. 143-293 and
4 G.S. 143-294.

5 (g) If at any stage of the proceedings the claimant is determined to be a qualified
6 recipient, the Commission shall give notice to the claimant and to the Office of the State
7 Treasurer, and the State Treasurer shall make payment of compensation to the qualified
8 recipient, a trust specified under G.S. 143B-426.51(b), or the estate of a qualified recipient, as
9 applicable.

10 (h) Decisions and determinations by the Commission favorable to the claimant shall be
11 final and not subject to appeal by the State.

12 (i) Costs under this section shall be taxed to the State.

13 **"§ 143B-426.54. Office of Justice for Sterilization Victims.**

14 (a) There is created in the Department of Administration the Office of Justice for
15 Sterilization Victims.

16 (b) At the request of a claimant or a claimant's legal representative, the Office shall
17 assist an individual who may be a qualified recipient to determine whether the individual
18 qualifies for compensation under this Part. The Office may assist an individual filing a claim
19 under this Part and collect documentation in support of the claim. With the claimant's consent,
20 the Office may represent and advocate for the claimant before the Commission, and may assist
21 the claimant with any good faith further appeal of an adverse decision on a claim.

22 (c) The Office shall plan and implement an outreach program to attempt to notify
23 individuals who may be possible qualified recipients.

24 **"§ 143B-426.55. Confidentiality.**

25 Records of all inquiries of eligibility, claims, and payments under this Part shall be
26 confidential and not public records under Chapter 132 of the General Statutes.

27 **"§ 143B-426.56. Compensation excluded as income, resources, or assets.**

28 (a) Any payment made under this section is not subject to income tax as provided in
29 G.S. 105-134.6(b)(23), nor to be considered income or assets for purposes of determining the
30 eligibility for, or the amount of, any benefits or assistance under any State or local program
31 financed in whole or in part with State funds.

32 (b) Pursuant to G.S. 108A-26.1, the Department of Health and Human Services shall do
33 the following:

34 (1) Provide income, resource, and asset disregard to an applicant for or recipient
35 of public assistance who receives compensation under this Part. The amount
36 of the income, resource, and asset disregard shall be equal to the total
37 compensation paid to the individual from the Eugenics Sterilization
38 Compensation Fund.

39 (2) Provide resource protection by reducing any subsequent recovery by the
40 State under G.S. 108A-70.5 from a deceased recipient's estate for payment of
41 Medicaid-paid services by the amount of resource disregard given under
42 subdivision (1) of this subsection.

43 (3) Adopt rules to implement the provisions of subdivisions (1) and (2) of this
44 subsection.

45 **"§ 143B-426.57. Limitation of liability.**

46 Nothing in this Part shall revive or extend any statute of limitations that may otherwise
47 have expired prior to July 1, 2012. The State's liability arising from any cause of action related
48 to any asexualization or sterilization performed pursuant to an order of the Eugenics Board of
49 North Carolina shall be limited to the compensation authorized by this Part."

50 **SECTION 2.** G.S. 105-134.6(b) is amended by adding a new subdivision to read:

1 "(23) The amount paid to the taxpayer during the taxable year from the Eugenics
2 Sterilization Compensation Fund in the Office of the State Treasurer as
3 compensation to a qualified recipient under the Eugenics Asexualization and
4 Sterilization Compensation Program under Part 30 of Article 9 of Chapter
5 143B of the General Statutes."

6 SECTION 3. Part 1 of Article 2 of Chapter 108A of the General Statutes is
7 amended by adding a new section to read:

8 "**§ 108A-26.1. Exclude compensation from the Eugenics Sterilization Compensation Fund**
9 **from income, resources, and assets for public assistance programs.**

10 With regard to compensation received pursuant to Part 30 of Article 9 of Chapter 143B of
11 the General Statutes, the provisions of G.S. 143B-426.56(b) shall apply to the Department."

12 SECTION 4. G.S. 132-1.23 reads as rewritten:

13 "**§ 132-1.23. Eugenics program records.**

14 (a) Records in the custody of the State, including those in the custody of the North
15 Carolina Office of Justice for Sterilization Foundation Victims, concerning the North-Carolina
16 Eugenics Board of North Carolina's program are confidential and are not public records to the
17 extent they concern records, including the records identifying (i) persons-individuals impacted
18 by the program, (ii) persons-individuals, or their guardians or authorized agents-agents,
19 inquiring about the impact of the program on them, the individuals, or (iii) persons-persons, or
20 their guardians or authorized agents-agents, inquiring about the potential impact of the program
21 on others.

22 (b) Notwithstanding subsection (a) of this section, a person-an individual impacted by
23 the program may obtain that person's individual records under the program, and a guardian or
24 authorized agent of that person may also obtain them program, or a guardian or authorized
25 agent of that individual, may obtain that individual's records under the program upon execution
26 of a proper release authorization.

27 (c) Notwithstanding subsections (a) and (b) of this section, minutes or reports of the
28 Eugenics Board of North Carolina, for which identifying information of the individuals
29 impacted by the program have been redacted, may be released to any person. As used in this
30 subsection, "identifying information" shall include the name, street address, birth day and
31 month, and any other information the State believes may lead to the identity of any individual
32 impacted by the program, or of any relative of an individual impacted by the program."

33 SECTION 5. There is established the Eugenics Sterilization Compensation Fund in
34 the Office of the State Treasurer. Compensation authorized under Part 30 of Article 9 of
35 Chapter 143B of the General Statutes shall be paid from this Fund. Funds appropriated to this
36 Fund shall not revert until all claims timely filed with the Industrial Commission under Part 30
37 of Article 9 of Chapter 143B of the General Statutes have been finally adjudicated and all
38 qualified recipients who timely submit claims are paid. The Fund is subject to the oversight of
39 the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

40 SECTION 6. The Department of Health and Human Services shall submit to the
41 Centers for Medicare and Medicaid Services by July 1, 2012, a State Plan Amendment for the
42 Medical Assistance Program and a State Plan Amendment for the Children's Health Insurance
43 Program to allow for income, resource, and asset disregard for compensation payments under
44 Part 30 of Article 9 of Chapter 143B of the General Statutes, the Eugenics Asexualization and
45 Sterilization Compensation Program, as enacted by Section 1 of this act.

46 SECTION 7. Of the funds appropriated for the 2012-2013 fiscal year to the
47 Eugenics Reserve Fund, the sum of ten million dollars (\$10,000,000) shall be transferred to the
48 Eugenics Sterilization Compensation Fund established under Section 5 of this act.

49 SECTION 8. Of the funds appropriated for the 2012-2013 fiscal year to the
50 Eugenics Reserve Fund, the sum of one hundred eighty-four thousand dollars (\$184,000) shall
51 be transferred to the Industrial Commission for the administration of Section 1 of this act.

1 **SECTION 9.** Of the funds appropriated for the 2012-2013 fiscal year to the
2 Eugenics Reserve Fund, the sum of six hundred fifty-four thousand dollars (\$654,000) shall be
3 transferred to the Department of Administration for the expenses of the Office of Justice for
4 Sterilization Victims as set forth in Section 1 of this act.

5 **SECTION 10.** The Department of Cultural Resources shall electronically scan and
6 index records of index cards and minutes of the Eugenics Board of North Carolina. The
7 Department of Administration, with the assistance of the Department of Cultural Resources,
8 shall establish an electronic searchable database of records of the Eugenics Board of North
9 Carolina, which shall be made available for the purpose of assisting in the identification of
10 claimants who may be qualified recipients under this act. Of the funds appropriated for the
11 2012-2013 fiscal year to the Eugenics Reserve Fund, the sum of fifty-seven thousand dollars
12 (\$57,000) shall be transferred to the Department of Cultural Resources for the electronic
13 scanning and indexing of documents. Of the funds appropriated for the 2012-2013 fiscal year to
14 the Eugenics Reserve Fund, the sum of one hundred fifty-five thousand dollars (\$155,000) shall
15 be transferred to the Department of Administration for the creation and maintenance of the
16 database established under this section.

17 **SECTION 11.** It is the intent of this General Assembly that, to the extent the funds
18 appropriated by this act are insufficient to pay compensation to all qualified recipients under
19 this act, any future General Assembly will appropriate sufficient funds to compensate all
20 qualified recipients.

21 **SECTION 12.** Section 2 of this act is effective for taxes imposed for taxable years
22 beginning on or after January 1, 2012. Sections 6 and 12 of this act are effective when this act
23 becomes law. The remainder of this act becomes effective July 1, 2012.



HOUSE BILL 947: Eugenics Compensation Program

2011-2012 General Assembly

Committee:	House Finance	Date:	May 24, 2012
Introduced by:	Reps. Womble, Tillis, Parmon, Stam	Prepared by:	Greg Roney
Analysis of:	PCS to First Edition H947-CSTM-23		Committee Counsel

SUMMARY: *House Bill 947 would provide \$50,000 in compensation to individuals who were asexualized or sterilized under the authority of the Eugenics Board of North Carolina.*

The finance component of House Bill 947 is Section 2. Section 2 allows a State individual income tax deduction for the compensation.

The Proposed Committee Substitute makes 6 technical changes to House Bill 947 as follows: (1) the effective date for Section 2 that creates the State tax deduction is tax years beginning on or after 1/1/12; (2) the source of the funds transferred in Sections 7-10 is the Eugenics Reserve Fund; (3) the compensation is specified to be a lump-sum payment; (4) the hearing location for out-of-State claimants is Wake County; (5) the State Treasurer is authorized to pay compensation to the recipient, a trust specified under G.S. 143B-426.51(b), or the recipient's estate; and (6) determinations favorable to the claimant are not subject to appeal by the State.

As introduced, House Bill 947 was identical to S800.

BACKGROUND: Beginning in 1919, the General Assembly authorized the asexualization and sterilization of certain inmates or patients of State institutions. Involuntary sterilization was ruled permissible under the U.S. Constitution in 1929.¹ In 1933, the General Assembly created and authorized the Eugenics Board of North Carolina ("Board") to order sterilization of a "mentally diseased, feeble-minded, or epileptic" individual when such procedure was considered to be in the best interest of the mental, moral, or physical improvement of the individual or for the public good, or if the individual would be likely to procreate a child who would have a tendency to serious physical, mental, or nervous disease or deficiency. The Board ordered the asexualization or sterilization of an estimated 7,600 individuals between 1933 and 1974. In 1974, the General Assembly transferred the authority to order such sterilization proceedings to the courts. North Carolina's involuntary sterilization laws were repealed in 2003.

BILL ANALYSIS: House Bill 947 would establish a program to provide compensation in the amount of \$50,000 to individuals asexualized or sterilized by order of the Board between 1933 and 1974, and to provide a process for determining who is entitled to that compensation.

SECTION 1 of the bill defines eligibility for compensation, sets the amount of compensation, establishes the process and procedure for the filing and determining of claims of eligibility for compensation, provides appeal rights, creates an advocacy office for sterilization victims, addresses records privacy, and prescribes the effects of compensation awards for purposes of eligibility for public assistance and taxation.

G.S. 143B-426.50 sets out the definitions applicable in this Part. "Qualified recipient" is defined as an individual entitled to compensation who proves he or she (1) was asexualized or sterilized (2) pursuant to an order of the Board between 1933 and 1974, and (3) was alive as of March 1, 2010.

¹ *Buck v. Bell*, 274 U.S. 200 (1927).

House Bill 947

Page 2

G.S. 143B-426.51 sets a lump sum compensation award of \$50,000 per qualified recipient. It allows compensation to be assigned to a trust for the recipient's benefit.

G.S. 143B-426.52 sets the deadline for filing a claim as December 31, 2015. Claims are submitted to the Office of Justice for Sterilization Victims ("Office"), which in turn files the claims with the Industrial Commission ("Commission"). The Commission is required to make rules for processing claims, make eligibility determinations, and notify claimants.

G.S. 143B-426.53 sets out the authority and process for the Commission to make eligibility determinations. This process provides for a determination on the application by a deputy commissioner, gives an unsuccessful claimant the right to a redetermination, a hearing, and a review on the record by the full Commission. Appeals by the claimant from the Commission are to the Court of Appeals.

G.S. 143B-426.54 creates an Office of Justice for Sterilization Victims in the Department of Administration. (DOA) to assist in the filing of claims, serve as victim advocate, provide legal assistance to victims when necessary, and implement a public outreach program to potential qualified recipients.

G.S. 143B-426.55 provides that records relating to eligibility, claims, and payments under the Program are confidential and are not public records.

G.S. 143B-426.56 excludes compensation payments from the State income tax and from being considered income or assets for purposes of eligibility for public assistance programs. DHHS is specifically directed to provide income, resource and asset disregard and protection to individuals who apply for or receive public assistance under State-controlled programs.

G.S. 143B-426.57 makes clear that no applicable statute of limitations is revived or extended by this law, and that the State's liability is limited to the \$50,000 compensation award.

SECTIONS 2 AND 3 of the bill make conforming changes exempting compensation payments from the State income tax laws and the public assistance laws. ✓

SECTION 4 makes conforming changes to the current public record law that exempts certain records of the Eugenics Board from public records by permitting the release of minutes or reports of the Eugenics Board if identifying information is redacted.

SECTION 5 establishes the Eugenics Sterilization Compensation Fund in the Office of the State Treasurer to pay compensation awards.

SECTION 6 directs the Department of Health and Human Services to submit State Plan Amendments by July 1, 2012, to the federal Centers for Medicare and Medicaid Services for income, resource and asset disregard for compensation payments. *Wake County*

SECTION 7 directs the Office of the State Treasurer to use \$10 million in 2012-13 appropriated funds for the payment of compensation.

SECTION 8 directs the Industrial Commission to use \$184,000 in 2012-13 appropriated funds to administer the Program.

SECTION 9 directs DOA to use \$654,000 of 2012-13 appropriated funds for expenses of the Office.

SECTION 10 directs the Department of Cultural Resources to use \$57,000 of 2012-13 appropriated funds to scan and index Eugenics Board records, and to work with DOA to create an electronic searchable database of the records. DOA is directed to use \$155,000 of 2012-13 appropriated funds for the database creation and maintenance.

SECTION 11 states the intent of the General Assembly that, if appropriations are insufficient to pay all qualified claims, future General Assemblies will appropriate adequate funds to compensate all qualified recipients.

House Bill 947

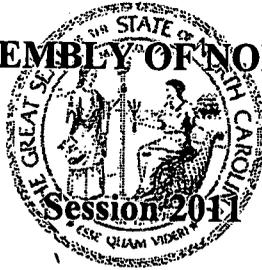
Page 3

EFFECTIVE DATE: Section 2 is effective for taxes imposed for taxable years beginning on or after January 1, 2012.. Sections 6 and 12 are effective when the act becomes law. The remainder becomes effective July 1, 2012.

Walker Reagan and Janice Paul, of the Research Division, substantially contributed to this summary.

H947-SMTM-65(CSTM-23) v3

GENERAL ASSEMBLY OF NORTH CAROLINA



Warren
Bond
ROSS

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 24, 2012

TO: House Finance Committee

FROM: Rodney Bizzell, Mark Bondo, Chloe Gossage, Kristin Walker
Fiscal Research Division

nm opp.

RE: PCS H947-CSTM-23 [v.2]

		FISCAL IMPACT				
		Yes (x)	No ()	No Estimate Available ()		
		<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
REVENUES						
EXPENDITURES						
Dept. of Cultural Resources	\$57,000					
Industrial Comm.	\$184,000	199,116	106,570	112,809	118,316	
Dept. of Admin.	\$809,000	354,111	375,741	396,635	415,205	
State Treasurer	See Potential Qualified Recipients: Top of Page 3					
POSITIONS/ FTE (cumulative):						
Industrial Commission	2	2	1	1	1	
Dept. of Admin.	5 ✓	5 ✓	5 ✓	5 ✓	5 ✓	
Dept. of Cultural Res.	1					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Administration; Department of Cultural Resources; Industrial Commission; State Treasurer, Court of Appeals						

1933
74 *7 Bond*

f 150,000

EFFECTIVE DATE: Section 1: January 1, 2012. Section 6 and 12: When the Bill becomes law.
Remaining Sections: July 1, 2012.

BILL SUMMARY:

House Bill 947 would establish a program to provide compensation in the amount of \$50,000 to individuals asexualized or sterilized by order of the Board between 1933 and 1974, and to provide a process for determining who is entitled to that compensation.

SECTION 1 of the bill defines eligibility for compensation, sets the amount of compensation, establishes the process and procedure for the filing and determining of claims of eligibility for compensation, provides appeal rights, creates an advocacy office for sterilization victims, addresses records privacy, and prescribes the effects of compensation awards for purposes of eligibility for public assistance and taxation.

SECTIONS 2 AND 3 of the bill make conforming changes exempting compensation payments from the State income tax laws and the public assistance laws.

SECTION 4 makes conforming changes to the current public record law that exempts certain records of the Eugenics Board from public records by permitting the release of minutes or reports of the Eugenics Board if identifying information is redacted.

SECTION 5 establishes the Eugenics Sterilization Compensation Fund in the Office of the State Treasurer to pay compensation awards.

SECTION 6 directs the Department of Health and Human Services to submit State Plan Amendments by July 1, 2012, to the federal Centers for Medicare and Medicaid Services for income, resource and asset disregard for compensation payments.

SECTION 7 directs that \$10 million in funds appropriated to the Eugenics Reserve Fund be transferred to the Office of the State Treasurer in 2012-13 for the payment of compensation.

SECTION 8 directs that \$184,000 in funds appropriated to the Eugenics Reserve Fund be transferred to the Industrial Commission in 2012-13 to administer the Program.

SECTION 9 directs that \$654,000 in funds appropriated to the Eugenics Reserve Fund be transferred to DOA in 2012-13 for expenses of the Office.

SECTION 10 directs that \$57,000 in funds appropriated to the Eugenics Reserve Fund be transferred to the Department of Cultural Resources in 2012-13 to scan and index Eugenics Board records, and to work with DOA to create an electronic searchable database of the records. This section also directs that \$155,000 in funds appropriated to the Eugenics Reserve Fund be transferred to DOA in 2012-13 for the database creation and maintenance.

SECTION 11 states the intent of the General Assembly that, if appropriations are insufficient to pay all qualified claims, future General Assemblies will appropriate adequate funds to compensate all qualified recipients.

Sections 6 and 12 are effective when the act becomes law. The remainder becomes effective July 1, 2012.

[Source: Legislative Research Division]

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2000
100M

ASSUMPTIONS AND METHODOLOGY:

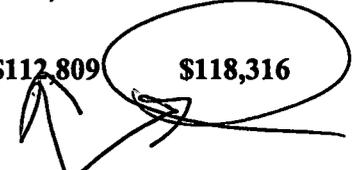
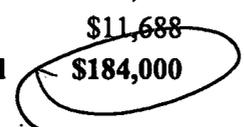
Potential Qualified Recipients: Section 1 awards qualified recipients, as defined in the bill, compensation of \$50,000. Section 5 of this bill creates a Eugenics Sterilization Compensation Fund within the Office of the State Treasurer to distribute compensation.

The NC Justice for Sterilization Victims Foundation received an estimate from the State Center for Health Statistics that there could potentially be 2,994 individuals alive in 2010 who would be eligible for compensation. While the individuals must file by December 31, 2015, it is unknown how many of these individuals will file a claim to receive compensation in a given year and when they will be determined an eligible qualified recipient. It is expected that it will take some portion of time to set up the process for outreach, advocacy, and determination required by the Bill. Currently, the Foundation reports that 132 claims have been filed and have deemed valid by their review. Thus, a low estimate for the first year of operations would be \$6,600,000. Should all of the estimated 2,994 qualified recipients apply for the State could expend a total of \$149,700,000 over the analyzed time period.

Section 1

Section 1 directs that the Industrial Commission will make determinations as to eligibility to receive the funds. The bill directs that a Deputy Commissioner will make the determination and hold hearings if requested by a denied claimant. Additionally, the full Commission is to hear appeals if they are made by the claimant. Fiscal Research estimates that one new full-time Commissioner is needed in the first year, with one administrative assistant. It is unknown how many claims, both valid and unsubstantiated will be made; however, the Commission will have to review all of them to make determinations. In their experience thus far, the NC Justice for Sterilization Victims Foundation has received four unsubstantiated claims for each one that is validated. It is estimated that one Deputy Commissioner could review at least 3,000 claims per year. It is estimated that the first two years will be the busiest, with the number of claims declining in subsequent years. Thus, the Deputy Commissioner position and the administrative assistant position is reduced to 0.5 FTE in years 3 and thereafter. Costs, including inflationary increases, are estimated as follows:

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Deputy Commissioner	\$95,000	\$102,353	\$54,544	\$57,806	\$60,684
Administrative Assistant	\$31,622	\$34,070	\$19,277	\$20,429	\$21,447
Retirement	\$18,120	\$27,822	\$13,990	\$14,827	\$15,565
Social Security	\$9,687	\$18,560	\$9,333	\$9,891	\$10,384
Health Insurance	\$10,384	\$11,188	\$5,534	\$5,865	\$6,157
Travel	\$2,500	\$1,281	\$1,319	\$1,352	\$1,382
Operating Costs R	\$5,000	\$3,843	\$2,574	\$2,639	\$2,697
Operating Costs NR	\$11,688				
Total	\$184,000	\$199,116	\$106,570	\$112,809	\$118,316



Funds for FY 2012-13 are transferred to the Industrial Commission from the Eugenics Reserve Fund in section 8 of the bill.

Furthermore, Section 1 directs that the Department of Administration (DOA) establish an Office for Justice of Sterilization Victims. The Office will assist claimants, or their legal representatives, in filing claims for compensation. The Office will also help determine if a claimant is qualified for compensation. If needed, the Office will provide legal representation for claimants as required. The Office is also directed to perform outreach efforts to notify and identify potential claimants. There is currently a director of the NC Justice for Sterilization Victims Foundation within the DOA. The Foundation was established by Executive Order and funded by the General Assembly in S.L. 2009-451 with a non-recurring, non-reverting appropriation of \$250,000. It is estimated that the director will continue to staff the Office. In addition, there will be additional staff of an Attorney II to assist in legal representation and assistance for the claimants and office. Two Advocacy Specialists will be required to assist potential claimants and review claims. An administrative assistant will also be required to assist the office. The Office will perform outreach functions as required by the Bill and it is estimated that \$300,000, non-recurring, will be required for this function.

Section 10 also directs the Department of Administration (DOA) to create an electronic database of Eugenics Board records. DOA is directed to use \$155,000 of the funds transferred from the reserve for this purpose. DOA anticipates that they will use contractual or temporary personnel to design and maintain the database using existing software programs, and to oversee data collection and entry. DOA also estimates that they will require six graduate student interns for three months to collect and enter the data. Expenses would include contractual or temporary employees, software and other related operating costs, and computer equipment. It is anticipated that the database will be completed within FY 2012-13. Beyond FY 2012-13, DOA may incur some ongoing expenses for temporary or contractual services in order to maintain the database, but it is expected that the Department can absorb these with funds available.

Costs, including inflationary increases, are estimated as follows:

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Director (1)	\$58,701	\$63,244	\$67,406	\$71,437	\$74,994
Attorney II (1)	\$63,695	\$68,408	\$72,910	\$77,270	\$81,118
Advocacy Specialist II (2)	\$82,346	\$82,346	\$82,346	\$82,346	\$82,346
Administrative Assistant (1)	\$31,622	\$34,070	\$36,311	\$38,483	\$40,399
Ret/SS	\$42,924	\$42,924	\$42,924	\$42,924	\$42,924
Health Insurance	\$24,650	\$24,650	\$24,650	\$24,650	\$24,650
Travel	\$14,531	\$14,531	\$14,531	\$14,531	\$14,531
Operating Cost (R)	\$12,535	\$12,535	\$12,535	\$12,535	\$12,535
Operating Cost (NR)	\$22,600				
Outreach	\$300,000				
Database	\$155,000				
Total	\$808,604	\$342,708	\$353,613	\$364,175	\$373,497

Funds for FY 2012-13 are transferred to the Department of Administration from the Eugenics Reserve Fund in section 9 and 10 of the bill.

Section 1 allows claimants to appeal a determination from the Industrial Commission to the Court of Appeals within thirty days. Fiscal Research estimates that there will not be a noticeable impact on the Court of Appeals and any appeals can be handled with available resources.

Section 2 also provides that compensation provided under this bill is not subject to State income tax. This is to be clarifying in nature and does not create a fiscal impact.

Sections 7, 8, and 9

These sections transfer funds from the Eugenics Reserve Fund to the appropriate Departments where the funds will be expended.

Section 10

Section 10 directs the Department of Cultural Resources (DCR) to electronically scan and index the Eugenics Board index cards and minutes. DCR has already scanned these documents, but has not yet indexed them. DCR anticipates that one new, time-limited position would be required for one year (FY 2012-13) to index these records. The \$57,000 in transferred funds that DCR is directed to spend for this purpose would be sufficient to hire one additional Archives & Records Professional, including salary (\$35,996), benefits, and associated position start-up and operating costs. DCR would utilize existing staff to coordinate with DOA on the creation of an electronic database. Details are as follows:

	FTE	FY 2012-13
Archives and Records Professional	1	\$35,996
Ret/SS		\$7,905
Health		\$5,192
Employee Admin Cost (R)		\$2,507
Employee Admin Cost (NR)		\$5,400
Total	1	\$57,000

SOURCES OF DATA: Department of Cultural Resources, State Center for Health Statistics, Department of Administration.

TECHNICAL CONSIDERATIONS: None



North Carolina General Assembly
House Committee on Finance

Minutes

May 30, 2012

The House Committee on Finance met on Wednesday, May 30, 2012, at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Folwell, Starnes and Setzer; Vice-Chair McComas; and Representatives K. Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, T. Moore, Ross, Saine, Stone, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, Jesse Hayes and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Setzer called the meeting to order and recognized Representative Howard to present **HB 1025, A BILL TO BE ENTITLED AN ACT TO EXTEND THE SUNSET OF CERTAIN TAX PROVISIONS**. By motion of Howard, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Ross moved to amend the bill and the amendment was adopted. Representative Starnes moved for a favorable report to the committee substitute, which changes the title, unfavorable to the original bill. Motion passed.

The next matter of business was **HB 142, A BILL TO BE ENTITLED AN ACT TO MAKE A TECHNICAL CORRECTION TO THE INDUSTRIAL FACILITIES SALES TAX REFUND**. By motion of Howard, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Stam moved to amend the bill and the amendment was adopted. Representative Starnes moved for a favorable report to the committee substitute, which changes the title, unfavorable to the original bill. Motion passed.

There being no further business presently before the Committee, the meeting adjourned at 9:36 am.


Rep. Mitchell Setzer, Presiding Chair


Andrew Henson, Committee Clerk

HOUSE FINANCE AGENDA
Wednesday, May 30, 2012 at 8:30 am
Chair: Rep. Setzer

Bill #	Short Title	Sponsor	Materials and Explanation	Staff	Comments
H1025	Extend Tax Provisions	Howard	<input type="checkbox"/> Summary <input type="checkbox"/> Fiscal Note	Heather Jonathan	
H 142	Tech Corr: Eligibility of Indust. Facilities > Econ. Devpt. & Finance Changes	Moore	<input type="checkbox"/> PCS <input type="checkbox"/> Summary <input type="checkbox"/> Fiscal Note	Trina Sandra	

****Bills to be referred to Occupancy Tax Sub-Committee Chaired by Rep. McGee**
 HB 991 Jackson Co. Occupancy Tax Changes
 HB 1087 Fontana Dam Occupancy Tax

HOUSE FINANCE AGENDA

Wednesday, May 30, 2012 at 8:30 am

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****Bills to be referred to Occupancy Tax Sub-Committee Chaired by Rep. McGee**

HB 991 Jackson Co. Occupancy Tax Changes

HB 1087 Fontana Dam Occupancy Tax

Tech. Amend - Julia Howard
 - PCS -
 Adopt

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 647 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE CREATION OF
MUTUAL INSURANCE HOLDING COMPANIES AND TO CHANGE THE TIME PERIOD FOR
FIRE CODE INSPECTIONS OF PUBLIC BUILDINGS.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute # 2 for

HB 1052 A BILL TO BE ENTITLED AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS LIEN, TAX LIEN, AND PAYMENT BOND LAWS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S MECHANICS LIENS ON REAL PROPERTY COMMITTEE.

With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1025*

Short Title: Extend Tax Provisions.

(Public)

Sponsors: Representatives Howard and Starnes (Primary Sponsors).

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

Referred to: Finance.

May 22, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE SUNSET OF CERTAIN TAX PROVISIONS, AS PROPOSED
3 BY THE REVENUE LAWS STUDY COMMITTEE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Section 2 of S.L. 2009-505 reads as rewritten:

6 "SECTION 2. This act is effective when it becomes law and expires ~~July 1, 2012.~~ July 1,
7 2013."

8 SECTION 2. G.S. 105-129.16D(d) reads as rewritten:

9 "(d) Sunset. – This section is repealed effective for facilities placed in service on or after
10 ~~January 1, 2013.~~ January 1, 2014."

11 SECTION 3. G.S. 105-129.16F(b) reads as rewritten:

12 "(b) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1,~~
13 ~~2013.~~ January 1, 2014."

14 SECTION 4. G.S. 105-129.16G(b) reads as rewritten:

15 "(b) Sunset. – This section expires for taxable years beginning on or after ~~January 1,~~
16 ~~2012.~~ January 1, 2014."

17 SECTION 5. G.S. 105-129.82(a) reads as rewritten:

18 "(a) Sunset. – This Article is repealed effective for business activities that occur on or
19 after ~~January 1, 2013.~~ January 1, 2014."

20 SECTION 6.(a) G.S. 105-130.48(f) reads as rewritten:

21 "(f) Sunset. – This section is repealed effective for taxable years beginning on or after
22 ~~January 1, 2013.~~ January 1, 2014."

23 SECTION 6.(b) G.S. 105-151.30(f) reads as rewritten:

24 "(f) Sunset. – This section is repealed effective for taxable years beginning on or after
25 ~~January 1, 2013.~~ January 1, 2014."

26 SECTION 7. G.S. 105-151.28(d) reads as rewritten:

27 "(d) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1,~~
28 ~~2013.~~ January 1, 2014."

29 SECTION 8. G.S. 105-151.31(c) reads as rewritten:

30 "(c) Sunset. – This section is repealed effective for taxable years beginning on or after
31 ~~January 1, 2013.~~ January 1, 2014."

32 SECTION 9. G.S. 105-131.32(c) reads as rewritten:

33 "(c) Sunset. – This section is repealed effective for taxable years beginning on or after
34 ~~January 1, 2013.~~ January 1, 2014."

35 SECTION 10. G.S. 105-163.015 reads as rewritten:



1 "§ 105-163.015. Sunset.

2 This Part is repealed effective for investments made on or after ~~January 1, 2013~~ January 1,
3 2014."

4 SECTION 11.(a) G.S. 105-164.14A(a) reads as rewritten:

5 "(a) Refund. – The following taxpayers are allowed an annual refund of sales and use
6 taxes paid under this Article:

- 7 (1) **(Repealed for purchases made on or after January 1, 2013)** Passenger air
8 carrier. – An interstate passenger air carrier is allowed a refund of the sales
9 and use tax paid by it on fuel in excess of two million five hundred thousand
10 dollars (\$2,500,000). The amount of sales and use tax paid does not include
11 a refund allowed to the interstate passenger air carrier under
12 G.S. 105-164.14(a). This subdivision is repealed for purchases made on or
13 after ~~January 1, 2013~~ January 1, 2014.
- 14 (2) Major recycling facility. – An owner of a major recycling facility is allowed
15 a refund of the sales and use tax paid by it on building materials, building
16 supplies, fixtures, and equipment that become a part of the real property of
17 the recycling facility. Liability incurred indirectly by the owner for sales and
18 use taxes on these items is considered tax paid by the owner.
- 19 (3) Business in low-tier area. – A taxpayer that is engaged primarily in one of
20 the businesses listed in G.S. 105-129.83(a) in a development tier one area
21 and that places machinery and equipment in service in that area is allowed a
22 refund of the sales and use tax paid by it on the machinery and equipment.
23 For purposes of this subdivision, "machinery and equipment" includes
24 engines, machinery, equipment, tools, and implements used or designed to
25 be used in one of the businesses listed in G.S. 105-129.83, capitalized for tax
26 purposes under the Code, and not leased to another party. Liability incurred
27 indirectly by the taxpayer for sales and use taxes on these items is
28 considered tax paid by the taxpayer. The sunset for Article 3J of Chapter 105
29 of the General Statutes for development tier one areas applies to this
30 subdivision.
- 31 (4) **(Repealed for purchases made on or after January 1, 2013)** Motorsports
32 team or sanctioning body. – A professional motorsports racing team, a
33 motorsports sanctioning body, or a related member of such a team or body is
34 allowed a refund of the sales and use tax paid by it in this State on aviation
35 fuel that is used to travel to or from a motorsports event in this State, to
36 travel to a motorsports event in another state from a location in this State, or
37 to travel to this State from a motorsports event in another state. For purposes
38 of this subdivision, a "motorsports event" includes a motorsports race, a
39 motorsports sponsor event, and motorsports testing. This subdivision is
40 repealed for purchases made on or after ~~January 1, 2013~~ January 1, 2014.
- 41 (5) **(Repealed for purchases made on or after January 1, 2014)** Professional
42 motorsports team. – A professional motorsports racing team or a related
43 member of a team is allowed a refund of fifty percent (50%) of the sales and
44 use tax paid by it in this State on tangible personal property, other than tires
45 or accessories, that comprises any part of a professional motorsports vehicle.
46 For purposes of this subdivision, "motorsports accessories" includes
47 instrumentation, telemetry, consumables, and paint. This subdivision is
48 repealed for purchases made on or after January 1, 2014.
- 49 (6) **(Repealed for purchases made on or after January 1, 2013)** Analytical
50 services business. – A taxpayer engaged in analytical services in this State is
51 allowed a refund of sales and use tax paid by it. This subdivision is repealed

1 for purchases made on or after ~~January 1, 2013~~January 1, 2014. The amount
2 of the refund is the greater of the following:

3 a. Fifty percent (50%) of the eligible amount of sales and use tax paid
4 by it on tangible personal property that is consumed or transformed
5 in analytical service activities. The eligible amount of sales and use
6 tax paid by the taxpayer in this State is the amount by which sales
7 and use tax paid by the taxpayer in this State in the fiscal year exceed
8 the amount paid by the taxpayer in this State in the 2006-2007 State
9 fiscal year.

10 b. Fifty percent (50%) of the amount of sales and use tax paid by it in
11 the fiscal year on medical reagents.

12 (7) **(Repealed for purchases made on or after January 1, 2038)** Railroad
13 intermodal facility. – The owner or lessee of an eligible railroad intermodal
14 facility is allowed a refund of sales and use tax paid by it under this Article
15 on building materials, building supplies, fixtures, and equipment that
16 become a part of the real property of the facility. Liability incurred indirectly
17 by the owner or lessee of the facility for sales and use taxes on these items is
18 considered tax paid by the owner or lessee. This subdivision is repealed for
19 purchases made on or after January 1, 2038."

20 **SECTION 11.(b)** G.S. 105-164.14B(f) reads as rewritten:

21 "(f) Sunset. – This section is repealed for sales made on or after ~~January 1, 2013~~January
22 1, 2014."

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



HOUSE BILL 1025: Extend Tax Provisions

2011-2012 General Assembly

Committee: House Finance	Date: May 30, 2012
Introduced by: Reps. Howard, Starnes	Prepared by: Heather Fennell
Analysis of: First Edition	Committee Counsel

SUMMARY: *The proposed draft extends several tax provisions.*

[As introduced, this bill was identical to S827, as introduced by Sens. Rucho, Hartsell, Blue, which is currently in Senate Finance.]

BILL ANALYSIS: It is anticipated that major tax modernization will be undertaken during the 2013 session of the General Assembly. This act extends the following provisions in order to maintain the current state of the North Carolina tax code until comprehensive tax modernization can be accomplished.

Section 1: Extends the tier one designation for seafood industrial parks through July 1, 2013.

Sections 2-10: Extends the following tax credits through January 1, 2014:

2. Tax credit for renewable fuel facilities.
3. Tax credit for biodiesel producers.
4. Work opportunity tax credit.
5. Article 3J tax credits.
6. Tax credit for recycling oyster shells.
7. Tax credit for premiums on long-term care insurance.
8. Refundable earned income tax credit.
9. Tax credit for adoption expenses.
10. Tax credit for qualified business ventures.

Section 11: Extends the following sales tax refunds through January 1, 2014:

- Passenger air carriers
- Machinery and equipment placed in a tier 1 county.
- Aviation fuel for motorsports team of sanctioning body.
- Analytical services.
- Certain industrial facilities.

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

BACKGROUND: Tax credits are considered a mechanism for encouraging and rewarding behavior that is beneficial to the State. Like appropriations, tax credits are expenditures of public funds for the benefit of certain businesses, interest groups, and other taxpayers. However, unlike appropriations, without some limitation, they can continue in perpetuity costing the State millions of dollars without review by the General Assembly. In 1998, the Revenue Laws Study Committee recommended that sunsets be placed on virtually all of the tax credits as a means to review and reevaluate those credits. Periodic review of tax credits allow the General Assembly to consider each credit on its merits to determine whether it continues to serve a public purpose that justifies its cost.

H1025-SMTD-114(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 1025 (First Edition)

SHORT TITLE: Extend Tax Provisions.

SPONSOR(S): Representatives Howard and Starnes

FISCAL IMPACT (\$millions)					
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
General Fund:	\$0	-\$0.8	-\$135.8	-\$14.3	\$-14.3
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Dept. of Revenue					
EFFECTIVE DATE: Effective when it becomes law					

BILL SUMMARY: This proposal would extend the expiring tax expenditures listed in the chart below:

	<i>Repeal Date</i>	<i>FY 2013-14 Revenue Loss</i>
Income Tax Credits:		
o Work opportunity tax credit	01/01/2012	\$800,000
o Tax credit for constructing renewable fuel facilities	01/01/2013	\$100,000
o Tax credit for biodiesel producers (motor fuel excise tax)	01/01/2013	\$100,000
o Article 3J tax credits		
- Credit for Creating Jobs	01/01/2013	\$1,000,000
- Credit for Investing in Business Property	01/01/2013	\$5,100,000
- Credit for Investing in Real Property	01/01/2013	\$300,000
o Tax credit for qualified business ventures	01/01/2013	\$7,500,000
o Tax credit for recycling oyster shells	01/01/2013	\$100,000
o Tax credit for premiums paid on long-term care insurance	01/01/2013	\$5,800,000
o Tax credit for adoption expenses	01/01/2013	\$5,400,000
o Refundable earned income tax credit	01/01/2013	\$102,500,000
Sales Tax Refunds:		
o Sales tax refund for passenger air carriers	01/01/2013	\$6,000,000
o Sales tax refund for machinery and equipment placed in a tier one county	01/01/2013	\$200,000
o Sales tax refund for aviation fuel of motorsports team or sanctioning body	01/01/2013	\$100,000
o Sales tax refund for analytical services business	01/01/2013	\$100,000
o Sales tax refund for certain industrial facilities	01/01/2013	\$700,000
Total:		\$135,800,000

The work opportunity tax credit was repealed for 2012. The proposal would reinstate the credit for 2012 and schedule its repeal for 2014. The other provisions are scheduled for repeal in 2013. The proposal extends the repeal date for one year to 2014.

ASSUMPTIONS AND METHODOLOGY:

The estimated impact for the income and sales tax provisions is based on data obtained from the Department of Revenue. The fiscal impact shown for FY 2014-15 and FY 2015-16 is due to the extension of the Article 3J tax credits. The Article 3J tax credits are taken in installments that don't begin until the tax year following the year generated and are subject to carry-forward provisions. Consequently, the fiscal impact for a one year extension of Article 3J is spread out over a 10-year period.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jonathan Tart

APPROVED BY: Mark Trogdon, Acting Director
Fiscal Research Division

DATE: May 29, 2012



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 142*
PROPOSED COMMITTEE SUBSTITUTE H142-CSMCF-20 [v.4]

5/29/2012 1:51:39 PM

Short Title: Economic Development & Finance Changes.

(Public)

Sponsors:

Referred to:

February 21, 2011

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ECONOMIC DEVELOPMENT AND TO PROVIDE FISCAL RELIEF TO CITIZENS OF THE STATE BY (1) TEMPORARILY CAPPING THE GAS TAX, (2) DELAYING THE IMPOSITION OF TOLLS ON FERRY ROUTES, (3) EXEMPT MOTIONS TO WITHDRAW FROM CIVIL MOTIONS FILING FEE, (4) WAIVING THE FILING FEE OTHERWISE DUE FROM UNEMPLOYED INDIVIDUALS ORGANIZING LIMITED LIABILITY COMPANIES, (5) CLARIFYING AND EXTENDING THE APPROPRIATE FILING PERIOD FOR AN ECONOMIC INCENTIVE, (6) EXPANDING THE USE OF INDUSTRIAL DEVELOPMENT FUNDS FOR CERTAIN PROJECTS, AND (7) MAKING A TECHNICAL CORRECTION TO THE PORT ENHANCEMENT ZONE.

The General Assembly of North Carolina enacts:

ONE-YEAR CAP ON MOTOR FUEL EXCISE TAX RATE

SECTION 1. Notwithstanding G.S. 105-449.80(a), for the period July 1, 2012, through June 30, 2013, the motor fuel excise tax rate may not exceed thirty-seven and one-half cents (37 1/2¢) a gallon.

DELAY FERRY TOLL COLLECTION

SECTION 2. Notwithstanding Item 24 on Page K-3 of the Senate Appropriations Committee Report on House Bill 200, incorporated into S.L. 2011-145 by Section 32.4(a) of that act, the Department of Transportation, Ferry Division, shall not collect the increased tolls required by S.L. 2011-145 during the 2012-2013 fiscal year.

EXEMPT MOTIONS TO WITHDRAW FROM CIVIL MOTIONS FILING FEE

SECTION 3.(a) G.S. 7A-305(f) reads as rewritten:

"(f) For the support of the General Court of Justice, the sum of twenty dollars (\$20.00) shall accompany any filing containing one or more motions not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief either (i) the taxing of costs, including attorneys' fees-fees, or (ii) a motion to withdraw as attorney or counsel of record."

SECTION 3.(b) G.S. 7A-306(g) reads as rewritten:

"(g) For the support of the General Court of Justice, the sum of twenty dollars (\$20.00) shall accompany any filing containing one or more motions not listed in G.S. 7A-308 that is filed with the clerk. No costs shall be assessed to a motion containing as a sole claim for relief



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1 the taxing of costs, including attorneys' ~~fees.~~ fees, or (ii) a motion to withdraw as attorney or
 2 counsel of record."

3 SECTION 3.(c) G.S. 7A-307(a)(4) reads as rewritten:

4 "(a) In the administration of the estates of decedents, minors, incompetents, of missing
 5 persons, and of trusts under wills and under powers of attorney, in trust proceedings under
 6 G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, and in collections of personal
 7 property by affidavit, the following costs shall be assessed:

8 ...

9 (4) For the support of the General Court of Justice, the sum of twenty dollars
 10 (\$20.00) shall accompany any filing requiring a notice of hearing and
 11 containing one or more motions not listed in G.S. 7A-308 that is filed with
 12 the clerk. No costs shall be assessed to a motion containing as a sole claim
 13 for relief the taxing of costs, including attorneys' ~~fees.~~ fees, or (ii) a motion
 14 to withdraw as attorney or counsel of record."

15 SECTION 3.(d) This section becomes effective August 1, 2012, and applies to
 16 motions filed on or after that date.

17
 18 **WAIVE THE FILING FEE FOR FILING ARTICLES OF ORGANIZATION WITH**
 19 **THE SECRETARY OF STATE FOR AN UNEMPLOYED INDIVIDUAL.**

20 SECTION 4.(a) G.S. 57C-1-22 reads as rewritten:

21 "**§ 57C-1-22. Filing, service, and copying fees.**

22 (a) ~~The~~ Except as provided in subsection (a1) of this section, the Secretary of State
 23 shall collect the following fees when the documents described in this subsection are delivered
 24 to the Secretary of State for filing:

	<u>Document</u>	<u>Fee</u>
25		
26	(1) Articles of organization	\$125.00

27 ...
 28 (a1) The Secretary of State shall not collect the fee for delivery of articles of
 29 organization to the Secretary of State for filing when the organizer swears or affirms, under
 30 penalty of perjury on a form promulgated by the Secretary of State, that the organizer is an
 31 unemployed individual at the time of filing. The penalty imposed for perjury committed under
 32 this subsection is the same as that provided in G.S. 66-167.

33"

34 SECTION 4.(b) This section becomes effective August 1, 2012, and applies to
 35 articles of organization filed on or after that date.

36
 37 **CLARIFY AND EXTEND THE PERIOD OF TIME TO APPLY FOR A SALES TAX**
 38 **REFUND OF AVIATION FUEL PURCHASED BY AN INTERSTATE PASSENGER**
 39 **AIR CARRIER BETWEEN JANUARY 1, 2010, AND JUNE 30, 2011.**

40 SECTION 5.(a) For calendar year 2010, an interstate passenger air carrier that is
 41 eligible for a refund of sales and use taxes paid on fuel in excess of two million five hundred
 42 thousand dollars (\$2,500,000) under G.S. 150-164.14(a1) and G.S. 105-164.14A(a)(1) is
 43 subject to the provisions of this section notwithstanding any provisions of G.S. 105-164.14,
 44 G.S. 105-164.14A, or Section 4 of S.L. 2010-166 to the contrary. Notwithstanding the fact that
 45 the first six months of 2010 are subject to G.S. 105-164.14(a1) and the last six months of 2010
 46 are subject to G.S. 105-164.14A(a)(1), a taxpayer shall submit one request for a refund for the
 47 entire calendar year.

48 SECTION 5.(b) An interstate passenger air carrier is allowed a refund of the sales
 49 and use tax paid by it on fuel in excess of one million two hundred fifty thousand dollars
 50 (\$1,250,000) for the period January 1, 2011, through June 30, 2011. The amount of sales and
 51 use tax paid does not include a refund allowed to the interstate passenger air carrier under

1 G.S. 105-164.14(a). A request for a refund must be in writing and must include any information
 2 and documentation required by the Secretary. The request for a refund is due before July 1,
 3 2012. Refunds applied for after the due date are barred.

4 **SECTION 5.(c)** Subsection (b) of this section is effective January 1, 2011, and
 5 applies to purchases made on or after that date. The remainder of this section is effective when
 6 it becomes law.

7
 8 **PERMIT THE USE OF MONEYS FROM THE INDUSTRIAL DEVELOPMENT FUND**
 9 **TO BE USED FOR SEWER IMPROVEMENTS IN ADJOINING COUNTIES.**

10 **SECTION 6.** G.S. 143B-437.01(a) reads as rewritten:

11 "(a) **Creation and Purpose of Fund.** – There is created in the Department of Commerce
 12 the Industrial Development Fund to provide funds to assist the local government units of the
 13 most economically distressed counties in the State in creating and retaining jobs in certain
 14 industries. The Department of Commerce shall adopt rules providing for the administration of
 15 the program. Those rules shall include the following provisions, which shall apply to each grant
 16 from the fund:

- 17 (1) The funds shall be used for (i) installation of or purchases of equipment for
 18 eligible industries, (ii) structural repairs, improvements, or renovations of
 19 existing buildings to be used for expansion of eligible industries, or (iii)
 20 construction of or improvements to new or existing water, sewer, gas,
 21 telecommunications, high-speed broadband, electrical utility distribution
 22 lines or equipment, or transportation infrastructure for existing or new or
 23 proposed industrial buildings to be used for eligible industries. To be eligible
 24 for funding, the water, sewer, gas, telecommunications, high-speed
 25 broadband, electrical utility lines or facilities, or transportation infrastructure
 26 shall be located on the site of the building or, if not located on the site, shall
 27 be directly related to the operation of the specific eligible industrial activity.
 28 To be eligible for funding, the sewer infrastructure shall be located on the
 29 site of the building or, if not located on the site, shall be directly related to
 30 the operation of the specific eligible industrial activity, even if the sewer
 31 infrastructure is located in a county other than the county in which the
 32 building is located.

33"

34
 35 **TECHNICAL CORRECTION FOR THE PORT ENHANCEMENT ZONE**
 36 **DESIGNATION.**

37 **SECTION 7.(a)** G.S. 143B-437.013(a) reads as rewritten:

38 "(a) **Port Enhancement Zone Defined.** – A port enhancement zone is an area that meets
 39 all of the following conditions:

- 40 (1) It is comprised of part or all of one or more contiguous census tracts, census
 41 block groups, or both, in the most recent federal decennial census.
 42 (2) All of the area is located within 25 miles of a State port and is capable of
 43 being used to enhance port operations.
 44 (3) Every census tract and census block group that comprises the area has at
 45 least eleven percent (11%) of households with incomes of fifteen thousand
 46 dollars (\$15,000) or less."

47 **SECTION 7.(b)** This section is effective for taxable years beginning on or after
 48 January 1, 2013.

EFFECTIVE DATE

1
2 **SECTION 8.** Except as otherwise provided, this act is effective when it becomes
3 law.



PCS for HOUSE BILL 142: Economic Development & Finance Changes

2011-2012 General Assembly

Committee: House Finance	Date: May 30, 2012
Introduced by: Reps. T. Moore, Hager, Hastings	Prepared by: Trina Griffin
Analysis of: PCS to First Edition H142-CSMCF-20	Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 142 makes the following changes related to economic development and the finance laws:*

- *One-year cap of 37 ½¢ on the gas tax (the current rate is 38.9¢).*
- *One-year delay of new and increased ferry tolls.*
- *Exempt from \$20 filing fee motions to withdraw as attorney.*
- *Waive filing fee for articles of organization by an unemployed individual.*
- *Clarify and extend time to apply for sales tax refund of aviation fuel.*
- *Industrial Development Fund changes related to sewer infrastructure projects only.*
- *Port enhancement zone technical correction.*

ONE-YEAR CAP ON THE MOTOR FUEL EXCISE TAX RATE

CURRENT LAW: A motor fuel excise tax is imposed on all motor fuel sold, distributed, or used in the State. The motor fuel tax rate has two components: a flat rate of 17.5¢ and a variable rate that may change every six months.¹ The variable rate is equal to 7% of the wholesale price of gasoline based on a weighted average price of gasoline and diesel, as reported by the US DOE Energy Information Administration. The variable rate is currently 21.4¢, for a total State tax motor fuel tax rate of 38.9¢ per gallon for the period January through June 2012.

The upcoming variable rate is expected to decrease based on the six-month period that ended March 31; the projected State motor fuel tax rate beginning July 1, 2012, is 38.8¢ a gallon. However, it is projected that the rate effective January 1, 2013, would be higher based on the wholesale price of gasoline over the last few months. The variable tax rate effective January 1, 2013, would be based on the wholesale price of gasoline during the period April 1, 2012, through September 30, 2012.

One-half cent per gallon of the excise tax is allocated to various environmental funds. Of the remaining excise tax revenue, 75% goes to the Highway Fund and 25% goes to the Highway Trust Fund.

BILL ANALYSIS: Section 1 of the PCS would place a cap of 37½¢ per gallon on the motor fuel excise tax rate for the period July 1, 2012, through June 30, 2013. The rate could fall below this amount, but it could not exceed this amount. This reduction in rate would reduce motor fuel tax revenues by an estimated \$81.6 million for FY12-13. The House budget reflects the impact of the cap.

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

¹ The variable rate component was introduced in 1986 as part of legislation that increased funding for road construction. In addition to the introduction of a 3% variable rate, which equated to 1.5¢ per gallon at that time, the legislation increased the flat rate from 12¢ per gallon to 14¢ per gallon. The General Assembly incorporated the variable rate in part as recognition that the cost of road construction increases as the cost of motor fuel increases because of the petroleum products used in road construction. In 1989, the General Assembly increased the flat tax rate to 17¢ per gallon and increased the variable component from 3% to 7% of the average wholesale price. In 1992, the tax rate was changed to the current rate of 17.5¢ per gallon plus 7% of the average wholesale price (S.L. 1991-538).

House PCS 142

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BACKGROUND: The General Assembly has legislated temporary caps and ceilings on the variable rate over the past few years:

2006	Capped the variable rate at 12.4¢ per gallon to ensure that the State motor fuel tax rate could not exceed 29.9¢ for the period January 2006 through June 2007. ²
2007	Extended the 12.4¢ cap through the period ending June 2009. The rate fell to 29.7¢ for the period July through December 2007; otherwise it remained at 29.9¢.
2009	Created a ceiling on the variable rate of 12.4¢ per gallon to ensure that the State motor fuel tax rate did not fall below 29.9¢ for the period July 2009 through June 2011. Based on the wholesale price of motor fuel during this period, the rate remained well above the floor of 29.9¢. The rate rose to 32.5¢ per gallon for the period ending June 2011.
2011	The House passed House Bill 645 during the special session held in November. The 3rd edition of House Bill 645 would cap the motor fuel tax rate at 35¢ per gallon, which was the effective tax rate in November 2011. The bill passed third reading in the House on November 29, 2011. On May 16, it was received by the Senate and referred to the Senate Finance Committee.

DELAY FERRY TOLL COLLECTION

CURRENT LAW: Section 31.30 of the 2011 Appropriations Act directed the Board of Transportation to establish tolls for all ferry routes except for the Ocracoke/Hatteras Ferry and the Knotts Island Ferry, to become effective April 1, 2012. The Senate Appropriations Committee Report on House Bill 200, incorporated into the budget act, indicated that toll increases on existing routes and new tolls on the remaining routes would generate \$2.5 million in FY 2011-12 and \$5 million recurring beginning in FY 2012-2013.

BILL ANALYSIS: Section 2 of the PCS would direct the Department of Transportation not to collect during the 2012-2013 fiscal year the new and increased tolls required by the 2011 budget act. The fiscal impact of this delay is accounted for in the House budget.

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

BACKGROUND: On February 29, 2012, the Governor issued an Executive Order placing a one-year moratorium on the new and increased ferry tolls. The legality of the Governor's order has been called into question by both the Attorney General's office and members of the General Assembly. In a statement issued on April 13, 2012, Attorney General Roy Cooper said that the state law as passed by the Legislature must be followed. He further stated that since it was the Legislature's decision to collect tolls, only the Legislature has the authority to remove them. The Department of Transportation has set the new and increased rates for five ferry routes, but they are not currently being enforced.

EXEMPT MOTIONS TO WITHDRAW FROM FILING FEE

CURRENT LAW: There is a \$20 fee to file most motions in civil actions, in special proceedings, and in the administration of estates.³ There is no fee to file a motion where the sole claim for relief is the taxing of costs, including attorney's fees.

² Section 24.3 of S.L. 2006-66. Section 2.2(g) of S.L. 2006-66 provided a reserve in the General Fund for the purpose of holding harmless the Highway Fund and the Highway Trust Fund in the event that the variable wholesale component of the tax would have exceeded 12.4¢ per gallon.

³ Fees for motions listed in G.S. 7A-308 supersede the \$20 fee in G.S. 7A-305.

House PCS 142

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BILL ANALYSIS: Section 3 would exempt from the \$20 filing fee a motion to withdraw as attorney or counsel of record in civil actions, special proceedings, or in the administration of estates. The fiscal impact of this exemption is accounted for in the House budget.

EFFECTIVE DATE: This section would become effective August 1, 2012, and apply to motions filed on or after that date.

WAIVE FILING FEE FOR FILING ARTICLES OF ORGANIZATION BY AN UNEMPLOYED INDIVIDUAL

CURRENT LAW: Articles of organization are similar to articles of incorporation, outlining the initial statements required to form a limited liability company. It is a necessary document for setting up an LLC in North Carolina. The current fee for filing articles or organization with the Secretary of State is \$125.00.

BILL ANALYSIS: Section 4 of the PCS would waive the \$125 filing fee for articles of organization if the organizer swears or affirms, under penalty of perjury, that the organizer is an unemployed individual at the time of filing.

EFFECTIVE DATE: This section becomes effective August 1, 2012, and applies to articles of organization filed on or after that date.

CLARIFY & EXTEND TIME TO APPLY FOR A SALES TAX REFUND OF AVIATION FUEL

CURRENT LAW: An interstate passenger air carrier is allowed an annual refund of the sales and use tax paid by it on fuel in excess of \$2,500,000. A request for a refund is due within six months after the end of the State's fiscal year. The refund period covers purchases made during the State's fiscal year. Refunds applied for after the due date are barred. The only taxpayer that currently qualifies for this credit is U.S. Airways.

BACKGROUND: This sales tax refund for aviation fuel was originally authorized in 2005. Prior to 2010, the refund period covered purchases made during a calendar year, and the refund application was due within six months after the end of the calendar year. In 2010, the General Assembly enacted legislation, S.L. 2010-166, that consolidated and made uniform sunset and reporting features and requirements across the State's various economic incentives. Among the changes, the due dates of the sales tax refunds were standardized to apply to a fiscal year. The effective date of the legislation specifically provided that, "The first claim for refund by a taxpayer whose sales tax refund period is changed by this act is due within six months after July 1, 2010, and applies to purchases during the time period not covered by the taxpayer's last claim for refund."

There was some confusion associated with this bill. During the same session, there was another bill,^[1] which passed first, extending various sunsets from January 1, 2011, to January 1, 2013. S.L. 2010-166 failed to take into account the extension of the sunsets enacted by the other bill. When S.L. 2010-166 was enacted, it unintentionally nullified the sunset extensions because it was enacted after the first one passed. This error was later corrected in 2011 technical corrections legislation.^[2]

In the midst of the confusion, the transition from filing for a refund on a calendar year basis to a fiscal year basis, which should have occurred in 2010, was overlooked by both U.S. Airways and the Department of Revenue. In February of 2011, U.S. Airways filed for a refund for calendar year 2010 and received it. In January of 2012, U.S. Airways filed for a refund for calendar year 2011 and was told

^[1] S.L. 2010-31.

^[2] S.L. 2011-330.

House PCS 142

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that the claim for the first six months of 2011 was barred due to an untimely application. And the refund request for the second six months of 2011 was not yet due.

BILL ANALYSIS: Section 5 of the PCS does two things. First, it validates the 2010 refund application and payment issued by the Department of Revenue and second, it provides for the transition from a calendar year refund period to a fiscal year refund period. Subsection (a) would validate the 2010 refund payment made on a calendar year basis. Subsection (b) would allow the taxpayer to apply for a sales tax refund for aviation fuel purchased by it in excess of \$1,250,000 between January 1, 2011, and June 30, 2011, so long as the application is made before July 1, 2012. The cap is reduced to reflect the fact that the refund would only be for a six-month period. The fiscal impact of this provision is a reduction of approximately \$6.34 million in State sales tax revenues and \$2.71 million in local sales tax revenues. The provision has a fiscal impact because the taxpayer is not entitled to the refund under current law since it filed an untimely application. The fiscal impact has been accounted for in the House budget with corresponding adjustments to General Fund availability.

EFFECTIVE DATE: The provision related to the refund for the first half of 2011 is effective January 1, 2011, and applies to purchases made on or after that date. The remainder of the section is effective when it becomes law.

INDUSTRIAL DEVELOPMENT FUND CHANGES

CURRENT LAW: The Industrial Development Fund (IDF), which is within the Department of Commerce, provides funds to assist local governments in economically distressed counties with creating jobs in certain industries.⁴ "Economically distressed county" is defined as a county that has one of the 65 highest rankings under the development tier designation.⁵ An eligible industry is defined as a company or person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade.

The IDF funds must be used for (i) installation of or purchases of equipment for eligible industries; (ii) structural repairs and renovations of buildings for expansion of eligible industries; or (iii) construction of or improvements to new or existing utility lines or equipment or transportation infrastructure for existing or new building for the eligible industries. Other requirements include that the funds have to be used by the city and county governments for projects that directly result in the creation of new jobs and must be expended at a maximum rate of \$10,000 per new job created up to a maximum of \$500,000 per project.

To be eligible for funding, the infrastructure being funded must be located on the site of the building or, if not located on the site, must be directly related to the operation of the specific eligible industrial activity. In all cases, the infrastructure must be located in an economically distressed county.

BILL ANALYSIS: Section 6 of the PCS would modify the eligibility qualification for the funding of sewer infrastructure only by providing that the sewer infrastructure need not be located in the same county as the site of the building where the eligible industrial activity is being conducted. It does not change the requirement that the infrastructure project must be directly related to the operation of the eligible industrial activity.

BACKGROUND: This change would facilitate an economic development project in Davie County. Ashley Furniture is currently upfitting an existing building that requires additional sewer capacity.

⁴ IDF is currently funded by loan repayments only; there is no longer a General Fund appropriation for IDF. Loan repayments average around \$50,000 annually.

⁵ Under the development tier designation, the 40 most distressed counties are designated as tier 1, the next 40 as tier 2 and the 20 least distressed as tier 3.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: May 29, 2012

TO: House Finance Committee

FROM: Rodney Bizzell, Bryce Ball, Mark Bondo, Amna Cameron, Kristine Leggett, Kristin Walker, Lanier McRee, and Sandra Johnson, Fiscal Research Division

RE: House Bill 142 (Proposed Committee Substitute)

	FISCAL IMPACT (\$ In Millions)				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
REVENUES:					
Part I. Motor Fuel Cap					
Highway Fund	-\$61.2				
Highway Trust Fund	-\$20.4				
Wildlife Resources Fund	-\$0.1				
Part II. Ferry Tolls					
Highway Fund	-\$2.5				
Part III. Civil Filing					
	-\$0.3				
Part V. Tax Refund					
Local Gov.	-\$2.7				
Part IV. Filing Fee			See Assumptions and Methodology		
Part VI. Industrial Fnd.			No Fiscal Impact		
EXPENDITURES:					
Part IV. Filing Fee			See Assumptions and Methodology		
POSITIONS:					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Dept. of Revenue, NC Department of Transportation, NC Dept. of Wildlife Resources					
EFFECTIVE DATE: Unless otherwise noted, when the bill becomes law.					

BILL SUMMARY: The Proposed Committee Substitute for House Bill 142 makes the following changes related to economic development and the finance laws:

- One-year cap of 37 ½¢ on the gas tax.
- One-year delay of increased ferry tolls.
- Exempt from \$20 filing fee motions to withdraw as attorney.
- Clarify and extend time to apply for sales tax refund of aviation fuel.
- Industrial Development Fund changes related only to sewer infrastructure projects.
- Lower investment threshold from \$150 million to \$100 million in order to be eligible for 20-year carryforward period under Article 3J.
- Waive filing fee for articles of organization by an unemployed individual.
- Port enhancement zone technical correction.

ASSUMPTIONS AND METHODOLOGY:

PART I: One-year Cap on Motor Fuel Excise Tax Rate

Consensus Revenue Forecast:

The motor fuels excise tax rate consists of a flat rate of 17.5 cents per gallon plus a variable rate that is 7% of the national weighted average wholesale price of gasoline and diesel for a six-month base period. For January through June 2012, the variable rate is 21.4 cents per gallon. Based on the April 2012 consensus revenue forecast, the variable rate will decrease to an average of 21.3 cents per gallon in FY 2013. Capping the tax at 37.5 cents per gallon sets a maximum variable rate at no more than 20.0 cents per gallon for FY 2013. Based on existing statutes, the variable rate will automatically readjust on July 1, 2013. Capping this automatic adjustment generates this fiscal impact.

Distribution of Motor Fuels Excise Tax:

Wildlife Resources Fund receives 1/6 of one percent of Motor Fuels Excise Tax attributed only to the Highway Fund. A cap impacts the Highway Fund, Highway Trust Fund, and Wildlife Resources Fund. The total cut to Wildlife Resource is \$102,000.

PART II: Delay Ferry Toll Collection

Delays the collection of increased tolls required per S.L. 2011-145, Sec. 31.30, for the 2012-13 fiscal year. S.L. 2011-145 directed that the Board of Transportation toll all ferry routes, except the Currituck/Knotts Island and Hatteras/Ocracoke routes, to achieve a net recurring reduction in operating funding of \$2.5 million.

Fares will be collected in accordance with the schedule in effect prior to the submitted amendments to 19A NCAC 02D .0531 and 19A NCAC 02D .0532. The House Committee Report on the Continuation, Expansion, and Capital Budgets (HB 950) appropriates \$2.5 million on a non-recurring basis to offset the loss of tolling revenue resulting from this delay.

PART III: Exempt Motions to Withdraw from Civil Motions Filing

The Administrative Office of the Courts estimates that motions to withdraw as counsel account for approximately \$290,000 of the total funds collected for the civil motions fee. Therefore, Part III of this bill will result in a loss in General Fund availability of \$290,000. H.B. 950, Modify 2011

Appropriations Act, includes reductions in the Justice and Public Safety area to account for the loss.

PART IV: Waive the Filing Fee for Filing Articles of Organization with the Secretary of State for Unemployed Individuals

This section would waive the \$125 filing fee for Articles of Organization for limited liability corporations. Currently funds collected from this fee are deposited into the State's General Fund. It is unknown how much revenue the State will fail to collect as a result of this fee waiver. According to recent data, there were 34,365 new LLC filings in FY 2011. The table below reflects data for the most recent completed Fiscal Year, as well as historic trends. It is unknown how many of those filing were unemployed at the time of filing. It is unknown how many additional individuals will file given the fee waiver.

FY	Active LLC	New LLC
2010-11	198,793	34,365
2009-10	236,718	29,974
2008-09	218,649	29,594
2007-08	197,193	30,351
2006-07	166,182	30,351

It is also unknown how such a fee waiver will impact the current operation of the Corporations Division within the Secretary of State. Currently, the annual appropriation to the Division is \$3,004,428 for each year of the current biennium which supports 59 FTE. If such a program greatly increases LLC filings, additional resources may be required within the Division. The Secretary of State is responsible for creating a form, which should not require additional resources. While it is the responsibility of the filing organizer to attest, under penalty of perjury that they are unemployed, the Secretary of State may require additional resources for enforcement.

PART V: Clarify and Extend the Period of Time to Apply for a Sales Tax Refund of Aviation Fuel Purchased by an Interstate Passenger Air Carrier between January 1, 2010 and June 30, 2011

An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of \$2,500,000. A request for a refund is due within six months after the end of the State's fiscal year. This proposal extends the period in which interstate passenger air carriers can apply for a sales tax refund. According to the Department of Revenue, outstanding sales tax refunds for interstate passenger air carriers in excess of \$1,250,000 between January 1, 2010, and June 30, 2011 equal \$6.34 million in State sales tax and \$2.71 million in local sales tax. The request for a refund is due before July 1, 2012.

PART VI: Permit the Use of Moneys from the Industrial Development Fund to be used for Sewer Improvements in Adjoining Counties

Part 6 of the bill allows for the Industrial Development Fund (IDF) to fund sewer infrastructure projects in any county as long as the site that the sewer infrastructure is servicing is in an eligible

county. This part of the bill is not estimated to have a fiscal impact as it is not known which projects would have applied before this change versus after this change. IDF is currently funded by loan repayments only; there is no longer a General Fund appropriation for IDF. Loan repayments average around \$50,000 annually. As of May 25, 2012, IDF had a cash balance of \$1,102,793.

SOURCES OF DATA: U.S. Airways representatives; NC Dept. of Revenue; Consensus Revenue Forecast, April 2012, between the Office of State Budget and Management and the North Carolina General Assembly's Fiscal Research Division;

TECHNICAL CONSIDERATIONS: None

Forsyth County operates the water and sewer system that serves Davie County and would need to make improvements to the system in order to provide the additional capacity required by Ashley Furniture. Davie County is a tier 2 county and would be eligible for IDF funds. Forsyth County, however, is a tier 3 county and would not otherwise qualify. As applied to this project, the change would enable IDF funds to be used to improve sewer infrastructure located in a tier 3 county to the extent it is directly related to the operation of an eligible industrial activity in a tier 2 county. Forsyth County has indicated that the improvements to the sewer system for purposes of serving the Ashley Furniture site would not enhance sewer service in Forsyth County.

PORT ENHANCEMENT ZONE TECHNICAL CORRECTION

CURRENT LAW: S.L. 2011-302 created a new type of zone eligible for enhanced credits⁶ under Article 3J, known as a "ports enhancement zone." North Carolina has two State ports, the Port of Morehead City and the Port of Wilmington. The Port of Morehead City is located in Carteret County; Carteret County is a tier 3 county. The Port of Wilmington is located in New Hanover County; New Hanover County is also a tier 3 county.

A ports enhancement zone is 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 25 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.

The statute also stipulates that the area of the county that is included in one or more port enhancement zones may not exceed 5% of the total area of the county.

The enhanced credits available to an urban progress zone (UP zone) and an agrarian growth zone (AG zone)⁷ will be available to a ports enhancement zone, effective for taxable years beginning on or after January 1, 2013.

BILL ANALYSIS: Section 7 of the PCS would change one of the three conditions that must be met in order to qualify as a ports enhancement zone. Under the bill, the zone would have to be comprised of part or all of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census. This change would make it consistent with the UP zone definition.

⁶ North Carolina seeks to incent businesses to create jobs and invest in business property primarily through Article 3J tax credits. A taxpayer's eligibility for a credit and the amount of the credit varies depending upon the county or zone in which the jobs are created or the investments are made. 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.

⁷ The enhanced credits available to an UP zone or an AG zone under Article 3J are as follows:

- **Jobs tax credit.** – The threshold for new full-time jobs created to qualify for the tax credit for creating new jobs is the same as for a tier 1 county, five ; and the amount of the credit is increased by \$1,000 per job. 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.
- **Machinery and equipment investment tax credit.** – The investment threshold requirement to qualify for the tax credit for investing in business property is the same as a tier 1 county, which is none. The amount of the investment tax credit is also the same as a tier 1 county, 7% of the cost of tangible personal property that is placed in service during the taxable year.

House PCS 142

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EFFECTIVE DATE: This section becomes effective for taxable years beginning on or after January 1, 2013.

H142-SMSV-95(CSMCf-20) v2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1025

DATE 5/30/12

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) ROSS
Sen.)

1 moves to amend the bill on page 3, line 23

2 (X) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 "Section 12 of G.S. 105-129.39 reads as rewritten:

5 "§105-129.39. Sunset

6 This article expires for qualified rehabilitation
7 expenditures and rehabilitation expenses incurred on
8 or after January 1, ~~2014~~ 2015."

9 Section 12.(b) of G.S. 105-129.75 reads as
10 rewritten:

11 "§105-129.75 Sunset

12 This article expires January 1, ~~2014~~ 2015,
13 for rehabilitation projects for which an application
14 for an eligibility certification is submitted on
15 or after that date."

16 Section 13. This act is effective when it
17 becomes law."

18 and by ~~amend~~ page 1 line ² 3 by rewriting the line
19 to read:

AN ACT TO EXTEND THE SUNSET
OF CERTAIN TAX
PROVISIONS."

SIGNED [Signature]

ADOPTED

FAILED

TABLED

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 5/30/12

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE H142 - CSMCF - 20

(to be filled in by
Principal Clerk)

Rep.) Stam
Sen.) _____

1 moves to amend the bill on page 1, line 29

2 () WHICH CHANGES THE TITLE

3 by deleting "or" and on page 1, line 30,

4 by deleting "record." and substituting "record, or

5 (iii) a motion to withdraw condemnor's deposit in a

6 condemnation proceeding;" and on page 2, lines

7 1-2 by deleting "or (ii) a motion to withdraw

8 as attorney or counsel of record." and substituting

9 "~~(ii) a motion to withdraw as attorney or~~

10 ~~counsel of record."~~ and substituting "(ii) a

11 motion to withdraw as attorney or counsel of record,

12 or (iii) a motion to withdraw condemnor's deposit

13 in a condemnation proceeding;" and on page

14 2, line 13, by deleting "or" and on

15 page 2, line 14, by deleting "record." and

16 substituting "record, or (iii) a motion to withdraw

17 condemnor's deposit in a condemnation proceeding."

18

19

SIGNED Stam

ADOPTED _____ FAILED _____ TABLED _____

**2011 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on
FINANCE.

Committee Substitute for

HB 1025 A BILL TO BE ENTITLED AN ACT TO EXTEND THE SUNSET OF CERTAIN TAX PROVISIONS, AS PROPOSED BY THE REVENUE LAWS STUDY COMMITTEE.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 142*

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

H142-ASV-55 [v.1]

Page 1 of 1

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

Date _____, 2012

Representative Howard

- 1 moves to amend the bill on page 2, line 42, by deleting the phrase "G.S. 150-164.14(a1)" and
- 2 substituting the phrase "G.S. 105-164.14(a1)".
- 3
- 4

SIGNED _____

Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____



* H 1 4 2 - A S V - 5 5 - V - 1 *



North Carolina General Assembly
House Committee on Finance

Minutes

~
June 7, 2012

The House Committee on Finance met on Wednesday, May 30, 2012, at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Folwell, Starnes and Setzer; Vice-Chair McComas; and Representatives K. Alexander, Brandon, Brawley, Carney, Collins, Cotham, Faison, Hackney, Hall, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, Ross, Samuelson, Stone, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, Jesse Hayes and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Starnes called the meeting to order and recognized Representative West to present **HB 1087, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF FONTANA DAM TO LEVY AN OCCUPANCY TAX.** Representative Carney moved for a favorable report on the bill. Motion passed.

The next matter of business was **HB 991, A BILL TO BE ENTITLED AN ACT TO POSTPONE THE EFFECTIVE DATE OF CHANGES MADE TO THE JACKSON COUNTY OCCUPANCY TAX DURING THE 2011 REGULAR SESSION OF THE GENERAL ASSEMBLY.** Representative Luebke moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 958, A BILL TO BE ENTITLED AN ACT TO CREATE A PUBLIC-PRIVATE PARTNERSHIP FOR THE NORTH CAROLINA ZOOLOGICAL PARK, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON PUBLIC-PRIVATE PARTNERSHIPS.** The committee discussed the bill and no motion was carried.

There being no further business presently before the Committee, the meeting adjourned at 9:50 am.

Edgar V. Starnes
Rep. Edgar Starnes, Presiding Chair

Andrew Henson
Andrew Henson, Committee Clerk

AGENDA
House Finance Committee

Thursday, June 7, 2012
Room 544 LOB
8:30 a.m.

Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

HB 1087 Fontana Dam Occupancy Tax
Representatives West

HB 991 Jackson Co. Occupancy Tax Changes
Representative Haire

HB 958 NC Zoo Public-Private Ptshp. > PCS
Representatives Moffit, Brawley, Murry, R. Moore

Adjournment

VISITOR REGISTRATION SHEET

House Finance Committee

May 23, 2012

Name of Committee

Date Jun. 7, 2012

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Allison Walker	Nelson Mullins
Fred Bonn	Dona : 6500
Jason Sayers	SLD
David Knott	DENR
David Jones	NC Zoo
B. in Cary	DENR
Cheryl Turner	NC Zoo Society
Euel Johnson	"
Jim Klingler	NC Zoo Society
George Smith	William Mullen
Kara Weishaar	SA

VISITOR REGISTRATION SHEET

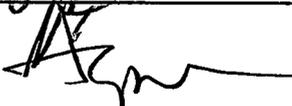
House Finance Committee

~~May 23, 2012~~

Name of Committee

Date June 7, 2012

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
Vance Holloman	NC DST
DORA FAZZINI	NC DST
Speros Pleggias	DORA
Mitch Leonard	SEANC
SOLARI	DST
K. Bestman	TSS
Paul Meyer	NCLM
Jack Cozart	NSS
	DST
	WK
William Creech	Dora

HOUSE FINANCE AGENDA
Thursday, Jun 7, 2012 at 8:30 am
Chair: Rep. Starnes

Bill #	Short Title	Sponsor	Materials and Explanation	Staff	Comments
H 1087	Fontana Dam Occupancy Tax	West	<input type="checkbox"/> Summary <input type="checkbox"/> Fiscal Note	Trina	
H 991	Jackson Co. Occupancy Tax Changes	Haire	<input type="checkbox"/> Summary <input type="checkbox"/> Fiscal Note	Trina	
H 958	NC Zoo Public-Private Ptshp. > PCS	Moffit	<input type="checkbox"/> Summary <input type="checkbox"/> Fiscal Note <input type="checkbox"/> PCS	Greg	

*Refer HB 1190 North Topsail Beach Occupancy Tax Change to Occupancy Tax Subcommittee chaired by Rep. McGee

*House Finance Committee
Presentation*

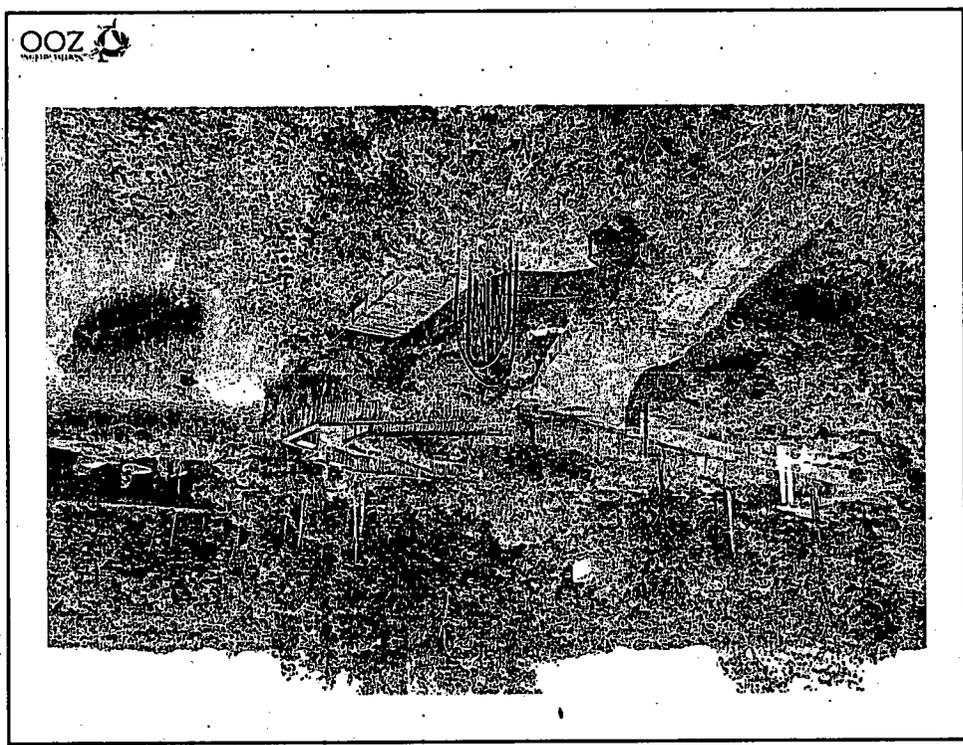
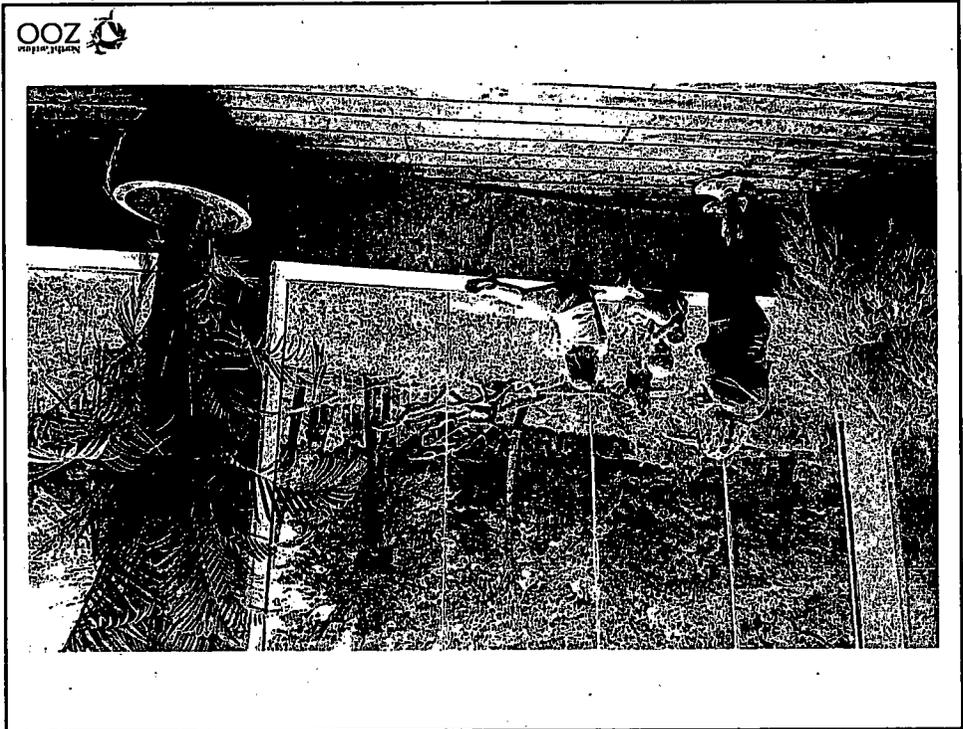
Thursday, June 7th, 2012

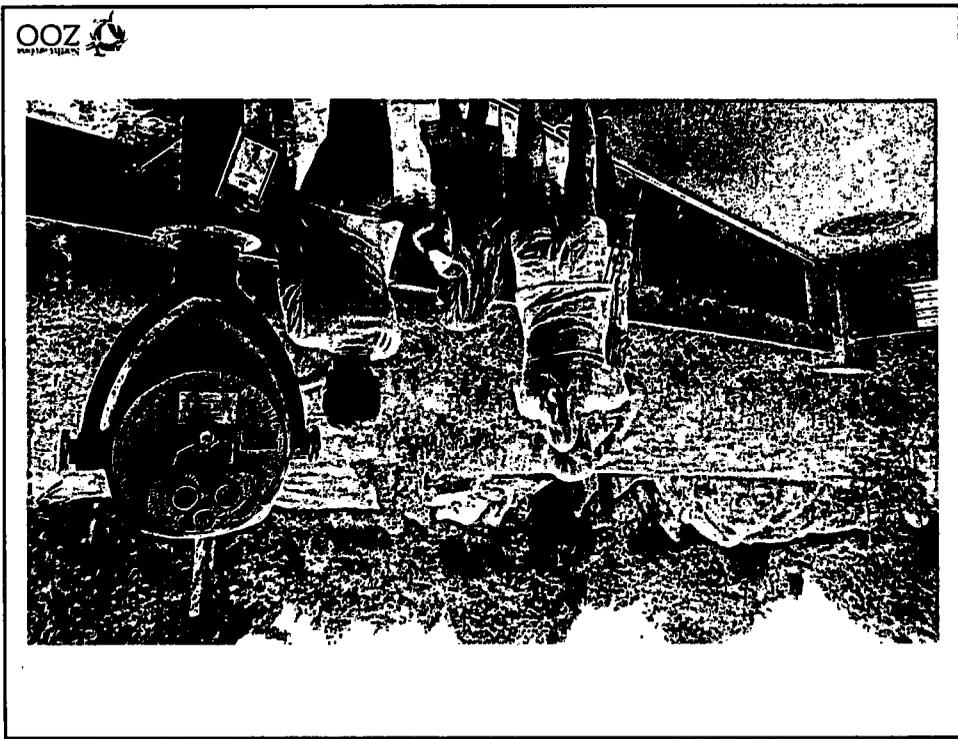
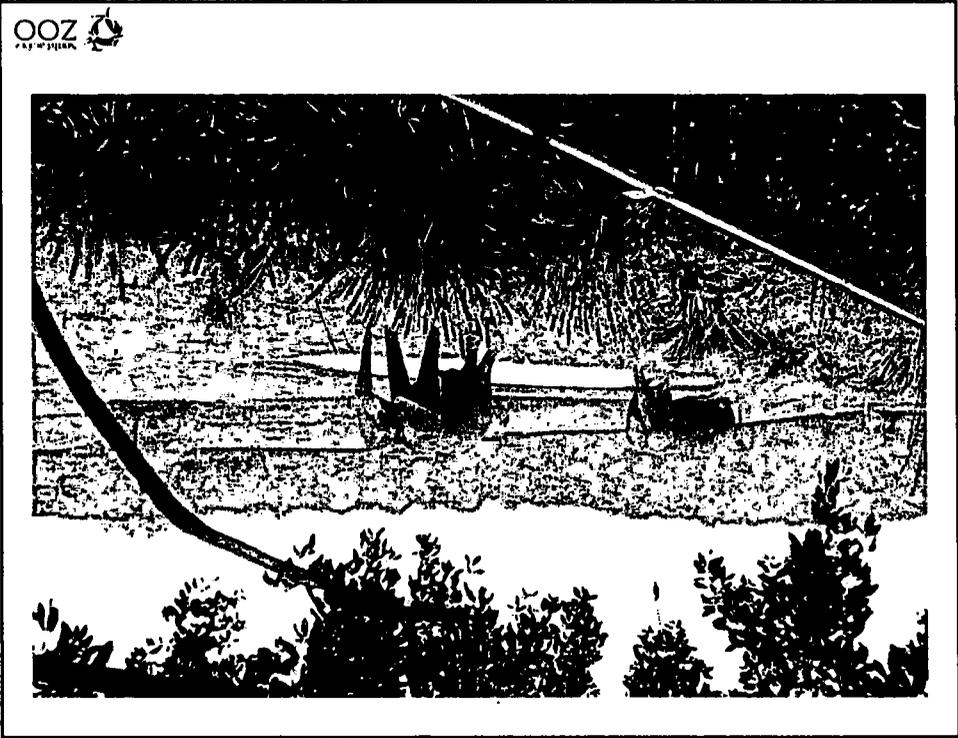


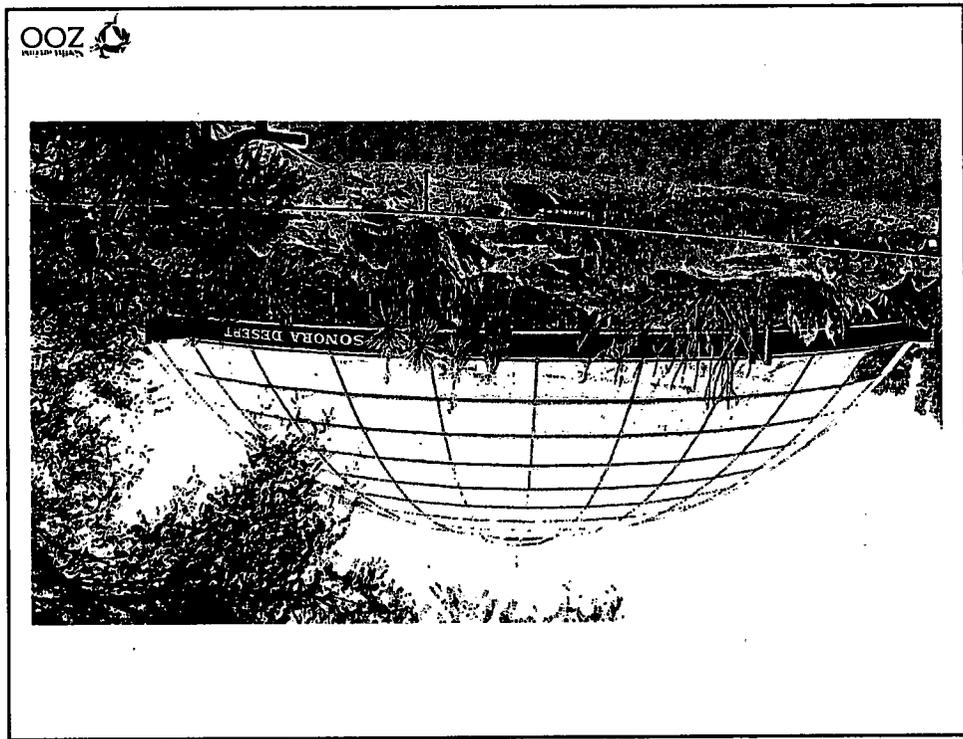
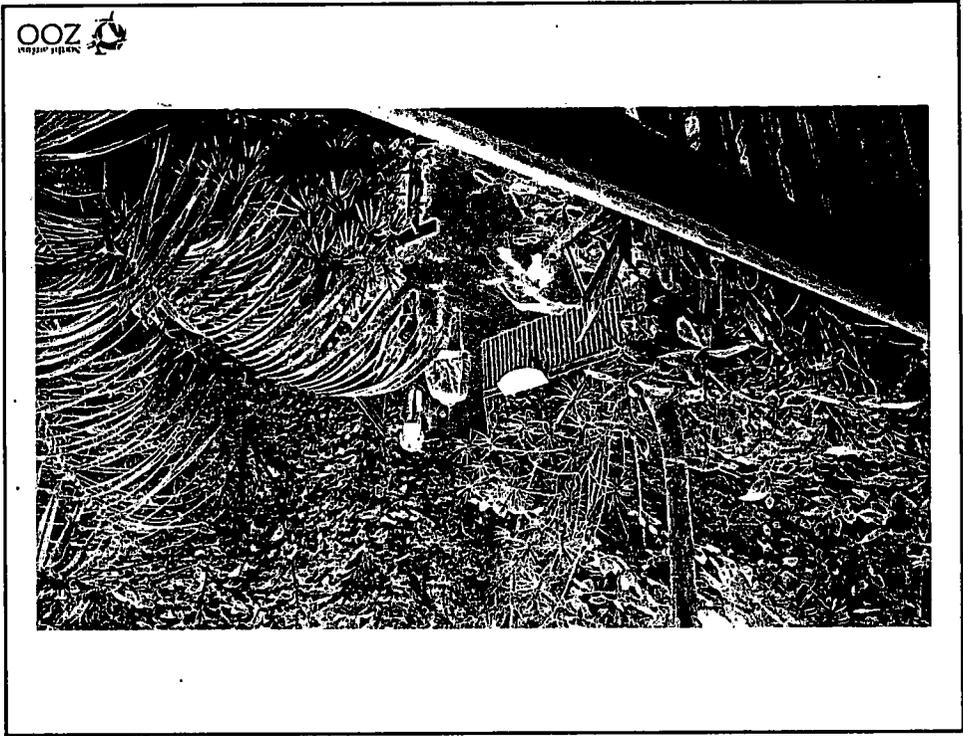
North Carolina Zoo

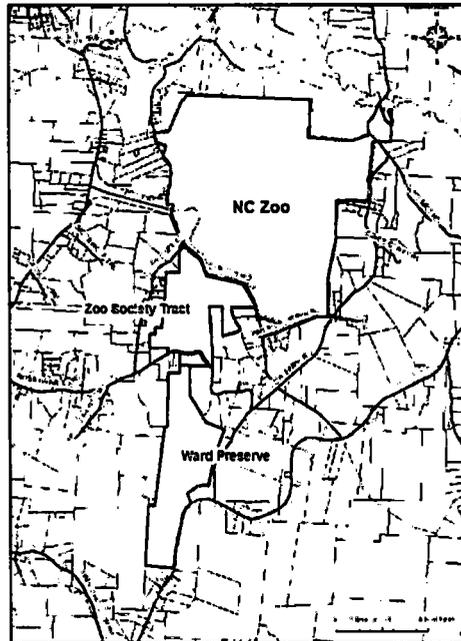
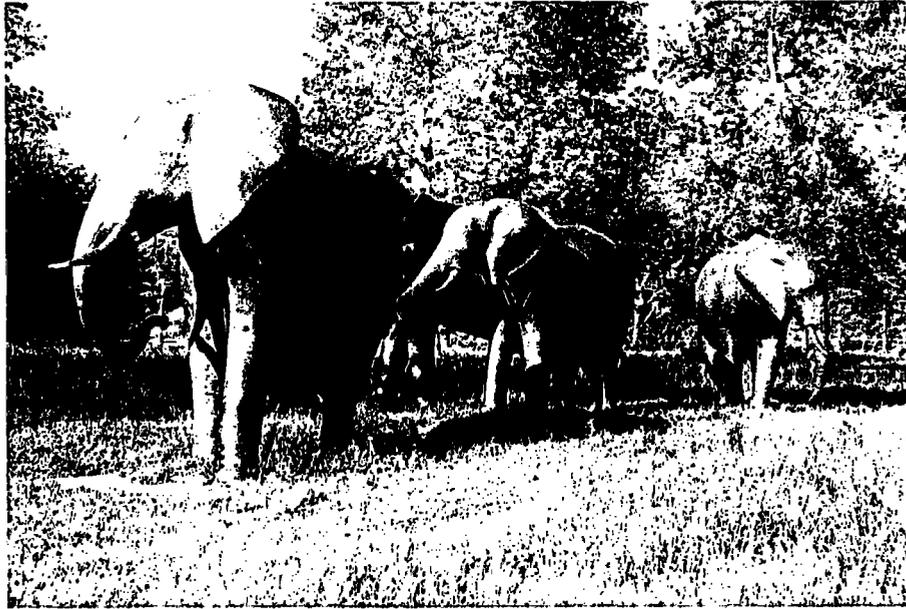
The Future Zoo





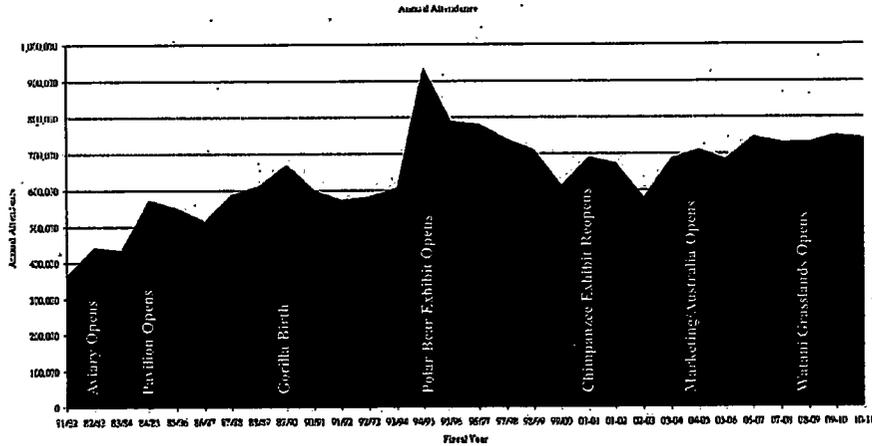






North Carolina Zoo

Annual Attendance by Fiscal Year



North Carolina Population

25 Mile Radius	.27 Million
50 Mile Radius	1.8 Million
100 Mile Radius	(2011 Population Estimate) 7.5 Million
100 Mile Radius	(2014 Population Estimate) 8.2 Million



Annual Economic Impact

Existing Zoo Facilities

<i>Expenditures:</i>	<i>\$146 Million</i>
<i>Employment:</i>	<i>1,655 Jobs</i>
<i>Tax Impact:</i>	<i>\$2.9m Randolph County</i>
	<i>\$5.3m State of North Carolina</i>



Annual Economic Impact

Peripheral Land

Enhanced Peripheral land plus existing Zoo

<i>Expenditures:</i>	<i>\$264 Million</i>
<i>Employment:</i>	<i>2,630 Jobs</i>
<i>Tax Impact:</i>	<i>\$5.3m Randolph County</i>
	<i>\$9.7m State of North Carolina</i>





North Carolina Zoo Governance Study Update

Why Zoos Consider a Shift in Governance

- *75% of AZA accredited zoos under private management – most with public partners – true PPP... (public/private partnership)*
- *Creates an entrepreneurial business approach*
- *Provides flexibility in response to staffing & visitors*
- *Allows for cost efficiencies by eliminating the duplication of efforts and in purchasing services*



Why Zoos Consider a Shift in Governance

- *Creates market-based pricing strategies*
- *Offers a re-investment strategy as “what is earned at the Zoo is invested in the Zoo”*
- *Strengthen private financial support for the Zoo*
 - *Investment in new facilities, exhibits and attractions*
 - *Provides new opportunities to engage the regional & State-wide communities*
- *Solidify the Zoo’s annual funding structure*

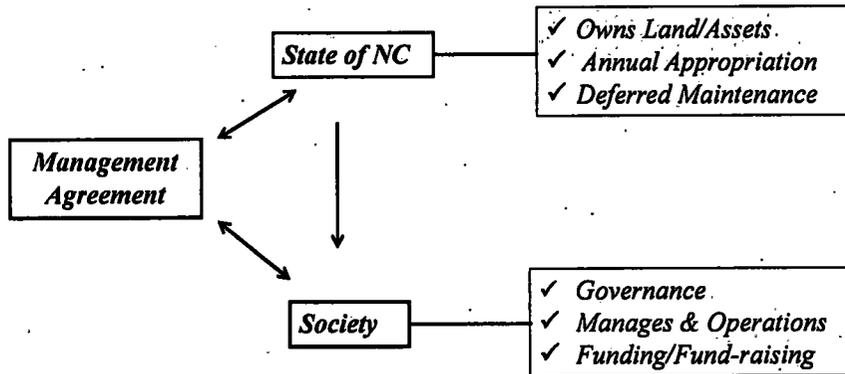


Why Zoos Consider a Shift in Governance

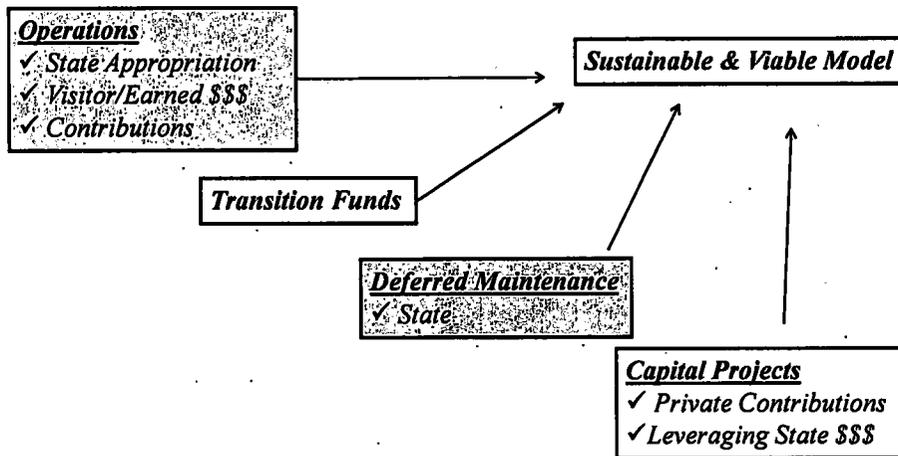
- *Develop strategic partnerships to increase income and investment*
- *Speed up decision making process*
- *Encourage a management culture best suited to the Zoo’s Needs*
- *Enables long-term planning and resultant timely actions*



Potential Organizational Structure under PPP Structure



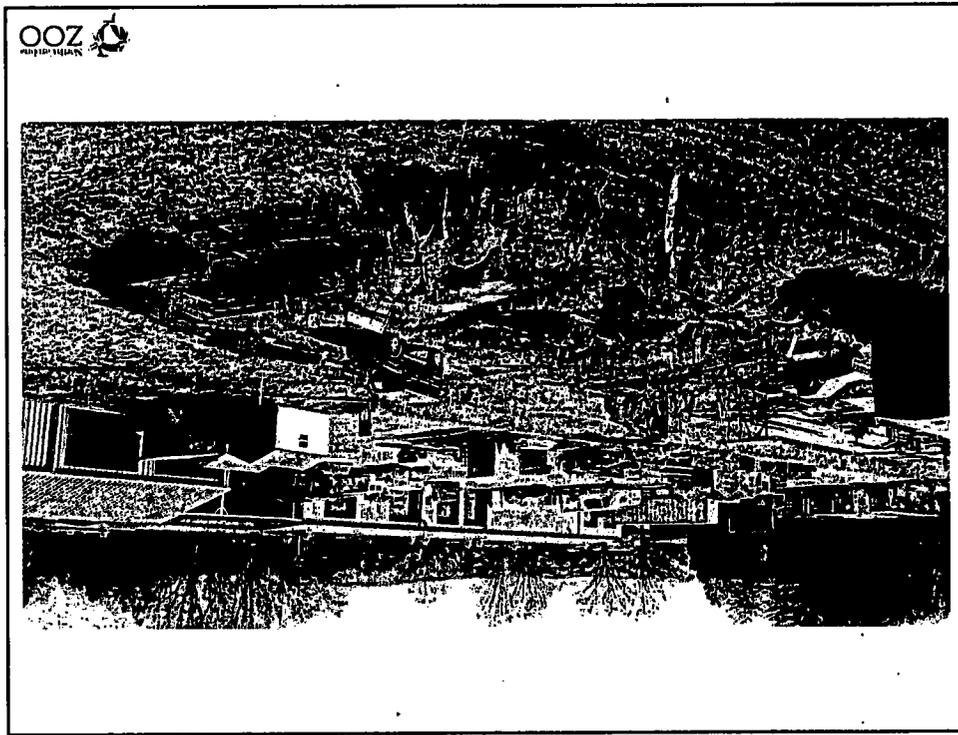
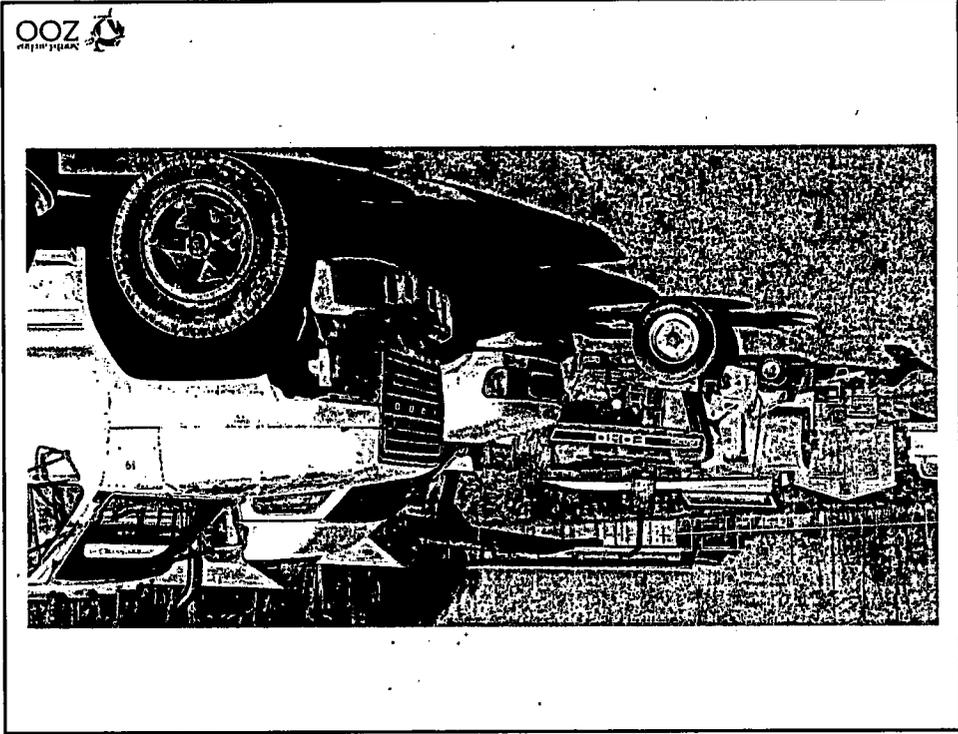
Strategic Funding Model



Deferred Maintenance

<i>Building Repairs</i>	<i>19.0 m</i>
<i>Exhibits/Fencing/Glass</i>	<i>4.0 m</i>
<i>Parking/Roads/Paths</i>	<i>2.5 m</i>
<i>Heavy Vehicles</i>	<i>2.0 m</i>
<i>Water/Sewer/Irrigation</i>	<i>1.5 m</i>
<i>Electrical/Energy</i>	<i><u>1.0 m</u></i>
	<i>30.0 Million</i>





Appropriations

FY	Actual Attendance	Actual State Appropriation
2001-02	671,619	\$7,363,259
2001-03	576,093	\$8,253,189
2003-04	676,956	\$8,075,991
2004-05	709,030	\$8,688,470
2005-06	682,977	\$9,437,318
2006-07	746,650	\$10,957,664
2007-08	729,500	\$11,472,868
2008-09	729,615	\$11,483,834
2009-10	749,627	\$11,131,782
2010-11	741,119	\$11,451,024



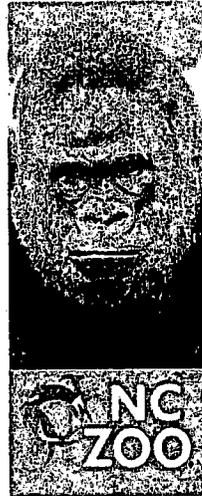
Key Points

- *\$10 Million in appropriations annually*
- *\$5 Million/year for 6 years to catch up on backlog maintenance (Total \$30 Million)*
- *\$3.2 Million Transition*



Key Points

- *Maintenance of High Quality, World Class Facility*
- *Flexible, Entrepreneurial, Time Sensitive Business Approach*
- *Increased Private Support*
- *Creation of Income Generating Partnerships*



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 991

Short Title: Jackson Co. Occupancy Tax Changes. (Local)

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

Referred to: Government, if favorable, Finance.

May 21, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO POSTPONE THE EFFECTIVE DATE OF CHANGES MADE TO THE
3 JACKSON COUNTY OCCUPANCY TAX DURING THE 2011 REGULAR SESSION
4 OF THE GENERAL ASSEMBLY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Section 7 of S.L. 2011-170 reads as rewritten:

7 "SECTION 7. Part II and Section 5 of this act become effective January 1, 2013. This The
8 remainder of this act is effective when it becomes law."

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





HOUSE BILL 991: Jackson Co. Occupancy Tax Changes

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Haire
Analysis of: First Edition

Date: June 7, 2012
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 991 would delay the effective date of legislation enacted during the 2011 session authorizing Jackson County to levy an additional 3% room occupancy tax and requiring other administrative changes. This bill received a favorable report by the Occupancy Tax Subcommittee on June 5, 2012.*

CURRENT LAW: In 1985, the General Assembly authorized several western counties, including Jackson, to levy an occupancy tax of 3%. The net proceeds of the tax are placed in a special Travel and Tourism Fund and may be used only to promote travel and tourism in the county. The county has discretionary authority to establish a tourism development authority to administer the funds.

In 2011, the General Assembly enacted S.L. 2011-170 (HB 96), which rewrote and recodified the law authorizing the 3% room occupancy tax in Jackson County to conform the content to the uniform format currently used for occupancy taxes. By conforming to the House Finance Occupancy Tax Guidelines, Jackson County may use up to one-third of the occupancy tax proceeds for tourism-related expenditures, which it could not do under the 1985 law. The 2011 legislation also authorized Jackson County to levy an additional 3% occupancy tax with the same conditions and requirements that apply to the first 3%.

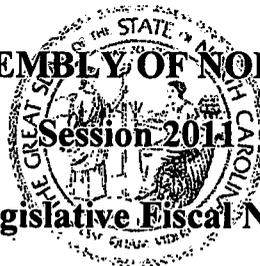
BILL ANALYSIS: House Bill 991 would delay until January 1, 2013, the effective date of the 2011 legislation. The county has requested this legislation.

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

BACKGROUND: As noted above, the 1985 legislation did not require the occupancy tax proceeds to be administered by a tourism development authority. In 1987, the legislation was amended to give the County discretionary authority to establish a travel and tourism authority. Jackson County currently has two travel and tourism authorities that administer the proceeds of the 3% room occupancy tax: the Jackson County Tourism Authority and the Cashiers Tourism Authority. Based upon the way the 2011 legislation was drafted, the County was required to establish a single, countywide Tourism Development Authority as soon as the act became law, regardless of when and whether the County enacted the additional 3% occupancy tax. The County believed that it would not have to establish a single TDA until it enacted the additional 3% tax. The County would like additional time to transition to a single TDA and, therefore, requested the effective date extension.

H991-SMSV-101(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 991 (First Edition)

SHORT TITLE: Jackson Co. Occupancy Tax Changes.

SPONSOR(S): Representative Haire

FISCAL IMPACT

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

FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16 FY 2016-17

REVENUES

No Fiscal Impact

EXPENDITURES

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Jackson County

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

BILL SUMMARY: House Bill 991 amends SL 2011-170 to postpone changes made to Jackson County's occupancy tax until January 1, 2013.

ASSUMPTIONS AND METHODOLOGY: The 2011 legislation allowed for an additional 3% occupancy tax to be levied with the same conditions and requirements that apply to the initial 3% rate. House Bill 991 would simply move the effective date of that legislation to January 1, 2013. There would be no fiscal impact, as the additional 3% occupancy tax is not being levied.

SOURCES OF DATA: Committee Counsel Report

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Mark Trogon, Acting Director
Fiscal Research Division

DATE: June 4, 2012



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1087

Short Title: Fontana Dam Occupancy Tax. (Local)

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

Referred to: Government, if favorable, Finance.

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF FONTANA DAM TO LEVY AN
OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

TOWN OF FONTANA DAM OCCUPANCY TAX

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

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

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

The following definitions apply in this section:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross proceeds collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Fontana Dam Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the



* H 1 0 8 7 - V - 1 *

1 town or to attract tourists or business travelers to the town. The term
2 includes tourism-related capital expenditures.

3 **SECTION 1.(d) Tourism Development Authority. – Appointment and**
4 **Membership. –** When the Town Council adopts a resolution levying a room occupancy tax
5 under this section, it shall also adopt a resolution creating the Fontana Dam Tourism
6 Development Authority, which shall be a public authority under the Local Government Budget
7 and Fiscal Control Act. The resolution shall provide for the membership of the Authority,
8 including the members' terms of office, and for the filling of vacancies on the Authority. At
9 least one-third of the members shall be individuals who are affiliated with businesses that
10 collect the tax in the town, and at least one-half of the members shall be individuals who are
11 currently active in the promotion of travel and tourism in the town. The Town Council shall
12 designate one member of the Authority as chair and shall determine the compensation, if any,
13 to be paid to members of the Authority.

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

17 **SECTION 1.(e) Duties. –** The Authority shall expend the net proceeds of the tax
18 levied under this section for the purposes provided in subsection (c) of this section. The
19 Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related
20 events and activities in the town, and finance tourist-related capital projects in the town.

21 **SECTION 1.(f) Reports. –** The Authority shall report quarterly and at the close of
22 the fiscal year to the Fontana Dam Town Council on its receipts and expenditures for the
23 preceding quarter and for the year in such detail as the Town Council may require.

24 **SECTION 2. G.S. 160A-215(g) reads as rewritten:**

25 "(g) **Applicability. –** Subsection (c) of this section applies to all cities that levy an
26 occupancy tax. To the extent subsection (c) conflicts with any provision of a local act,
27 subsection (c) supersedes that provision. The remainder of this section applies only to Beech
28 Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia,
29 Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir,
30 Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville,
31 Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of
32 Ahoskie, Beech Mountain, Benson, Bermuda Run, Blowing Rock, Boiling Springs, Boone,
33 Burgaw, Carolina Beach, Carrboro, Cooleemee, Cramerton, Dallas, Dobson, Elkin, Fontana
34 Dam, Franklin, Grover, Hillsborough, Jonesville, Kenly, Kure Beach, Leland, McAdenville,
35 Mocksville, Mooresville, Murfreesboro, North Topsail Beach, Pembroke, Pilot Mountain,
36 Ranlo, Selma, Smithfield, St. Pauls, Swansboro, Troutman, Tryon, West Jefferson, Wilkesboro,
37 Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and
38 Brunswick Counties."

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



HOUSE BILL 1087: Fontana Dam Occupancy Tax

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. West
Analysis of: First Edition

Date: June 7, 2012
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 1087 would authorize the Town of Fontana Dam to levy a room occupancy tax of up to 3%, the proceeds of which would be remitted to a Tourism Development Authority. The Authority would be required to use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourist-related expenditures. This bill was given a favorable report by the Occupancy Tax Subcommittee on June 5, 2012.*

[As introduced, this bill was identical to S942, as introduced by Sen. Davis, which is currently in Senate State and Local Government.]

CURRENT LAW: The Town of Fontana Dam was incorporated in 2011.¹ The Town is located in Graham County, which has the authority to levy a 3% room occupancy tax.² The proceeds of that tax may be, but are not required to be, administered by a Travel and Tourism Authority. All of the proceeds must be used to promote travel and tourism in the county. The Fontana Village Resort, which is the only hotel accommodation within the municipal limits, currently collects both the State and local sales and use tax and the county occupancy tax on the rental of its accommodations.

BILL ANALYSIS: House Bill 1087 would authorize Fontana Dam to levy a 3% room occupancy tax. The Town would be required to establish a Tourism Development Authority to administer the proceeds. The proceeds must be used as follows: at least two-thirds for tourism promotion and the remainder for tourism-related expenditures. The bill conforms to the Guidelines for Occupancy Tax adopted by the House Finance Committee.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax,³ which provide uniformity among counties and cities with respect to the levy, administration, collection, repeal, and imposition of penalties.

¹The Joint Legislative Commission on Municipal Incorporation did not give a favorable recommendation to the incorporation of Fontana Dam in its report, dated March 16, 2009, because the Commission found that the proposed Town did not meet the Commission standards for population and population density. The petition said Fontana Dam has 25 to 30 people with 25 people per half square mile, and the standard is 100 people with 250 people per square mile. Failure to get a favorable recommendation from the Commission does not prevent the General Assembly from incorporating a municipality. In the past 10 years, six petitions have failed to get a favorable recommendation, and incorporation occurred anyway. In most of those cases, the Commission found that the area seeking to be incorporated did not meet the criterion of 40% development. In the same years, eight failed petitions resulted in no incorporation.

²Originally enacted in 1985, Graham County's authorizing legislation does not conform to the House Finance Guidelines for Occupancy Tax. On previous occasions the Subcommittee has been presented with the issue of whether to require nonconforming county legislation to be brought into conformity with the Guidelines when a municipality in that county seeks the authority to levy or increase an occupancy tax, which effectively prevents conforming the county legislation in the future to the extent there remains a 6% cap on the rate of tax. To date, the Occupancy Tax Subcommittee has not established such a requirement.

³G.S. 153A-155 and G.S. 160A-215.

House Bill 1087

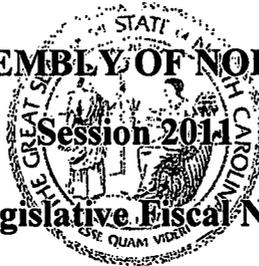
Page 2

In 1993, the House Finance Committee established the Occupancy Tax Guidelines, which address the rate of tax, the use of the tax proceeds, the administration of the tax, and the body with authority to determine how the proceeds will be spent. A summary of these provisions is detailed in the chart below. Many of the principles contained in the Guidelines are similar to those contained in policy statements adopted by the North Carolina Travel and Tourism Coalition and the North Carolina Restaurant and Lodging Association. The House Finance Committee Chairs have traditionally appointed a Subcommittee on Occupancy Taxes to scrutinize occupancy tax legislation to determine whether the legislation adheres to the Guidelines. The House Finance Chairs appointed Representatives McGee, Cotham, Carney, Moffitt, and Warren to be members of the House Finance Subcommittee on Occupancy Taxes this biennium.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term “net proceeds”, “promote travel and tourism”, and “tourism related expenditures” are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first \$500,000 collected each year plus 1% of the remainder collected each year.

H1087-SMSV-102(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 1087 (First Edition)

SHORT TITLE: Fontana Dam Occupancy Tax.

SPONSOR(S): Representative West

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
REVENUES					
Town of Fontana Dam	\$100,600	\$106,800	\$112,700	\$117,800	\$121,800
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Fontana Dam, Town of Fontana Dam Tourism Development Authority					
EFFECTIVE DATE: This act is effective when it becomes law.					

BILL SUMMARY:

House Bill 1087 would authorize the Town of Fontana Dam to levy a room occupancy tax of up to 3%, the proceeds of which would be remitted to a Tourism Development Authority. The Authority would be required to use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourist-related expenditures.

ASSUMPTIONS AND METHODOLOGY:

The Town of Fontana Dam has one resort with approximately 200 rentable rooms. In 2011, the North Carolina Department of Commerce estimated a room occupancy rate of 56.1%, with an average daily room rate of \$81.86. Using this information (200 rooms * 365 days * 56.1% occupancy rate * \$81.86 room rate * 3% occupancy tax) yields a revenue estimate of \$100,600 for 2012-13. Future fiscal year impacts were forecast using the Leisure and Tourism portion of the North Carolina Gross State Product, as forecast by Moody's.

SOURCES OF DATA: Committee Counsel Report, Fontana Village, Moody's Economy.com, North Carolina Department of Commerce Division of Tourism, Film and Sports Development

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY:

Mark Trogdon, Acting Director
Fiscal Research Division

DATE: June 6, 2012



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 958

Short Title: NC Zoo Public-Private Ptshp. (Public)

Sponsors: Representatives Moffitt, Brawley, Murry, and R. Moore (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Finance.

May 17, 2012

- 1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A PUBLIC-PRIVATE PARTNERSHIP FOR THE NORTH
3 CAROLINA ZOOLOGICAL PARK, AS RECOMMENDED BY THE HOUSE SELECT
4 COMMITTEE ON PUBLIC-PRIVATE PARTNERSHIPS.
5 The General Assembly of North Carolina enacts:
6 SECTION 1.(a) Part 22 of Article 7 of Chapter 143B of the General Statutes
7 (North Carolina Zoological Park Council) is repealed.
8 SECTION 1.(b) Any assets of the Zoo Fund established under Part 22 of Article 7
9 of Chapter 143B of the General Statutes at the time of its repeal shall be administered by the
10 Department of Environment and Natural Resources under the management agreement provided
11 by G.S. 143-177 as amended by this act.
12 SECTION 2. Article 14 of Chapter 143 of the General Statutes reads as rewritten:
13 "Article 14.
14 "North Carolina Zoological Authority.
15 **"§ 143-177. Right to receive ~~gifts~~, gifts, operation, and transfer of Zoo.**
16 (a) Purpose; Management Agreement; Transfer of Zoo. – The North Carolina
17 Zoological Park (Zoo) maintains a diverse collection of plant and wildlife specimens in order to
18 study, conserve, and introduce to people the species of the world. The North Carolina
19 Department of Environment and Natural Resources is directed to enter into a management
20 agreement with the North Carolina Zoological Society, Inc., (Society) for a term not to exceed
21 25 years with options to renew at the end of each term, for the Society to maintain and operate
22 the Zoo. The management agreement shall require that the Zoo provide free admission to North
23 Carolina school students visiting the Zoo as part of an in-school tour group. The Society shall
24 carry out the following minimum duties with respect to the Zoo:
25 (1) Providing park and outreach operation.
26 (2) Planning for and implementation of maintenance and expansion.
27 (3) Providing construction, furnishings, and equipment.
28 (4) Maintaining high standards of animal welfare and husbandry.
29 (5) Carrying out research and practical conservation programs.
30 (6) Establishing and setting admission fees.
31 (7) Promoting public appreciation of animals and plants.
32 (8) Disseminating information about the Zoo and its programs.
33 (9) Developing effective public support.
34 (10) Soliciting financial and material support from various private sources within
35 and without the State of North Carolina.



- 1 (11) Maintaining the highest possible standards in the Zoo's exhibits,
2 landscaping, and overall appearance.
- 3 (12) Maintaining Association of Zoos and Aquariums (AZA) accreditation.
- 4 (b) State Representation on Society Board. – As a condition of entering into the
5 agreement, the Society shall amend its articles of incorporation, bylaws, or other appropriate
6 corporate document to provide that the Secretary of the Department of Environment and
7 Natural Resources or that Secretary's designee and the Secretary of the Department of
8 Administration or that Secretary's designee shall serve on its board of directors ex officio.
- 9 (c) General Transfer Language. – As of January 1, 2013, all of the rights, privileges,
10 liabilities, and obligations of the North Carolina Zoological Park Council not inconsistent with
11 the provisions of this section shall, under the terms of the management agreement, be
12 transferred to and assumed by the board of directors of the Society.
- 13 (d) Governance of Zoo. – As of January 1, 2013, the Zoo and the zoological programs
14 established or maintained by the Zoo shall be governed by the Society under the general
15 direction of its board of directors.
- 16 (e) Personal Property Transfer. – To effect an orderly transition, the management
17 agreement shall detail the specific personal property of the State, both tangible and intangible,
18 that shall be transferred to the Society. The management agreement must also provide for
19 reversion of such personal property to the State or redirection by the State if the Society ceases
20 to exist, enters bankruptcy, terminates its management agreement with the State, or in any other
21 way is incapable of maintaining the Zoo. The Department of Environment and Natural
22 Resources shall transfer to the Society any personal property listed in the State asset inventory
23 that is necessary for the operation of the Zoo, including any relevant permits, registrations, and
24 licenses necessary, appropriate, or convenient to ownership. If any fee or other payment is
25 required to effectuate the transfer, the Society shall pay the fee or other payment or reimburse
26 the Department of Environment and Natural Resources for any expenditure in relation to the
27 transfer.
- 28 (f) Real Property Transfer. – All real property currently owned by the State and
29 allocated to the Zoo shall remain in title to the State. The State shall retain property control
30 over all State real property at the Zoo, except that the Society shall be afforded naming rights
31 on land or fixtures owned by the State.
- 32 (g) Annual Appropriations. – As a management fee to support operation of the Zoo, the
33 sum of ten million dollars (\$10,000,000) shall be appropriated annually by the State to the
34 Society under the terms of the management agreement until the end of its term; except for the
35 2012-2013 fiscal year, it shall be the sum of five million dollars (\$5,000,000) to annualize it to
36 the January 1, 2013, effective date of the transfer.
- 37 (h) Reserve for Repair and Renovation. – The Society shall be eligible for allocations
38 from the Reserve for Repair and Renovation to cover current deferred maintenance on State
39 property at the Zoo that as of January 1, 2012, totalled thirty million dollars (\$30,000,000). It is
40 the intent of the General Assembly that five million dollars (\$5,000,000) annually shall be
41 provided to the Society from the Reserve until a total of thirty million dollars (\$30,000,000) has
42 been satisfied. The allocation shall be administered by the the Department of Environment and
43 Natural Resources. As initial implementation of this subsection, for the 2012-2013 fiscal year,
44 the sum of five million dollars (\$5,000,000) is appropriated from the Reserve for Repair and
45 Renovation to the Department of Environment and Natural Resources and provided to the
46 Society to cover deferred maintenance on State property at the Zoo.
- 47 (i) Transition Costs. – The sum of three million two hundred thousand dollars
48 (\$3,200,000) for the 2012-2013 fiscal year is appropriated from the General Fund to the
49 Department of Environment and Natural Resources for transition expenses necessary to
50 implement this section.

1 (j) Audit. – The Society shall be subject to audit by the State Auditor and the
2 Performance Evaluation Division of the General Assembly.

3 (k) In order to carry out the purposes of this Article, the ~~Board is authorized~~ Society
4 may to acquire by gift or will, absolutely or in trust, from individuals, corporations, or any
5 other source money or other property, or any interests in property, which may be retained, sold
6 or otherwise used to promote the purposes of this Article. The use of gifts shall be subject to
7 such limitations as may be imposed thereon by donors, notwithstanding any other provisions of
8 this Article.

9 **"§ 143-177.1. North Carolina Zoological Park Fund.**

10 All gifts made to the ~~North Carolina Zoological Park Zoo~~ for the purposes of this Article
11 shall be exempt from every form of taxation including, but not by the way of limitation, ad
12 valorem, intangible, gift, inheritance and income taxation. Proceeds from the sale of any
13 property acquired under the provisions of this Article shall be deposited in the North Carolina
14 State treasury and shall be credited to the ~~North Carolina Zoological Park Zoo~~.

15 **"§ 143-177.2. Cities and counties.**

16 Cities and counties are hereby authorized to expend funds derived from nontax sources and
17 to make gifts of surplus property, to assist in carrying out the purposes of this Article.

18 **"§ 143-177.3. Sources of funds.**

19 (a) It is the intent of this Article that the funds for the creation, establishment,
20 construction, operation and maintenance of the ~~North Carolina Zoological Park Zoo~~ shall be
21 obtained primarily from private sources; however, the ~~Council Society~~, under the supervision
22 and approval and with the assistance of the Secretary of Environment and Natural ~~Resources~~
23 Resources, is hereby authorized to receive and expend such funds as may from time to time
24 become available by appropriation or otherwise from the State of North Carolina; provided,
25 that the ~~North Carolina Zoological Park Council Society~~ shall not in any manner pledge the
26 faith and credit of the State of North Carolina for any of its purposes. Real property of the State
27 may not be pledged as collateral by the Society in any financing, nor may the annual
28 appropriation for operating expenses be pledged as security in any financing.

29 (b) ~~The Council with the approval of the Secretary of Environment and Natural~~
30 ~~Resources is authorized to establish and set admission fees which are reasonable and consistent~~
31 ~~with the purpose and function of the North Carolina Zoological Park.~~

32 **"§ 143-177.4. Capital improvement projects.**

33 (a) As provided in this subsection, for any capital improvement projects on State lands
34 or when any State funds are used, the State shall retain design and construction oversight in the
35 following manner:

36 (1) Capital projects over two million dollars. – The facility master plan and any
37 plans, specifications, construction schedules, and budgets for such projects
38 which are estimated to require the expenditure of over two million dollars
39 (\$2,000,000) are subject to approval by the Department of Environment and
40 Natural Resources and by the Department of Administration to ensure that
41 State standards are met.

42 (2) Capital projects of two million dollars or less. – The Society shall, with
43 respect to the design, construction, or renovation of buildings, utilities, and
44 other property developments of the Zoo requiring the expenditure of two
45 million dollars (\$2,000,000) or less, take the following actions:

46 a. Conduct the fee negotiations for all design contracts and supervise
47 the letting of all construction and design contracts.

48 b. Develop procedures governing the responsibilities of the Zoo to
49 perform the duties of the Department of Administration and the
50 Director or Office of State Construction under G.S. 133-1.1(d) and
51 G.S. 143-341(3).

- 1 c. Develop procedures and reasonable limitations governing the use of
2 open-end design agreements, subject to G.S. 143-64.34 and the
3 approval of the State Building Commission.
- 4 d. Use existing plans and specifications for construction projects, where
5 feasible. Prior to designing a project, the Society shall consult with
6 the Department of Administration on the availability of existing
7 plans and specifications and the feasibility of using them for a
8 project.
- 9 e. The Society shall use the standard contracts for design and
10 construction currently in use for State capital improvement projects
11 by the Office of State Construction of the Department of
12 Administration.
- 13 f. A contract may not be divided for the purpose of evading the
14 monetary limit under this subsection.
- 15 g. Notwithstanding any other provision of Chapter 143 of the General
16 Statutes, the Department of Administration shall not be the awarding
17 authority for contracts awarded pursuant to this subsection.
- 18 h. The Society shall report annually to the State Building Commission
19 the following:
- 20 1. A list of projects governed by this subsection.
21 2. The estimated cost of each project, along with the actual cost.
22 3. The name of each person awarded a contract under this
23 subsection.
- 24 4. Whether the person or business awarded a contract under this
25 subsection meets the definition of "minority business" or
26 "minority person" as defined in G.S. 143-128.2(g).
- 27 (b) The Society may choose to ask for review by the Department of Environment and
28 Natural Resources and by the Department of Administration of other capital improvement
29 projects or capital improvement projects not covered by subsection (a) of this section. No other
30 State approval or review is required of such projects, as State review and approval is not
31 required of capital improvement projects on Society-owned property where there is no State
32 funding of the project.
- 33 (c) The Society may enter into lease arrangements with the State to make capital
34 improvements on State-owned property. This subsection shall be implemented as provided in
35 the management agreement required by G.S. 143-177.
- 36 (d) The Society or Department of Environment and Natural Resources may request
37 State funding for capital improvement projects through the State's capital planning and
38 budgeting process.
- 39 (e) This subsection does not exempt any capital improvement project from review and
40 approval by the city or county having jurisdiction over the property as may be required by law.
- 41 (f) Notwithstanding the provisions of Chapter 143C of the General Statutes, the Society
42 may approve (i) expenditures to plan a capital improvement project of the Zoo, the planning for
43 which is to be funded entirely with non-General Fund money, (ii) expenditures for a capital
44 improvement project of the Zoo that is to be funded and operated entirely with non-General
45 Fund money, or (iii) a change in the scope of any previously approved capital improvement
46 project of the Zoo, provided that both the project and change in scope are funded entirely with
47 non-General Fund money. The Society shall report any expenditure made pursuant to this
48 subsection to the Office of State Budget and Management and to the Joint Legislative
49 Commission on Governmental Operations."
- 50 SECTION 3. This act becomes effective January 1, 2013, except that the
51 Department of Environment and Natural Resources and the North Carolina Zoological Society,

- 1 Inc., may enter into the management agreement provided by G.S. 143-177, as amended by this
- 2 act, at any time prior to that date, and the Department of Environment and Natural Resources
- 3 may also act on any transitional requirements prior to that date.

Setzer



North Carolina General Assembly House Committee on Finance

Minutes

June 12, 2012

The House Committee on Finance met on Tuesday, June 12, 2012, at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chairs McComas and Wainwright; and Representatives K. Alexander, Brawley, Carney, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, T. Moore, Ross, Saine, Samuelson, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, Jesse Hayes and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Starnes called the meeting to order and recognized Representative Howard to present **SB 828, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS**. By motion of Representative Howard, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Howard moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

The next matter of business was **HB 1041, A BILL TO BE ENTITLED AN ACT TO EXCHANGE CERTAIN DESCRIBED TRACTS OF LAND BETWEEN THE CITY OF ARCHDALE AND THE CITY OF HIGH POINT**. Representative Brandon moved for a favorable report. Motion passed.

The next matter of business was **SB 906, A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF NAGS HEAD TO LEASE OUT PROPERTY FOR A LICENSED NURSING HOME UP TO FORTY YEARS WITHOUT TREATING IT AS A SALE**. Representative Setzer moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1088, A BILL TO BE ENTITLED AN ACT CONCERNING THE DIVISION BETWEEN GRAHAM AND SWAIN COUNTIES OF TVA PAYMENTS IN LIEU OF TAXES, AND CLARIFYING THE COMMON BOUNDARY BETWEEN THOSE COUNTIES**. Representative Carney moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1090, A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE REMAINING NINE PERCENT OF THE COMMON BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY NOT ADDRESSED BY SESSION LAW 2011-88 AND AS AUTHORIZED BY THE GENERAL ASSEMBLY BY SESSION LAW 2010-61 ENABLING THE CHANGES IN THE HISTORIC ORANGE COUNTY-ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING ALAMANCE COUNTY.** By motion of Representative Setzer, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Setzer moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

The next matter of business was **HB 1110, A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTIES FROM THE CORPORATE LIMITS OF THE TOWN OF MATTHEWS AND ANNEX IT TO THE TOWN OF STALLING, BOTH AT THE REQUEST OF THE RESPECTIVE TOWN GOVERNING BOARDS.** Representative Cotham moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1122, A BILL TO BE ENTITLED AN ACT TO VALIDATE CERTAIN LEVIES AND COLLECTION OF FIRE DISTRICT TAXES IN MARTIN COUNTY AND TO ALLOW MARTIN COUNTY TO ABOLISH BY RESOLUTION ITS CHAPTER 69 FIRE PROTECTION DISTRICTS UPON ESTABLISHMENT OF FIRE PROTECTION SERVICE DISTRICTS UNDER CHAPTER 153A OF THE GENERAL STATUTES.** Representative Carney moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1169, A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF BURGAW.** Representative Collins moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1202, A BILL TO BE ENTITLED AN ACT TO DEANNEX FROM THE CITY OF ROANOKE RAPIDS A PARCEL PREVIOUSLY ANNEXED BY A LEGISLATIVE ANNEXATION AND AMENDING THE AUTHORIZING LEGISLATION FOR THE HALIFAX-NORTHAMPTON REGIONAL AIRPORT AUTHORITY.** By motion of Representative Setzer, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Setzer moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

The next matter of business was **HB 1206, A BILL TO BE ENTITLED AN ACT TO MORE ACCURATELY DESCRIBE THE CORPORATE LIMITS OF THE TOWN OF BUTNER.** By motion of Representative Carney, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Carney moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

The next matter of business was **HB 1207, A BILL TO BE ENTITLED AN ACT TO ALLOW GRANVILLE COUNTY, PERSON COUNTY, THE CITY OF CREEDMOOR, THE TOWN OF BUTNER, AND THE TOWN OF STEM TO COLLECT DELINQUENT STORMWATER UTILITY FEES IN THE SAME MANNER AS DELINQUENT PERSONAL AND REAL PROPERTY TAXES.** Representative Howard moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

The next matter of business was HB 1217, A BILL TO BE ENTITLED AN ACT TO ADJUST THE BOUNDARIES OF THE TOWN OF WOODFIN AND THE CITY OF ASHEVILLE, AS REQUESTED BY THE GOVERNING BOARDS OF THOSE MUNICIPALITIES, BY (1) ANNEXING INTO THE CITY OF ASHEVILLE CERTAIN STATE-OWNED PROPERTY, (2) REMOVING CERTAIN STATE-OWNED PROPERTY FROM THE TOWN OF WOODFIN AND ANNEXING IT INTO THE CITY OF ASHEVILLE, (3) REMOVING CERTAIN STATE-OWNED AND PRIVATE PROPERTY FROM THE CITY OF ASHEVILLE AND ANNEXING IT INTO THE TOWN OF WOODFIN, AND (4) UPON PETITION OF THE OWNER AND WITH THE CONCURRENCE OF THE TOWN OF WOODFIN, ALLOWING THE CITY OF ASHEVILLE TO ANNEX CERTAIN PROPERTY IN THE TOWN OF WOODFIN THAT AS A RESULT OF THE OPERATION OF THIS ACT, IS SURROUNDED BY THE CITY OF ASHEVILLE OR A COMBINATION OF THE CITY OF ASHEVILLE AND AN UNINCORPORATED AREA, AND PROVIDING FOR THE CITY OF ASHEVILLE AND THE TOWN OF WOODFIN TO ENTER INTO AGREEMENTS REGARDING THE PROVISION OF MUNICIPAL SERVICES TO CERTAIN PROPERTIES IN EACH OTHER'S JURISDICTION. Representative Moffit moved for a favorable report to the bill. Motion passed.

The next matter of business was HB 1181, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE REVENUE LAWS STUDY COMMITTEE TO STUDY WHETHER MUNICIPALITIES SHOULD HAVE THE AUTHORITY TO LEVY A LOCAL OPTION SALES TAX FOR BEACH NOURISHMENT. By motion of Representative Lewis, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Carney moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

There being no further business presently before the Committee, the meeting adjourned at 9:46 am.

Rep. Edgar Starnes, Presiding Chair



Andrew Henson, Committee Clerk

HOUSE FINANCE AGENDA

Tuesday, June 12, 2012 at 8:30 am

Bill #	Short Title	Sponsor	Materials	Staff	Comments
S824	Expedited Rulemaking for Forced Combinations	Rucho	Summary	Cindy	
H945	Marion Legislative Annexation	Gillespie	Summary	Greg	
H963	Town of Columbia/Deannexation	Owens	Summary	Trina	
H1032	Morganton Deannexation	Blackwell	Summary	Greg	
H1199	Lake Lure Convey Property	Warren	PCS, Summary	Greg	
H1215	Henderson County Occupancy Tax Changes	McGrady	Summary, FN	Trina	If approved by subcommittee
H1203	Modify Martin County Occupancy Tax	Warren	Summary, FN	Trina	If approved by subcommittee
H957	Authorize Various Special Plates	Warren	PCS, Summary FN	Trina Brian	
S806	Modify Mortgage Regulation Funding	Brown	Summary, FN	Cindy Rodney	Brubaker/study recommendation
S572	County Omnibus	Davis	PCS, Summary	Cindy Rodney	
H182	Equalize Treatment of Cigarette Mfrs	Starnes	PCS, Summary FN	Heather Sandra	FOR DISCUSSION ONLY

S824
 H945
 H963
 H1032
 H1199
 H1215
 H1203
 H957
 S806
 S572
 H182

(discuss)
 with
 (Realt)
 (discuss)

Bill

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: JUNE 12, 2012

Room: 544

*Name: Porter Yelton - Cleveland - Tim Moore

County: Marie E. Neumann - Mecklenburg - Joe Hackney

Sponsor: Jennifer Stevenson - Mecklenburg - Thom Tillis

*Name: Patrick Jahn - Wake - Patsy Keever

County: Spencer Hazel - Guilford - Maggie Jeffus

Sponsor: Richard Killian - Mecklenburg - Ric Killian

*Name: Elizabeth Robins - Forsyth - Dale Folwell

County: Will Whisnant - Cleveland - Tim Moore

Sponsor: _____

*Name: _____

County: _____

Sponsor: _____

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: CARL MORELLO

2. Name: JOHN BRANDON

5. Name: _____

3. Name: YOUNG BAE

6. Name: _____

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE

Occup

DATE:

6-12-20

Room:

605

*Name:

County:

Sponsor:

House Sgt-At Arms:

1. Name:

Bill Bass

4. Name:

2. Name:

Martha James

5. Name:

3. Name:

6. Name:

VISITOR REGISTRATION SHEET

Name of Committee

Occup -

Date

6-12-12

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kara Weishaar

Smith Anderson

Dana Simpson

SA

Jack Gray

NCRLA

Miss Quick

Trouthol Sanders

Whitney Christensen

NCRLA

Jim Hobbs

HANC

DAVID BONE

MARTIN COUNTY

VISITOR REGISTRATION SHEET

HOUSE FINANCE

06-12-12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bobby Bryan	OAH/RRC
Molly Masich	OAH
JOE DELUCA	OAH/RRC
<i>[Signature]</i>	<i>[Signature]</i>
<i>[Signature]</i>	<i>[Signature]</i>
DANIEL BAUM	TROUTMAN SANDERS
SWANNA HAILEY	F&L Gates
PRESO HERRERO	MCIC
<i>[Signature]</i>	WM
Andy Eller	NCRMA
Sarah Wolfe	MWC
<i>[Signature]</i>	RCA/ACA

VISITOR REGISTRATION SHEET

HOUSE FINANCE

06-12-12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ha Nguyen	NCCOB
Elizabeth Hammond	NCCOB
McChesnut	for the Com. Bles.
RAY GRACE	NCCOB
Elizabeth Biser	Brooks Pieu
Paul Spick	NCCOB
Sarah Hardin	CTL
Shirley Roben	TWC
AL MILAK	NC DOR
John Panza	NC DOR
Patience Watt	NCAFA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 828*
Finance Committee Substitute Adopted 6/6/12
Third Edition Engrossed 6/7/12
PROPOSED HOUSE COMMITTEE SUBSTITUTE S828-PCS15244-RB-81

Short Title: Unemployment Insurance Changes.

(Public)

Sponsors:

Referred to:

May 21, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **PART I. CHANGE THE LAW TO CONTINUE THE THREE-YEAR LOOKBACK**
6 **TRIGGER FOR EXTENDED BENEFITS**

7 **SECTION 1.(a)** The General Assembly finds that the Governor's Executive Order
8 No. 93, entitled "Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of
9 North Carolina's Long-Term Unemployed," was the purported basis for action by the then
10 Employment Security Commission to provide for the extension of unemployment benefits to
11 thousands of North Carolinians. The extension of unemployment benefits was grounded upon
12 amendments to section 203 of the Federal-State Extended Unemployment Compensation Act of
13 1970 (the "1970 Act"), as amended by section 502(b) of the Tax Relief, Unemployment
14 Insurance Reauthorization and Job Creation Act of 2010 (the "Tax Relief Act of 2010").

15 **SECTION 1.(b)** The General Assembly finds that the Governor's Executive Order
16 No. 113, entitled "Further Extend Unemployment Benefits to Protect the Safety, Health, and
17 Welfare of North Carolina's Long-Term Unemployed," was the purported basis for action by
18 the then Employment Security Commission to provide for the extension of unemployment
19 benefits to thousands of North Carolinians nearing the end of a two-month federal extension of
20 unemployment benefits under section 201 of the Temporary Payroll Tax Cut Continuation Act
21 of 2011. That extension, authorized through February 29, 2012, was grounded upon
22 amendments to section 203 of the 1970 Act, as amended by section 502(b) of the Tax Relief
23 Act of 2010.

24 **SECTION 1.(c)** The General Assembly finds that section 502(b) of the Tax Relief
25 Act of 2010 specifies that the extension of benefits is to be made only as "the State may by law
26 provide." Section 205(f) of the underlying 1970 Act defines "State law" as the "unemployment
27 compensation law of the State, approved by the [U.S. Secretary of Labor]." In North Carolina,
28 that law is Chapter 96 of the General Statutes, the "Employment Security Law." Nothing in
29 Chapter 96 of the General Statutes, then or now, authorizes the Governor to extend
30 unemployment benefits by executive order, nor does Executive Order No. 93 or Executive
31 Order No. 113, or any other such order, constitute a "State law" within the meaning of the 1970
32 Act or the North Carolina Constitution. Section 1 of Article II of the North Carolina



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1 Constitution provides that "the legislative power of the State shall be vested in the General
2 Assembly." Further, Section 6 of Article I of the North Carolina Constitution provides that the
3 legislative and executive powers are "separate and distinct."

4 SECTION 1.(d) The General Assembly finds that the people of this State entrusted
5 the creation of laws to the General Assembly, not to the executive branch, and that Executive
6 Order No. 93 and Executive Order No. 113 were issued and acted upon by the executive branch
7 in a manner contrary to the rule of law.

8 SECTION 1.(e) Further, the General Assembly finds that it enacted Section 6.16 of
9 Session Law 2011-145 and, in so doing, validated the effects of the Governor's Executive Order
10 No. 113 with the stated intent to allow extended benefits to be paid under the Tax Relief Act of
11 2010 so long as payment of the extended benefits did not hinder the State's ability to reduce its
12 debt owed to the federal government for unemployment benefits.

13 SECTION 1.(f) It is deemed, therefore, to be in the best interest of the people of
14 this State that the General Assembly now ratify and hereby validate the effects of the
15 Governor's Executive Order No. 113.

16 SECTION 1.(g) To maintain the rule of law with respect to State and federal
17 relations pertaining to employment security laws in North Carolina, any executive order issued
18 by the Governor that purports to extend unemployment insurance benefits, whether those
19 benefits will be paid from federal or State funds, is void ab initio, unless the executive order is
20 issued upon authority that is conferred expressly by an act enacted by the General Assembly or
21 granted specifically to the Governor by the Congress of the United States.

22 SECTION 1.(h) Section 6.16(d) of S.L. 2011-145 reads as rewritten:

23 "SECTION 6.16.(d) This section becomes effective April 16, 2011, and expires ~~January 1,~~
24 2012-January 1, 2013."

25 SECTION 1.(i) G.S. 96-12.01(a1)(4)c.3. reads as rewritten:

26 "3. This section applies as provided under the Tax Relief,
27 Unemployment Insurance Reauthorization, and Job Creation
28 Act of 2010 (P.L. 111-312) as it existed on December 17,
29 2010, and is applicable to compensation for weeks of
30 unemployment beginning after December 17, 2010, and
31 ending on or before ~~December 31, 2011, December 31, 2012,~~
32 provided that:

33 I. The average rate of (i) insured unemployment, not
34 seasonally adjusted, equaled or exceeded one hundred
35 twenty percent (120%) of the average of such rates for
36 the corresponding 13-week period ending in all of the
37 preceding three calendar years and equaled or
38 exceeded five percent (5%) or (ii) total
39 unemployment, seasonally adjusted, as determined by
40 the United States Secretary of Labor, for the period
41 consisting of the most recent three months for which
42 data for all states are published before the close of the
43 week equals or exceeds six and one-half percent
44 (6.5%); and

45 II. The average rate of total unemployment in this State,
46 seasonally adjusted, as determined by the United
47 States Secretary of Labor, for the three-month period
48 referred to in this subsection, equals or exceeds one
49 hundred ten percent (110%) of the average for any of
50 the corresponding three-month periods ending in the
51 three preceding calendar years."

SECTION 1.(j) G.S. 96-12.01(a1)(4)e.3. reads as rewritten:

"3. This subdivision applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before ~~December 31, 2011~~, December 31, 2012, provided that:

- I. The average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent (8%); and
- II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subdivision equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 1.(k) This section is effective when it becomes law and applies retroactively to January 1, 2012.

PART II. RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401

SECTION 2.(a) The Current Operations Appropriations Act for the 2012-2013 fiscal year shall provide for the annual salaries of the Board of Review, as provided in G.S. 96-4(b).

SECTION 2.(b) G.S. 96-14(2) reads as rewritten:

"§ 96-14. Disqualification for benefits.

An individual shall be disqualified for benefits:

- ...
- (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 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. Receipt by the employee of no fewer than three written reprimands from the employer in the 12 months that immediately precedes the employee's termination is prima facie evidence of misconduct connected with the work. Examples of misconduct connected with the work include the following:

~~"Discharge for misconduct with the work" as used in this section is defined to include but not be limited to~~

- a. ~~separation~~ Separation initiated by an employer for violating the employer's written alcohol or illegal drug ~~policy; reporting policy.~~

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- b. Reporting to work significantly impaired by alcohol or illegal drugs; consuming drugs.
- c. Consuming alcohol or illegal drugs on employer's premises; conviction premises.
- d. 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; being if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.
- e. Being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs; any drugs if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.
- f. 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 public.
- g. 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 environment.
- h. Theft in connection with the employment; forging employment.
- i. Forging or falsifying any document or data related to employment, including a previously submitted application for employment; violation employment.
- j. Violation of an employer's written absenteeism policy; refusing policy.
- k. Refusing to perform reasonably assigned work tasks; 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

The phrase "discharge for misconduct connected with the work" does not include the discharge or an employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for any act or omission of the veteran that the 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."

SECTION 2.(c) G.S. 96-15(b)(2) reads as rewritten:

"(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

1 final decision of the Division unless within 30 days after the date of
2 notification or mailing of the conclusion, whichever is earlier, a written
3 appeal is filed pursuant to rules adopted by the Division. The Division shall
4 be deemed an interested party for such purposes and may remove to itself or
5 transfer to an appeals referee the proceedings involving any claim pending
6 before an adjudicator.

7 Provided, any interested employer shall be allowed ~~30~~10 days from the
8 ~~earlier of mailing or delivery~~ of the notice of the filing of a claim against the
9 employer's account to protest the claim and have the claim referred to an
10 adjudicator for a decision on the question or issue raised. A copy of the
11 notice of the filing shall be sent contemporaneously to the employer by
12 telefacsimile transmission if a fax number is on file. Provided further, no
13 question or issue may be raised or presented by the Division as to the
14 eligibility of a claimant under G.S. 96-13, or whether any disqualification
15 should be imposed under G.S. 96-14, after 45 days from the first day of the
16 first week after the question or issue occurs with respect to which week an
17 individual filed a claim for benefits. None of the provisions of this
18 subsection shall have the force and effect nor shall the same be construed or
19 interested as repealing any other provisions of G.S. 96-18.

20 An employer shall receive written notice of the employer's appeal rights
21 and any forms that are required to allow the employer to protest the claim.
22 The forms shall include a section referencing the appropriate rules pertaining
23 to appeals and the instructions on how to appeal."

24 **SECTION 2.(d)** G.S. 96-15(f) reads as rewritten:

25 "(f) Procedure. – The manner in which disputed claims shall be presented, the reports
26 thereon required from the claimant and from employers, and the conduct of hearings and
27 appeals shall be in accordance with rules adopted by the Division for determining the rights of
28 the parties, whether or not such rules conform to common-law or statutory rules of evidence
29 and other technical rules of procedure. ~~All~~

30 All testimony at any hearing before an appeals referee upon a disputed claim shall be
31 recorded unless the ~~the parties have waived the evidentiary hearing and entered into a~~
32 stipulation resolving the issues pending before the appeals referee, hearing officer, or other
33 employee assigned to make the decision, recording is waived by all interested parties. If the
34 testimony is recorded, it ~~but~~ need not be transcribed unless the disputed claim is further
35 appealed and, one or more of the parties objects, under such rules as the Division may adopt, to
36 being provided a copy of the tape recording of the hearing. Any other provisions of this
37 Chapter notwithstanding, any individual receiving the transcript shall pay to the Division such
38 reasonable fee for the transcript as the Division may by regulation provide. The fee so
39 prescribed by the Division for a party shall not exceed the lesser of sixty-five cents (65¢) per
40 page or sixty-five dollars (\$65.00) per transcript. The Division may by regulation provide for
41 the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in
42 the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110,
43 the Division shall waive the fee.

44 The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer,
45 or other employee assigned to make the decision believes the stipulation provides sufficient
46 information to make a decision, then the appeals referee, hearing officer, or other employee
47 assigned to make the decision may accept the stipulation and render a decision based on the
48 stipulation. If the appeals referee, hearing officer, or other employee assigned to make the
49 decision does not believe the stipulation provides sufficient information to make a decision,
50 then the appeals referee, hearing officer, or other employee assigned to make the decision must

1 reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded
2 hearing."

3 SECTION 2.(e) Subsections (b) through (d) of this section become effective
4 November 1, 2012. The remainder of this section is effective when it becomes law.

5
6 **PART III. COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE**
7 **EXTENSION ACT OF 2011**

8 SECTION 3.(a) G.S. 110-129.2(c) reads as rewritten:

9 "(c) Report Contents. – Each report required by this section shall contain the name,
10 address, ~~and~~ social security number of the newly hired employee, the date services for
11 remuneration were first performed by the newly hired employee, and the name and address of
12 the employer and the employer's identifying number assigned under section 6109 of the
13 Internal Revenue Code of 1986 and the employer's State employer identification number.
14 Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form,
15 and may be transmitted magnetically, electronically, or by first-class mail."

16 SECTION 3.(b) G.S. 110-129.2(j) is amended by adding a new subdivision to
17 read:

18 "(j) Definitions. – As used in this section, unless the context clearly requires otherwise,
19 the term:

20 ...
21 (5) "Newly hired employee" means (i) an employee who has not previously
22 been employed by the employer and (ii) an employee who was previously
23 employed by the employer but has been separated from such prior
24 employment for at least 60 consecutive days."

25 SECTION 3.(c) G.S. 96-9(c)(2) is amended by adding a new sub-subdivision to
26 read:

27 "(2) Charging of benefit payments. –

28 ...
29 f. The Division shall charge benefits to an employer's account when it
30 determines that an overpayment has been made to a claimant and it
31 determines that both of the following conditions apply:

- 32 1. The overpayment occurred because the employer failed to
33 respond timely or adequately to a written request of the
34 Division for information relating to an unemployment
35 compensation claim.
- 36 2. The employer exhibits a pattern of failure to respond timely
37 or adequately by failing to respond to written requests from
38 the Division for information relating to an unemployment
39 compensation claim on two or more occasions. If an
40 employer uses a third-party agent to respond on its behalf to
41 the Division, then the actions of the agent must be considered
42 when determining a pattern of failure to respond timely or
43 adequately. A pattern is established based on the agent's
44 behavior overall and not only with respect to its behavior
45 related to the employer.

46 For purposes of this sub-subdivision, written notification may
47 include a request sent electronically. A response is considered
48 untimely if it fails to be made within the time allowed under
49 G.S. 96-15(b)(2). A response is considered inadequate if it fails to
50 provide sufficient facts to enable the Division to make a correct
51 determination of benefits. However, a response may not be

1 considered inadequate if the Division fails to request the necessary
 2 information.

3 The prohibition on the noncharging of an employer's account
 4 under this sub-subdivision applies to each week of unemployment
 5 compensation that is an overpayment until the Division makes a
 6 determination that the claimant is no longer eligible for the overpaid
 7 amount and stops making the overpayment. If the claim is a
 8 combined-wage claim, the determination of noncharging for the
 9 combined-wage claim shall be made by the paying state. If the
 10 response from the employer does not meet the criteria established by
 11 the paying state for an adequate or timely response, the paying state
 12 must promptly notify the transferring state of its determination and
 13 the employer must be appropriately charged. The Division may
 14 waive the prohibition for good cause."

15 **SECTION 3.(d)** G.S. 96-18 is amended by adding a new subsection to read:

16 **"(h) Mandatory Federal Penalty.** – A person who has been held ineligible for benefits
 17 under subsection (e) of this section and who, because of those same acts or omissions, has
 18 received any sum as benefits under this Chapter to which the person is not entitled shall be
 19 assessed a penalty in an amount equal to fifteen percent (15%) of the amount of the erroneous
 20 payment. The penalty amount shall be payable to the fund. The penalty applies to an erroneous
 21 payment made under any State program providing for the payment of unemployment
 22 compensation as well as an erroneous payment made under any federal program providing for
 23 the payment of unemployment compensation. The notice of determination or decision advising
 24 the person that benefits have been denied or adjusted pursuant to subsection (e) of this section
 25 must include the reason for the finding of an erroneous payment, the penalty amount assessed
 26 under this subsection, and the reason the penalty has been applied.

27 The penalty amount may be collected in any manner allowed for the recovery of the
 28 erroneous payment, except that the penalty amount may not be recovered through offsets of
 29 future benefits. When a recovery with respect to an erroneous payment is made, any recovery
 30 applies first to the principal of the erroneous payment, then to the federally mandated penalty
 31 amount imposed under this subsection, and finally to any other amounts due."

32 **SECTION 3.(e)** G.S. 96-6(a) reads as rewritten:

33 **"(a) Establishment and Control.** – There is hereby established as a special fund, separate
 34 and apart from all public moneys or funds of this State, an Unemployment Insurance Fund,
 35 which shall be administered by the Division's Employment Insurance Section exclusively for
 36 the purposes of this Chapter. All moneys in the fund shall be commingled and undivided. This
 37 fund shall consist of:

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

1 (8) Any federally mandated penalty amount assessed under G.S. 96-18(h).

2 All moneys in the fund shall be commingled and undivided."

3 SECTION 3.(f) Subsection (c) of this section becomes effective October 1, 2013,
4 and applies to an overpayment established on or after that date. Subsections (d) and (e) of this
5 section become effective October 1, 2013, and apply to an erroneous payment determined
6 under G.S. 96-18(e) to be a fraudulent overpayment on or after that date. The remainder of this
7 section becomes effective July 1, 2012.

8
9 **PART IV. ENHANCE UNEMPLOYMENT COMPENSATION FRAUD DETECTION**
10 **AND RECOVERY, AS RECOMMENDED BY THE HOUSE UNEMPLOYMENT**
11 **FRAUD TASK FORCE**

12 SECTION 4.(a) G.S. 96-18(a) reads as rewritten:

13 "(a) ~~Any~~ It shall be unlawful for any person who makes to make a false statement or
14 representation knowing it to be false or to knowingly fails-fail to disclose a material fact to
15 obtain or increase any benefit under this Chapter or under an employment security law of any
16 other state, the federal government, or of a foreign government, either for himself or any other
17 ~~person, shall be guilty of a Class 1 misdemeanor, and each such false statement or~~
18 ~~representation or failure to disclose a material fact shall constitute a separate offense.~~person.
19 Records, with any necessary authentication thereof, required in the prosecution of any criminal
20 action brought by another state or foreign government for misrepresentation to obtain benefits
21 under the law of this State shall be made available to the agency administering the employment
22 security law of any such state or foreign government for the purpose of such prosecution.
23 Photostatic copies of all records of agencies of other states or foreign governments required in
24 the prosecution of any criminal action under this section shall be as competent evidence as the
25 originals when certified under the seal of such agency, or when there is no seal, under the hand
26 of the keeper of such records.

27 (1) A person who violates this subsection shall be found guilty of a Class I
28 felony if the value of the benefit wrongfully obtained is more than four
29 hundred dollars (\$400.00).

30 (2) A person who violates this subsection shall be found guilty of a Class 1
31 misdemeanor if the value of the benefit wrongfully obtained is four hundred
32 dollars (\$400.00) or less."

33 SECTION 4.(b) G.S. 96-18(g)(1) is repealed.

34 SECTION 4.(c) G.S. 96-18(g)(2) reads as rewritten:

35 "(2) Any person who has received any sum as benefits under this Chapter by
36 reason of the nondisclosure or misrepresentation by him or by another of a
37 material fact (irrespective of whether such nondisclosure or
38 misrepresentation was known or fraudulent) or has been paid benefits to
39 which he was not entitled for any reason (including errors on the part of any
40 representative of the Division) ~~other than subparagraph (1) above~~ shall be
41 liable to repay such sum to the Division as provided in ~~subparagraph (3)~~
42 ~~below, provided no such recovery or recoupment of such sum may be~~
43 ~~initiated after three years from the last day of the year in which the~~
44 ~~overpayment occurred.~~subdivision (3) of this subsection."

45 SECTION 4.(d) The Department of the Treasury, Financial Management Service,
46 is the federal government's central debt collection agency. It develops and maintains a
47 centralized offset program known as the Treasury Offset Program (TOP), by which payments
48 are offset to collect delinquent debts owed to federal agencies and states. State Unemployment
49 Compensation debts are now eligible for referral to the Program, pursuant to Public Law
50 110-32 and Public Law 111-291.

1 It is the desire of the General Assembly for the State to participate in the
 2 Unemployment Insurance Compensation Debt Program on or before January 1, 2013. The
 3 Division of Employment Security is required to report to the House Unemployment Fraud Task
 4 Force by September 1, 2012, November 1, 2012, and January 1, 2013, on the implementation
 5 of the TOP. The report should contain, at a minimum, the following:

- 6 (1) An implementation time line, including a go-live date and status update on
 7 where the Division is in the process.
- 8 (2) A detailed list of implementation requirements. For each requirement, the
 9 Division is to provide any barriers and proposed solutions to each barrier.
- 10 (3) An itemized accounting of the cost to implement TOP, including the source
 11 of funds used. Recurring and nonrecurring costs shall be broken out
 12 accordingly.
- 13 (4) For the September 1 report, the Division is to provide an estimate of how
 14 much it anticipates recovering annually through TOP. The report should
 15 include the methodology used to arrive at this estimate.

16 **SECTION 4.(e)** Subsection (a) of this section becomes effective December 1,
 17 2012, and applies to offenses committed on or after that date. Subsections (b) and (c) of this
 18 section become effective October 1, 2012, and apply to an overpayment established on or after
 19 that date. The remainder of this section is effective when it becomes law.

20 21 **PART V. TECHNICAL CHANGES REQUESTED BY THE DIVISION OF** 22 **EMPLOYMENT SECURITY**

23 **SECTION 5.(a)** The title of Article 4 of Chapter 96 of the General Statutes reads
 24 as rewritten:

25 "Article 4.

26 "Labor and Economic Analysis Division: Job Training, Education, and Placement Information
 27 Management."

28 **SECTION 5.(b)** G.S. 96-31 reads as rewritten:

29 **"§ 96-31. Definitions.**

30 As used in this Article, unless the context clearly requires otherwise, the term:

- 31 (1) "CFS" means the common follow-up information management system
 32 developed by ~~DES~~ the Labor and Economic Analysis Division under this
 33 Article.
- 34 (2) ~~"DES" means the Division of Employment Security.~~
- 35 (3) Repealed by Session Laws 2000, c. 140, s. 93.1(d).
- 36 (4) "State job training, education, and placement program" or "State-funded
 37 program" means a program operated by a State or local government agency
 38 or entity and supported in whole or in part by State or federal funds, that
 39 provides job training and education or job placement services to program
 40 participants. The term does not include on-the-job training provided to
 41 current employees of the agency or entity for the purposes of professional
 42 development."

43 **SECTION 5.(c)** G.S. 96-32 reads as rewritten:

44 **"§ 96-32. Common follow-up information management system created.**

45 (a) The ~~DES~~ Labor and Economic Analysis Division shall develop, implement, and
 46 maintain a common follow-up information management system for tracking the employment
 47 status of current and former participants in State job training, education, and placement
 48 programs. The system shall provide for the automated collection, organization, dissemination,
 49 and analysis of data obtained from State-funded programs that provide job training and
 50 education and job placement services to program participants. In developing the system, the
 51 ~~DES~~ Division shall ensure that data and information collected from State agencies is

1 confidential, not open for general public inspection, and maintained and disseminated in a
2 manner that protects the identity of individual persons from general public disclosure.

3 (b) The ~~DES~~ Labor and Economic Analysis Division shall adopt procedures and
4 guidelines for the development and implementation of the CFS authorized under this section.

5 (c) Based on data collected under the CFS, the ~~DES~~ Labor and Economic Analysis
6 Division shall evaluate the effectiveness of job training, education, and placement programs to
7 determine if specific program goals and objectives are attained, to determine placement and
8 completion rates for each program, and to make recommendations regarding the continuation
9 of State funding for programs evaluated."

10 SECTION 5.(d) G.S. 96-33 reads as rewritten:

11 "**§ 96-33. State agencies required to provide information and data.**

12 (a) Every State agency and local government agency or entity that receives State or
13 federal funds for the direct or indirect support of State job training, education, and placement
14 programs shall provide to the ~~DES~~ Labor and Economic Analysis Division all data and
15 information available to or within the agency or entity's possession requested by the ~~DES~~
16 Division for input into the common follow-up information management system authorized
17 under this ~~Article~~ Article and for such other official functions as are performed by the Division.
18 The Division of Employment Security shall provide all information in its possession and
19 control requested by the Division in order for the Division to accomplish the purpose set forth
20 in this Article and such other official functions performed by it.

21 (b) Each agency or entity required to report information and data to the ~~DES~~ Labor and
22 Economic Analysis Division under this Article shall maintain true and accurate records of the
23 information and data requested by the ~~DES~~ Division. The records shall be open to ~~DES~~ the
24 Division for inspection and copying at reasonable times and as often as necessary. Each agency
25 or entity shall further provide, upon request by ~~DES~~ the Division, sworn or unsworn reports
26 with respect to persons employed or trained by the agency or entity, as deemed necessary by
27 the ~~DES~~ Division to carry out the purposes of this Article. Information obtained by the ~~DES~~
28 Division from the ~~agency or entity~~ agency, entity, or the Division of Employment Security shall
29 be held by ~~DES~~ the Division as ~~confidential~~ confidential, subject to the State and federal laws
30 governing treatment of such information, and shall not be published or open to public
31 inspection other than in a manner that protects the identity of individual persons and
32 employers."

33 SECTION 5.(e) G.S. 96-35 reads as rewritten:

34 "**§ 96-35. Reports on common follow-up system activities.**

35 (a) The ~~DES~~ Secretary shall present annually by May 1 to the General Assembly and to
36 the Governor a report of CFS activities for the preceding calendar year. The report shall include
37 information on and evaluation of job training, education, and placement programs for which
38 data was reported by State and local agencies subject to this Article. Evaluation of the programs
39 shall be on the basis of fiscal year data.

40 (b) The ~~DES~~ Secretary shall report to the Governor and to the General Assembly upon
41 the convening of each biennial session, its evaluation of and recommendations regarding job
42 training, education, and placement programs for which data was provided to the CFS."

43 SECTION 5.(f) This section is effective when it becomes law.

44 PART VI. NC FACTS PROGRAM

45 SECTION 6.(a) G.S. 96-4(x)(1) reads as rewritten:

46 "(x) Confidentiality of Records, Reports, and Information Obtained from Claimants,
47 Employers, and Units of Government. Disclosure and redisclosure of confidential information
48 shall be consistent with 20 C.F.R. Part 603 and any written guidance promulgated and issued
49 by the U.S. Department of Labor consistent with this regulation and any successor regulation.
50 To the extent a disclosure or redisclosure of confidential information is permitted or required
51

1 by this federal regulation, the Department's authority to disclose or redisclose the information
2 includes the following:

- 3 (1) Confidentiality of Information Contained in Records and Reports. – (i)
4 Except as hereinafter otherwise provided, it shall be unlawful for any person
5 to obtain, disclose, or use, or to authorize or permit the use of any
6 information which is obtained from any employing unit, individual, or unit
7 of government pursuant to the administration of this Chapter or
8 G.S. 108A-29. (ii) Any claimant or employer or their legal representatives
9 shall be supplied with information from the records of the Division to the
10 extent necessary for the proper presentation of claims or defenses in any
11 proceeding under this Chapter. Notwithstanding any other provision of law,
12 any claimant may be supplied, subject to restrictions as the Division may by
13 regulation prescribe, with any information contained in his payment record
14 or on his most recent monetary determination, and any individual, as well as
15 any interested employer, may be supplied with information as to the
16 individual's potential benefit rights from claim records. (iii) Subject to
17 restrictions as the Secretary may by regulation provide, information from the
18 records of the Division may be made available to any agency or public
19 official for any purpose for which disclosure is required by statute or
20 regulation. (iv) The Division may, in its sole discretion, permit the use of
21 information in its possession by public officials in the performance of their
22 public duties. (v) The Division shall release the payment and the amount of
23 unemployment compensation benefits upon receipt of a subpoena in a
24 proceeding involving child support. (vi) The Division shall furnish to the
25 State Controller any information the State Controller needs to prepare and
26 publish a comprehensive annual financial report of the State or to track
27 debtors of the State. (vii) The Secretary may disclose or authorize
28 redisclosure of any confidential information to an individual, agency, or
29 entity, public or private, consistent with the requirements enumerated in 20
30 C.F.R. Part 603 or any successor regulation and any written guidance
31 promulgated and issued by the U.S. Department of Labor consistent with 20
32 C.F.R. Part 603.

33"
34 SECTION 6.(b) This section is effective when it becomes law.

35
36 **PART VII. EFFECTIVE DATE**

37 SECTION 7. Except as otherwise provided, this act is effective when it becomes
38 law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1041

Short Title: High Point/Archdale Boundaries. (Local)

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

Referred to: Government, if favorable, Finance.

May 23, 2012

A BILL TO BE ENTITLED

AN ACT TO EXCHANGE CERTAIN DESCRIBED TRACTS OF LAND BETWEEN THE
CITY OF ARCHDALE AND THE CITY OF HIGH POINT.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate
limits of the City of Archdale and added to the corporate limits of the City of High Point:

TRACT 1

BEGINNING at a point on the northwest property corner of Guilford County Tax
Parcel 0158327, said corner being also the eastern right-of-way of Baker Road; thence in a
southerly direction for approximately 447 feet along the eastern right-of-way line of Baker
Road to the southwestern property corner of Guilford County Tax Parcel 0158330; thence in a
westerly direction across the approximately 50-foot right-of-way of Baker Road to a point on
the western right-of-way line, said point being also the southeast property corner of Guilford
County Tax Parcel 0158060; thence continuing in a westerly direction for approximately 777
feet along the southern property line of said Tax Parcel 0158060 to its southwest property
corner, said point being also a corner of Guilford County Tax Parcel 0200547; thence in a
northerly direction for approximately 235 feet, said point being also the southwest corner of
Guilford County Tax Parcel 0200543; thence in an easterly direction for approximately 567
feet along the northern property line of said Tax Parcel 0158060 to the southwest property
corner of Guilford County Tax Parcel 0158067, said point being also the southeast property
corner of Guilford County Tax Parcel 0158064; thence in a northerly direction for a distance of
approximately 221 feet along the western property lines of Guilford County Tax Parcels
0158067, 0158066, and 0158065 to the northwest property corner of said Tax Parcel 0158065,
said point being also a point on the southern right-of-way of Weaver Avenue; thence in an
easterly direction for a distance of approximately 24 feet along the southern right-of-way of
Weaver Avenue, thence in a northerly direction across the approximately 50-foot right-of-way
of Weaver Avenue to a point on its northern right-of-way line, said point being also the
southwest property corner of Guilford County Tax Parcel 0158063; thence continuing in a
northerly direction for a distance of approximately 66 feet along the western property line of
said Tax Parcel 0158063 to its northwest property corner; thence in an easterly direction for a
distance of approximately 162 feet along the northern property line of said Tax Parcel 0158063,
said point being also a point on the western right-of-way line of Baker Road; thence in a
southerly direction for approximately 62 feet along the western right-of-way line of Baker
Road, said point being also the southwest property corner of said Tax Parcel 0158063; thence
continuing in a southerly direction across the approximately 50-foot right-of-way of Weaver



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1 Avenue to the northeast property corner of Guilford County Tax Parcel 0158065; thence in an
2 easterly direction across the approximately 50-foot right-of-way of Baker Road to the
3 northwest property corner of Guilford County Tax Parcel 0158327 and the END.

4 TRACT 2

5 BEGINNING at a point on the northwest property corner of Guilford County Tax
6 Parcel 0158079; thence in a easterly direction for approximately 209 feet along the northern
7 property line of said Tax Parcel 0158079 to its northeastern property corner, said corner being
8 also a point on the western right-of-way line of Baker Road; thence continuing in a easterly
9 direction across the approximately 50-foot right-of-way of Baker Road to a point on its eastern
10 right-of-way line, said point being also a point on the western property line of Guilford County
11 Tax Parcel 0158392; thence in a southerly direction for approximately 429 feet along the
12 western property lines of Guilford County Tax Parcels 0158392, 0158393, 0158394, and
13 0158407; thence in a northwesterly direction across the approximately 50-foot right-of-way of
14 Baker Road to a point on its western right-of-way line, said point being also the southeastern
15 property corner of Guilford County Tax Parcel 0158076; thence continuing in a northwesterly
16 direction for approximately 204 feet along the southern property line of said Tax Parcel
17 0158076 to its southwest property corner; thence in a northerly direction for approximately 383
18 feet along the western property lines of Guilford County Tax Parcels 0158076, 0158078, and
19 0158079, said point being also the northwest property corner of said Tax Parcel 0158079 and
20 the END.

21 SECTION 2. The following described property is removed from the corporate
22 limits of the City of High Point and added to the corporate limits of the City of Archdale:

23 BEGINNING at an existing iron pipe, said point located on the Eastern right-of-way
24 of Kersey Valley Road (S.R. 1154) and North 12 Deg. 17 Min. 31 Sec. East, 259.01 feet from
25 North Carolina Grid monument "HEN"; thence from said point of BEGINNING with the
26 Southern line of Lot 1, W. W. Paige Heirs per Plat Book 108 Page 37, South 85 Deg. 31 Min.
27 42 Sec. East, 404.13 feet to an existing iron pipe; thence with the Southern line of Lot 2, W. W.
28 Paige Heirs as recorded in Plat Book 66 Page 121, South 85 Deg. 30 Min. 34 Sec. East, 523.85
29 feet to an existing iron pipe; thence with the Southern line of Lot 3, W. W. Paige Heirs as
30 recorded in Plat Book 68 Page 16, South 85 Deg. 30 Min. 42 Sec. East, 465.12 feet to an
31 existing iron pipe, the Southeast corner of said Lot 3 in the West line of Robert L. Conner and
32 wife, Juanita D. Conner as recorded in Deed Book 4309 Page 1020; thence with West line of
33 the Conner property South 06 Deg. 02 Min. 28 Sec. West, 104.36 feet to a right of monument
34 on the Northern right-of-way of Interstate Highway 85; thence with the right-of-way of
35 Interstate Highway 85 the following 3 courses and distances; South 57 Deg. 45 Min. 09 Sec.
36 West, 301.85 feet to a right-of-way monument; thence South 59 Deg. 38 Min. 49 Sec. West,
37 341.25 feet to a right-of-way monument; thence South 60 Deg. 49 Min. 21 Sec. West, 152.30
38 feet to a point; thence leaving the right-of-way of Interstate Highway 85, North 29 Deg. 10
39 Min. 39 Sec. West, 137.71 feet to a point; thence North 09 Deg. 11 Min. 30 Sec. East, 150.61
40 feet to a point; thence with a curve to the right having a radius of 100.00 feet, an arc of 52.23
41 feet and a chord of South 71 Deg. 01 Min. 26 Sec. East, 51.64 feet to a point; thence with a
42 curve to the left having a radius of 50.00 feet and arc of 209.31 feet and a chord of North 04
43 Deg. 00 Min. 46 Sec. East, 86.67 feet to a point; thence with a curve to the right having a radius
44 of 100.00 feet and arc of 52.23 feet and a chord of South 79 Deg. 02 Min. 58 Sec. West, 51.64
45 feet to a point; thence North 85 Deg. 59 Min. 14 Sec. West, 129.26 feet to a point; thence with
46 a curve to the right having a radius of 420.00 feet and arc of 52.55 feet and a chord of North 82
47 Deg. 24 Min. 10 Sec. West, 52.51 feet to a point; thence North 78 Deg. 49 Min. 07 Sec. West,
48 206.97 feet to a point; thence with a curve to the left having a radius of 430.00 feet and arc of
49 62.91 feet and a chord of North 83 Deg. 00 Min. 36 Sec. West, 62.86 feet to a point; thence
50 North 87 Deg. 12 Min. 05 Sec. West, 220.69 feet to a point on the East right-of-way of Kersey
51 Valley Road; thence with the East right-of-way of Kersey Valley Road North 02 Deg. 47 Min.

1 55 Sec. East, 217.43 feet to the point and place of BEGINNING. Containing 9.09 acres more or
2 less per a map by Jamestown Engineering Group, Inc., entitled Annexation Map for the City of
3 High Point and designated as Job No. 99038.

4 **SECTION 3.** This act has no effect upon the validity of any liens of the City of
5 Archdale or the City of High Point for ad valorem taxes or special assessments outstanding
6 before the effective date of this act. Such liens may be collected or foreclosed upon after the
7 effective date of this act as though the property was still within the corporate limits of the City
8 of Archdale or the City of High Point, as appropriate.

9 **SECTION 4.** This act becomes effective July 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 906

Short Title: Nags Head Conveyance. (Local)
Sponsors: Senator White (Primary Sponsor).
Referred to: State and Local Government.

May 30, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE TOWN OF NAGS HEAD TO LEASE OUT PROPERTY FOR A
3 LICENSED NURSING HOME FOR UP TO FORTY YEARS WITHOUT TREATING IT
4 AS A SALE.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. G.S. 160A-272 reads as rewritten:
7 "§ 160A-272. Lease or rental of property.
8 (a) Any property owned by a city may be leased or rented for such terms and upon such
9 conditions as the council may determine, but not for longer than ~~40~~ years (except as
10 otherwise provided herein) and only if the council determines that the property will not be
11 needed by the city for the term of the lease. In determining the term of a proposed lease,
12 periods that may be added to the original term by options to renew or extend shall be included.
13 Property may be rented or leased only pursuant to a resolution of the council authorizing the
14 execution of the lease or rental agreement adopted at a regular council meeting upon 10 days'
15 public notice. Notice shall be given by publication describing the property to be leased or
16 rented, stating the annual rental or lease payments, and announcing the council's intent to
17 authorize the lease or rental at its next regular meeting.
18 (b) No public notice need be given for resolutions authorizing leases or rentals for terms
19 of one year or less, and the council may delegate to the city manager or some other city
20 administrative officer authority to lease or rent city property for terms of one year or less.
21 Leases for terms of more than ~~40~~ years shall be treated as a sale of property and may be
22 executed by following any of the procedures authorized for sale of real property.
23 (c) The council may approve a lease for the siting and operation of a renewable energy
24 facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 20 years without treating
25 the lease as a sale of property and without giving notice by publication of the intended lease.
26 This subsection applies to Catawba, Mecklenburg, and Wake Counties, the Cities of Asheville,
27 Raleigh, and Winston-Salem, and the Towns of Apex, Carrboro, Cary, Chapel Hill,
28 Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest,
29 Wendell, and Zebulon only."
30 SECTION 2. This act applies only to the Town of Nags Head and, as to that town
31 only, applies to a lease to allow for the operation of a licensed nursing home permitted under
32 Chapter 131E of the General Statutes.
33 SECTION 3. This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1088*

Short Title: Graham/Swain TVA Allocation/Border. (Local)

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

Referred to: Government, if favorable, Finance.

May 24, 2012

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE DIVISION BETWEEN GRAHAM AND SWAIN COUNTIES
3 OF TVA PAYMENTS IN LIEU OF TAXES, AND CLARIFYING THE COMMON
4 BOUNDARY BETWEEN THOSE COUNTIES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 105-458 reads as rewritten:

7 "§ 105-458. Apportionment of payments in lieu of taxes between local units.

8 The payments received by the State and local governments from the Tennessee Valley
9 Authority in lieu of taxes under section 13 of the Act of Congress creating it, and as amended,
10 shall be apportioned between the local governments in which the property is owned or an
11 operation is carried on, on the basis of each local government's percentage of the total value of
12 the Authority's property in the State, determined as hereinafter provided: Provided, however,
13 that the minimum annual payment to any local government from said fund, including the
14 amounts paid direct to said local government by the Authority, shall not be less than the
15 amount of annual actual tax loss to such local government based upon the two-year average on
16 said property next prior to it being taken over by the ~~Authority~~ Authority; Provided further that
17 as to the apportionment of funds between Graham County and Swain County:

- 18 (1) The dam itself will be allocated and assessed between Graham and Swain
19 Counties based on the location of survey marker 1475 as located on the
20 power house.
21 (2) The two generators and all other equipment located in Graham County will
22 be assessed in Graham County.
23 (3) Two-thirds of the generator building will be assessed in Graham County and
24 the remaining one-third will be assessed in Swain County.
25 (4) The remaining one generator and all other equipment located in Swain
26 County will be assessed in Swain County.
27 (5) The nearby transmission facilities, which are located in Swain County, will
28 be assessed in Swain County.
29 (6) All off-site property (such as off-site transmission lines and land) will be
30 assessed in the county where such property is located."

31 SECTION 2. Notwithstanding Chapter 94 of the Public Laws of 1870-71 and
32 Chapters 77 and 154 of the Public Laws of 1871-72, the common boundary line between
33 Graham County and Swain County is the center line of the Little Tennessee River for the full
34 length of the boundary between the two counties, the line running through the 1944 survey
35 marker, being survey marker 1475 as located on the power house.



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SECTION 3. This act applies to Graham and Swain Counties only.
SECTION 4. This act becomes effective June 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1090*
PROPOSED COMMITTEE SUBSTITUTE H1090-PCS11371-TMx-28

Short Title: Orange-Alamance Remaining 9% Boundary.

(Local)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE REMAINING NINE PERCENT OF THE COMMON BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY NOT ADDRESSED BY SESSION LAW 2011-88 AND AS AUTHORIZED BY THE GENERAL ASSEMBLY BY SESSION LAW 2010-61 ENABLING THE CHANGES IN THE HISTORIC ORANGE COUNTY-ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING ALAMANCE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. The historic boundary line forming Alamance County from Orange County was described and surveyed in 1849. In the subsequent 160 years, this line became uncertain, resulting in unintentional modifications to the boundary line affecting taxation, school attendance, zoning maps, and elections, within and among Alamance County, Orange County, and the Town of Mebane, North Carolina. Pursuant to G.S. 153A-18(a) entitled "Uncertain or Disputed Boundary", both county boards of commissioners passed resolutions (Alamance County, December 17, 2007 and Orange County, January 18, 2008) to request that North Carolina Geodetic Survey perform a preliminary resurvey and present a proposed map for consideration by both counties.

SECTION 2. In the 2011 session, the General Assembly, through S.L. 2011-88, ratified and adopted ninety-one percent (91%) of the boundary line between Alamance County and Orange County. Also in the 2011 session, the General Assembly, through S.L. 2011-87, authorized the boards of commissioners of Alamance County and Orange County to determine the most appropriate location for the remaining nine percent (9%) of the boundary line.

SECTION 3. The General Assembly recognizes the difficulties in addressing the issues associated with adopting a county boundary line and authorizes Alamance County and Orange County to maintain the current taxing, elections, education and any other recognized government functions in place in the transition areas affected by this act, if so needed, until July 1, 2013.

SECTION 4.(a) Except as otherwise provided in this act, on and after January 1, 2013, all papers, documents, and instruments required or permitted to be filed or registered, involving residents and property in areas affected by the resurvey of the boundary line, which previously may have been recorded in the adjoining counties, shall be recorded in the county to which the property has been reassigned by this act.

SECTION 4.(b) On and after January 1, 2013, all real and personal property in areas affected by the resurvey of the boundary line that was subject to ad valorem taxation on



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1 January 1, 2013, shall be subject to ad valorem taxes in the county to which the property is
2 reassigned for the fiscal year beginning July 1, 2013, to the same extent as it would have been
3 had it been correctly recognized by the tax departments of each county on March 1, 2013,
4 except as hereinafter provided with respect to classified registered motor vehicles. On
5 September 1, 2012, the adjoining county tax administrators shall commence the transfer to the
6 respective county tax assessors the ad valorem tax listings and valuations for all real and
7 personal property subject to ad valorem taxation in areas affected by the resurvey of the
8 boundary line, except classified motor vehicles which were registered in the adjoining counties
9 prior to July 1, 2012. For the fiscal year that begins July 1, 2012, all real and personal property
10 in areas affected by the resurvey of the boundary line, which was subject to ad valorem taxation
11 in that area on January 1, 2013, shall be assessed and taxed as follows:

- 12 (1) The ad valorem property taxes assessed on all classified registered motor
13 vehicles registered or listed in adjoining counties between January 1, 2012,
14 and March 1, 2013, shall be collected by the appropriate adjoining county
15 tax collector, and all such taxes shall be retained by that adjoining county.
16 The taxes on all classified registered motor vehicles registered after March 1,
17 2013, shall be assessed and collected by the county tax department in the
18 county to which the real property wherein the classified registered motor
19 vehicles are situated has been reassigned.
- 20 (2) The values established by the particular adjoining county tax administrator
21 on all personal property other than classified registered motor vehicles shall
22 be used by each county tax assessor without adjustment in computing taxes
23 due for the fiscal year beginning July 1, 2013. All such taxes shall be
24 assessed and collected by the appropriate county tax department.
- 25 (3) For the interim time period between the reassignment of properties into their
26 respective counties and until such time as the next regularly scheduled
27 revaluation period, Alamance County and Orange County may select either
28 of two methods of valuating the property reassigned into their respective
29 counties by this act. The selection of either method by a county shall not
30 give any individual or entity grounds for challenging such temporary
31 valuation. Such methods are delineated as follows:
 - 32 a. The values established by the adjoining county tax administrators on
33 all real property formerly taxed in their county shall be adjusted by
34 the appropriate county tax assessor by applying the difference
35 between one hundred percent (100%) of such values and the
36 appropriate county median ratio, as established by the Sales
37 Assessment Ratio Study compiled by the North Carolina Department
38 of Revenue as of January 1, 2009. The taxes determined by applying
39 this method will be collected and retained by the appropriate county
40 tax collector. The value of such property shall then be revalued
41 according to the regularly scheduled revaluation period for each
42 county.
 - 43 b. The values established by the adjoining county tax administrators on
44 all real property formerly taxed in their county shall be adopted by
45 the appropriate county tax assessor upon the transition of property to
46 the adjoining county. The valuation of such property shall then be
47 revalued according to the regularly scheduled revaluation period for
48 each county.
- 49 (4) Beginning January 1, 2014, all property in areas affected by the resurvey of
50 the boundary line that is subject to ad valorem taxation shall be listed,
51 assessed, and taxed by the appropriate county tax administrator in the same

1 manner as is prescribed by law for all other property located within each
2 county.

3 (5) The final tax values of property subject to ad valorem taxation in areas
4 affected by the resurvey of the boundary line as of January 1, 2014, shall be
5 determined by the adjoining county tax administrator. Appeals to the North
6 Carolina Property Tax Commission or to the courts by property owners of
7 properties affected by the boundary line change shall be defended by both
8 counties, and both counties shall be responsible for the counties' costs and
9 expenses, including attorneys' fees, incurred in connection with such
10 appeals.

11 (6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 2013, or for
12 prior years on property subject to taxation in areas affected by the resurvey
13 of the boundary line shall continue to be valid and enforceable by the
14 respective adjoining county, including the foreclosure remedies provided for
15 in G.S. 105-374 and G.S. 105-375, and the remedies of attachment and
16 garnishment provided for in G.S. 105-366 through G.S. 105-368. The
17 Alamance County and Orange County tax administrators shall supply one
18 another with a list of unpaid taxes for properties in areas of the boundary line
19 affected by the resurveys for the tax year 2012 on or before July 1, 2013.
20 Any such taxes collected by either county shall be promptly paid to the
21 appropriate adjoining county including accrued interest. The provisions of
22 G.S. 105-352(d) shall not apply to (i) those areas in adjoining county
23 previously taxed by either county outside the areas affected by the resurvey
24 of the boundary line, that shall forthwith be properly listed and taxed in the
25 county to which they have been reassigned by this act; and (ii) those areas
26 within each county that were in the past improperly listed and taxed by the
27 adjoining counties due to uncertainty as to the exact location of the true
28 historic Alamance County-Orange County boundary line.

29 **SECTION 4.(c)** No cause of action, including criminal actions, involving persons
30 or property in areas affected by the resurvey of the boundary line that is pending on July 1,
31 2013, shall be abated, and such actions shall continue in the appropriate adjoining county. In
32 no event shall a defense to a criminal act be maintained where such defense alleges a lack of
33 jurisdiction due to any act or failure to act related to the adjustment of the boundary line by this
34 act, regardless of when such criminal act is alleged to have occurred.

35 **SECTION 4.(d)** The board of elections of each adjoining county shall, effective
36 July 1, 2013, transfer the voter registration records pertaining to persons residing in areas
37 affected by the resurvey of the boundary line and located in either county to the adjoining
38 county's board of elections, and thereafter the registered voters so transferred shall be validly
39 registered to vote in that adjoining county. Persons in areas affected by the resurvey of the
40 boundary line shall continue to be in the same State House, State Senate, and United States
41 House of Representatives Districts as they were prior to the resurvey.

42 **SECTION 4.(e)** The Jury Commission of each adjoining county shall revise its
43 jury lists to add to or eliminate therefrom those persons subject to jury duty who reside in areas
44 affected by the resurvey of the boundary line, said revised jury lists to be effective July 1, 2013.

45 **SECTION 5.(a)** Any properties affected by S.L. 2010-61 or this act and that are
46 subject to taxation under G.S. 105-274 and that were taxed by both the Alamance County and
47 Orange County taxing authorities on or after January 1, 2007, are hereby granted the following
48 relief:

49 (1) Property owners of any such dually taxed properties may, pursuant to the
50 terms of G.S. 105-381, demand refund and/or release of taxes paid to the
51 county from which their property, or portion thereof, was transitioned.

1 (2) Any claim for relief pursuant to this section and under the terms of
2 G.S. 105-381 may be made for taxes assessed January 1, 2007, through
3 December 31, 2012. All such claims for relief must be made in writing to the
4 county from which the affected property was transitioned on or before
5 February 28, 2013. Should a claim for relief pursuant to this section not be
6 made by February 28, 2013, such claim is waived and no further relief shall
7 be granted pursuant to this or any other act. Alamance County and Orange
8 County shall not grant refunds or releases pursuant to this section for any
9 claims made after February 28, 2013, and are released from all liability, and
10 no court action shall be maintained for any such claims made for any act or
11 failure to act pursuant to this section.

12 **SECTION 5.(b)** The provisions of this section shall apply only to properties
13 transitioned or reassigned from one county to the other, in whole or in part, by the resurveys of
14 individual qualifying properties pursuant to S.L. 2010-61 and this act.

15 **SECTION 5.(c)** For purposes of this section only, the term "property owner" shall
16 include any builder or developer that paid property taxes on real property to both counties and
17 subsequently sold said property or that, as part of an escrow agreement in which the buyer of
18 such property paid taxes to one county and the builder or developer who sold the property, paid
19 taxes on the same piece of property to the adjoining county.

20 **SECTION 5.(d)** The taxing authorities of Alamance County and Orange County
21 shall notify property owners affected by this section of the terms of this section within 30 days
22 of this act becoming law. Such notice shall be by United States mail at the mailing address to
23 which any tax bills were previously submitted. No other notice is or shall be required.

24 **SECTION 6.** Any child who was a resident of any area reassigned by this act on its
25 date of ratification and who was a student in the Orange or Alamance school system during the
26 2011-2012 school year, and the siblings of any such person, may attend school in the same
27 school system attended in the 2011-2012 school year without necessity of a release or payment
28 of tuition. Any such student, while attending the Orange County school system, shall be
29 considered a resident of Orange County for all public school purposes, including transportation,
30 athletics, and funding formulas. Any such student, while attending the Alamance County
31 School system, shall be considered a resident of Alamance County for all public school
32 purposes, including transportation, athletics, and funding formulas. Notice must be given to all
33 affected school systems by the parent or guardian in order to exercise the privilege granted by
34 this section.

35 **SECTION 7.** The establishment of a county boundary line is, pursuant to Section 1
36 of Article VII of the North Carolina Constitution, the sole responsibility of the General
37 Assembly. Further, it is vital to the State of North Carolina and all affected local governments
38 that county boundary lines be fixed and any uncertainty as to the location of county boundary
39 lines be resolved. For this reason and in the interest of justice, neither Alamance County nor
40 Orange County, nor any agent, employee, or appointed or elected official thereof, shall be
41 liable to any individual, group, organization, for-profit or not-for-profit business entity of any
42 kind, governmental entity or agency of any type or kind for any damages, costs, fees, or fines,
43 and or court action shall be maintained against said counties, officials, employees, and agents
44 for any recommendation, act, failure to act, or conduct related to S. L. 2010-61, S.L. 2011-88,
45 or this act and/or the adoption of a fixed boundary line separating the two counties. Except as
46 set out in Section 5 of this act, and effective upon this act becoming law, Alamance County and
47 Orange County, their officials, employees, and agents are released from all liability for any
48 claims made, and no court action shall be maintained against said officials, employees, and
49 agents for any act or failure to act pursuant to the terms of this act, S.L. 2011-88, or S.L.
50 2010-61, and no further relief shall be granted or cause of action sustained except as provided
51 herein.

1 **SECTION 8.** Should any provision of S.L. 2010-61, as amended by S.L. 2011-88,
2 conflict with any provision of this act, the provisions of this act shall control. Should any line
3 marking the area of the nine percent (9%) reflected in the surveys referenced herein conflict
4 with any line shown on the surveys describing the area of the ninety-one percent (91%), the
5 surveys marking the area of the nine percent (9%) shall control.

6 **SECTION 9.** Pursuant to Section 1 of Article VII of the North Carolina
7 Constitution, any boundary line between Alamance County and Orange County previously
8 surveyed, recognized, adopted, described, utilized, or ratified, save and except the ninety-one
9 percent (91%) of the boundary line adopted by S.L. 2011-88, is modified as set forth herein
10 upon ratification of this act.

11 **SECTION 10.** Pursuant to Section 1 of Article VII of the North Carolina
12 Constitution, the official boundary line regarding the remaining nine percent (9%) of the line
13 separating Alamance County and Orange County, as recommended by the Alamance County
14 Board of Commissioners at its meeting of December 6, 2010, and the Orange County Board of
15 Commissioners at its meeting of December 14, 2010, is hereby formally recognized and
16 adopted by the General Assembly.

17 **SECTION 11.** Upon adoption, the survey plats reflecting the boundary line shall
18 be filed with the Alamance County Register of Deeds, with the Orange County Register of
19 Deeds, and in the office of the Secretary of State as provided in G.S. 153A-18(a).

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

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

H

1

HOUSE BILL 1110

Short Title: Matthews/Stallings Boundary Adjustment. (Local)

Sponsors: Representatives Horn, Brawley, Cotham, and McGuirt (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Government, if favorable, Finance.

May 24, 2012

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A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTIES FROM THE CORPORATE LIMITS OF THE TOWN OF MATTHEWS AND ANNEX IT TO THE TOWN OF STALLINGS, BOTH AT THE REQUEST OF THE RESPECTIVE TOWN GOVERNING BOARDS.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Matthews are reduced by removing the following described property in Mecklenburg County:

<u>Address</u>	<u>Parcel ID</u>	<u>Legal Description Lot# Block Book Page</u>
2230 Community Park	21505210	18 M 51-649
2224 Community Park	21505207	19 M 6-62
2208 Community Park	21505208	20 M 6-62
2308 Community Park	21505205	17 M 51-649
2304 Community Park	21505204	16 M 6-62

Also removed from the corporate limits of the Town of Matthews is the part of the right-of-way of Community Park Drive that is bounded by the Mecklenburg/Union County line and by one or more of those five listed parcels.

SECTION 2. The corporate limits of the Town of Stallings are extended by adding the following described property in Mecklenburg County:

<u>Address</u>	<u>Parcel ID</u>	<u>Legal Description Lot# Block Book Page</u>
2230 Community Park	21505210	18 M 51-649
2224 Community Park	21505207	19 M 6-62
2208 Community Park	21505208	20 M 6-62
2308 Community Park	21505205	17 M 51-649
2304 Community Park	21505204	16 M 6-62

Also added to the corporate limits of the Town of Stallings is the part of the right-of-way of Community Park Drive that is bounded by the Mecklenburg/Union County line and by one or more of those five listed parcels.

SECTION 3. This act has no effect upon the validity of any liens of the Town of Matthews for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Matthews.

SECTION 4. This act becomes effective June 30, 2012.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1169*

Short Title: Town of Burgaw/Deannexation. (Local)

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

Referred to: Government, if favorable, Finance.

May 30, 2012

1 A BILL TO BE ENTITLED
2 AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE
3 LIMITS OF THE TOWN OF BURGAW.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The following described property is removed from the corporate
6 limits of the Town of Burgaw:

7 All that land located in Burgaw Township, Pender County, State of North Carolina,
8 adjoining the lands of James Henry (Bud) Moore, Marion Lane, Roy Lanier, Acme Wood
9 Corporation, and others and being more particularly described as follows:

10 TRACT I

11 Beginning at a concrete location corner 3.4 feet from center of a cypress
12 stump on the east side of the run of Burgaw Creek, J. H. (Bud) Moore's corner; thence his line
13 and ditch North 65 degrees 09 minutes East 660.00 feet to a concrete monument; thence North
14 74 degrees 14 minutes East 1155.00 feet to a concrete monument; thence 77 degrees 09
15 minutes East 686.0 feet to an iron stake; thence North 88 degrees 58 minutes East 825.0 feet to
16 an iron stake; thence North 84 degrees 51 minutes 1337.3 feet to two iron pipes at a ditch
17 intersection; thence the same course North 84 degrees 51 minutes East 1367.5 feet to a plowed
18 fire lane at a point South 62 degrees 25 minutes East 304.2 feet from a marked corner; thence
19 with said fire lane South 62 degrees 25 minutes East 356.3 feet to a marked corner; thence
20 South 51 degrees 05 minutes East 982.3 feet to a corner; thence South 12 degrees 15 minutes
21 East 1072.6 feet to a pine stump with gum pointers; thence with line of Acme Wood
22 Corporation, South 9 degrees 56 minutes West 2920.4 feet to a "D.L.G." stone; thence South 89
23 degrees 42 minutes West 455.4 feet to a concrete monument; thence North 86 degrees 30
24 minutes West 1483.35 feet to a pipe at a field cross ditch; thence North 85 degrees 50 minutes
25 West 1333.3 feet to a concrete monument; thence the line of Marion Lane North 4 degrees 08
26 minutes East 1654.5 feet to a point upon the present avenue, leading to the house; thence with
27 the avenue (Lane's line) North 85 degrees 58 minutes West 2845.9 feet to a spike in center of
28 bridge over Burgaw Creek (Public Paved Road bridge); thence up the run of Burgaw Creek the
29 following traversed courses and distances:

- 30 (1) North 16 degrees 02 minutes East 323.1 feet;
31 (2) North 09 degrees 33 minutes West 204.2 feet;
32 (3) North 22 degrees 55 minutes West 205.8 feet;
33 (4) North 87 degrees 36 minutes West 183.0 feet;
34 (5) North 27 degrees 18 minutes West 153.6 feet;
35 (6) South 89 degrees 24 minutes West 71.7 feet;



- 1 (7) North 3 degrees 32 minutes East 149.9 feet;
- 2 (8) North 18 degrees 18 minutes West 160.5 feet;
- 3 (9) North 76 degrees 04 minutes West 75.2 feet;
- 4 (10) North 33 degrees 16 minutes West 170.2 feet;
- 5 (11) North 56 degrees 37 minutes West 115.9 feet;
- 6 (12) North 24 degrees 47 minutes West 87.9 feet;
- 7 (13) North 60 degrees 48 minutes West 135.9 feet; and
- 8 (14) North 48 degrees 01 minutes West 191.6 feet to the point of Beginning,
- 9 containing 523.99 acres, more or less, and described according to map of
- 10 M.R. Walton, Registered Surveyor, entitled "Map of Survey for Teal A.
- 11 Rivenbark" Burgaw Township, Pender County, North Carolina dated
- 12 May-June 1962, reference to which is hereby made for a more particular
- 13 description.

14 **TRACT II**

15 Beginning at a point in a fire lane which is South 62 degrees 25 minutes East
 16 304.2 feet from a marked corner of Corbett Package Company, also being the most
 17 Northeasterly corner of the above "First Tract" herein and running thence with the fire line
 18 South 62 degrees 25 minutes East 356.3 feet to a marked corner; thence South 51 degrees 05
 19 minutes East 982.3 feet to a corner; thence South 12 degrees 15 minutes East 1072.5 feet to a
 20 pine stump with gum pointers; thence leaving the lines of "First Tract" herein North 9 degrees
 21 56 minutes East 2005.1 feet to a stake; thence South 84 degrees 51 minutes West 1649.7 feet to
 22 the point of Beginning, containing 23.65 acres, more or less, and described according to map of
 23 M.R. Walton, Registered Surveyor, dated May-June 1962 entitled "Map of Survey for Teal A.
 24 Rivenbark", Burgaw Township, Pender County, North Carolina, reference to which is hereby
 25 made for a more particular description.

26 Subject however, to the right-of-way in favor of Four County Electric Membership Corporation
 27 recorded in Book 226, at Page 282 of the Pender County Registry.

28 **SECTION 2.** This act has no effect upon the validity of any liens of the Town of
 29 Burgaw for ad valorem taxes or special assessments outstanding before the effective date of
 30 this act. Such liens may be collected or foreclosed upon after the effective date of this act as
 31 though the property were still within the corporate limits of the Town of Burgaw.

32 **SECTION 3.** This act becomes effective July 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1181*
PROPOSED COMMITTEE SUBSTITUTE H1181-PCS70312-SV-53

Short Title: Study Municipal Local Option Sales Tax.

(Local)

Sponsors:

Referred to:

May 30, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE REVENUE LAWS STUDY COMMITTEE TO STUDY
3 WHETHER MUNICIPALITIES SHOULD HAVE THE AUTHORITY TO LEVY A
4 LOCAL OPTION SALES TAX FOR BEACH NOURISHMENT.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. The Revenue Laws Study Committee may study whether
7 municipalities should be granted the authority to levy a local option sales tax for the purpose of
8 providing dedicated funding for beach nourishment and other natural resources preservation
9 and report its findings, together with any recommended legislation, to the 2013 Regular Session
10 of the General Assembly upon its convening.
11 SECTION 2. This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1202*
PROPOSED COMMITTEE SUBSTITUTE H1202-PCS80389-LB-126

Short Title: Roanoke Rapids Deannex/Halifax N'hmpst Airport.

(Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO DEANNEX FROM THE CITY OF ROANOKE RAPIDS A PARCEL PREVIOUSLY ANNEXED BY A LEGISLATIVE ANNEXATION AND AMENDING THE AUTHORIZING LEGISLATION FOR THE HALIFAX-NORTHAMPTON REGIONAL AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The following property, which was annexed to the City of Roanoke Rapids by S.L. 2005-9, is removed from the corporate limits of the City of Roanoke Rapids: Halifax County Tax Office Parcel ID 1201473.

SECTION 1.(b) The City of Roanoke Rapids may exercise all the powers granted by Article 19 of Chapter 160A of the General Statutes in the area removed from the corporate limits by Section 1 of this act.

SECTION 1.(c) This section becomes effective June 30, 2012.

SECTION 2.(a) Section 4(a)(1) of S.L. 1997-275, as amended by S.L. 1998-130, reads as rewritten:

"(a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

- (1) To purchase, acquire, establish, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, control, lease, equip, improve, maintain, operate, and regulate or otherwise dispose of lands, facilities, and improvements for the use, restoration, manufacture, or repair of airplanes and other aircrafts; to finance and refinance for public and private parties airport facilities and improvements which relate to, develop, or further airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, transportation, distribution, storage, and aviation facilities and improvements; to secure any such financing or refinancing by all or any portion of their revenues, income, or assets or other available monies associated with any of their airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of its properties associated with its airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State, airports and landing fields for the use of airplanes and other aircraft



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1 ~~within the limits of the County and for this purpose to purchase, improve,~~
2 ~~own, hold, lease, or operate real or personal property.~~ The Airport Authority
3 may exercise these powers alone or in conjunction with the City of Roanoke
4 Rapids, the County of Northampton, or the County of Halifax."

5 **SECTION 2.(b)** Section 4(a)(12) of S.L. 1997-275 is repealed.

6 **SECTION 3.** Except as provided herein, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1206
PROPOSED COMMITTEE SUBSTITUTE H1206-PCS30638-SVx-52

Short Title: Butner Boundary Clarification.

(Local)

Sponsors:

Referred to:

May 31, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MORE ACCURATELY DESCRIBE THE CORPORATE LIMITS OF THE
3 TOWN OF BUTNER.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. Article II of the Charter of the Town of Butner, being Section 1.1 of
6 S.L. 2007-269, reads as rewritten:
7 "ARTICLE II. CORPORATE BOUNDARIES.
8 "Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of
9 the Town of Butner are as shown ~~on a map produced June 12, 2007, by the Granville County~~
10 ~~Tax Department and kept on file in the Butner City Hall, the Granville County Planning~~
11 ~~Department, and in the office of the Granville County Board of Elections.~~ on the plat recorded
12 at Plat Book 40, Page 168, Sheets 1-33, in the office of the Granville County Register of Deeds
13 entitled "Corporate Limits Survey for the Town of Butner" and shall also include that certain
14 tract of land consisting of 47.3523 acres and that certain tract of land consisting of 12.0022
15 acres as shown on that certain plat recorded at Plat Book 34, Page 144, in the office of the
16 Granville County Register of Deeds entitled "Survey For: Public Acquisition/South Granville
17 Water and Sewer Authority/Dutchville Township-Granville County/Butner, North Carolina."
18 The area within said boundaries shall be in the Town of Butner and in no other municipality.
19 "Section 2.2. **Extraterritorial Jurisdiction.** Until modified in accordance with law, the
20 extraterritorial jurisdiction of the Town of Butner under G.S. 160A-360 shall be as shown on a
21 ~~map produced June 12, 2007, by the Granville County Tax Department and kept on file in the~~
22 ~~Butner Town Hall, the Granville County Planning Department, and in the office of the~~
23 ~~Granville County Board of Elections.~~ maps recorded in Plat Book 40, Page 169, Sheets 1-13, in
24 the office of the Granville County Register of Deeds entitled "Mapping of Extraterritorial
25 Jurisdiction for the Town of Butner."
26 "Section 2.3. **Restrictions on Annexation as to Creedmoor.**
27 (a) The Town of Butner may not annex under Article 4A of Chapter 160A of the
28 General Statutes any territory not shown in its corporate limits on the plats recorded at Plat
29 Book 40, Page 168, Sheets 1-33, in the office of the Granville County Register of Deeds
30 entitled "Corporate Limits Survey for the Town of Butner" or in its extraterritorial jurisdiction
31 on the map produced June 12, 2007, by the Granville County Tax Department and kept on file
32 in the Butner Town Hall, the Granville County Planning Department, and the Granville County
33 Board of Elections. maps recorded in Plat Book 40, Page 169, Sheets 1-13, in the office of the
34 Granville County Register of Deeds entitled "Mapping of Extraterritorial Jurisdiction for the



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1 Town of Butner" located east of the centerline of Cash Road and south of Interstate 85 without
2 first receiving approval of the City of Creedmoor Board of Commissioners.

3 (b) For a period of five years following the effective date of the incorporation of the
4 Town of Butner, the Town of Butner may not involuntarily annex under Part 2 or 3 of Article
5 4A of Chapter 160A of the General Statutes any territory not shown in its corporate limits or
6 extraterritorial jurisdiction ~~on the map produced June 12, 2007, by the Granville County Tax~~
7 ~~Department and kept on file in the Butner Town Hall, the Granville County Planning~~
8 ~~Department, and the Granville County Board of Elections on the plats recorded at Plat Book~~
9 ~~40, Page 168, Sheets 1-33, in the office of the Granville County Register of Deeds entitled~~
10 ~~"Corporate Limits Survey for the Town of Butner" or in its extraterritorial jurisdiction on the~~
11 ~~maps recorded in Plat Book 40, Page 169, Sheets 1-13, in the office of the Granville County~~
12 ~~Register of Deeds entitled "Mapping of Extraterritorial Jurisdiction for the Town of Butner"~~
13 located west of the centerline of Cash Road and South of Interstate 85 without first receiving
14 approval of the City of Creedmoor Board of Commissioners.

15 "Section 2.4. **Restrictions on Annexation and Extraterritorial Jurisdiction as to the**
16 **City of Durham.**

17 (a) Notwithstanding the provisions of G.S. 160A-58.1(b)(2) and provided the remainder
18 of the requirements of Part 4 of Article 4A of Chapter 160A of the General Statutes are met, the
19 City of Durham may annex by satellite annexation pursuant to G.S. 160A-58.1, or any
20 successor statute, any territory in Durham County that is closer to the primary corporate limits
21 of the Town of Butner than to the primary corporate limits of the City of Durham. This
22 subsection shall also be considered as part of the Charter of the City of Durham.

23 (b) In addition to any other requirements of law, the Town of Butner may not annex
24 under Article 4A of Chapter 160A of the General Statutes any territory in Durham County, or
25 exercise extraterritorial authority under Article 19 of Chapter 160A of the General Statutes in
26 Durham County, without first receiving approval of the City of Durham, as evidenced by a
27 resolution or ordinance adopted by the City Council.

28 (e) The Town of Butner shall not request any changes in this section of the Charter
29 without first receiving approval of the City of Durham, as evidenced by a resolution or
30 ordinance adopted by the City Council."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1207

Short Title: Granville/Person Local Stormwater Fees. (Local)

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

Referred to: Government, if favorable, Finance.

May 31, 2012

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW GRANVILLE COUNTY, PERSON COUNTY, THE CITY OF
2 CREEDMOOR, THE TOWN OF BUTNER, AND THE TOWN OF STEM TO COLLECT
3 DELINQUENT STORMWATER UTILITY FEES IN THE SAME MANNER AS
4 DELINQUENT PERSONAL AND REAL PROPERTY TAXES.
5

6 Whereas, water quality standards mandated by State and federal law are requiring
7 that local governments develop more detailed, advanced, and costly stormwater programs; and

8 Whereas, effective stormwater management should be provided to protect, to the
9 extent practicable, the citizens from the loss of life and property damage from flooding; and

10 Whereas, aging stormwater conveyance systems and increasing demand upon those
11 systems from development require that local governments engage in long-term planning; and

12 Whereas, the construction, operation, and maintenance of stormwater conveyance
13 systems requires long-term planning and stable and adequate funding; and

14 Whereas, it is often most efficient to bill and collect rents, rates, fees, charges, and
15 penalties for stormwater management programs and structural and natural stormwater and
16 drainage systems in the same manner as property taxes; Now, therefore,

17 The General Assembly of North Carolina enacts:

18 SECTION 1.(a) G.S. 153A-277(a1) is amended by adding a new subdivision to
19 read:

20 "(4) A county may adopt an ordinance providing that any fee imposed under this
21 subsection may be billed with property taxes, may be payable in the same
22 manner as property taxes, and, in the case of nonpayment, may be collected
23 in any manner by which delinquent personal or real property taxes can be
24 collected. If an ordinance states that delinquent fees can be collected in the
25 same manner as delinquent real property taxes, the fees are a lien on the real
26 property described on the bill that includes the fee."

27 SECTION 1.(b) G.S. 153A-277(c) reads as rewritten:

28 "(c) Except as provided in subsections (a1) and (d) of this section and G.S. 153A-293,
29 rents Rents, rates, fees, charges, and penalties for enterprisory services shall be legal
30 obligations of the person contracting for them, and are shall in no case be a lien upon the
31 property or premises served, served and, except as provided in subsection (d) of this section,
32 are legal obligations of the person contracting for them, provided that no contract shall be
33 necessary in the case of structural and natural stormwater and drainage systems."

34 SECTION 1.(c) This section applies only to the Counties of Granville and Person.



1 **SECTION 2.** Section 4 of S.L. 2005-441, as amended by S.L. 2011-109, reads as
2 rewritten:

3 **"SECTION 4.** This act is effective when it becomes law and applies to stream-clearing
4 activities commenced on or after that date. Section 3 of this act applies only to the Cities of
5 Creedmoor, Durham and Winston-Salem, the Towns of Butner, Garner, Kernersville,
6 Knightdale, Morrisville, Stem, Wendell, and Zebulon, and the Village of Clemmons."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1217

Short Title: Asheville/Woodfin Boundary Adjustments. (Local)

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

Referred to: Government.

May 31, 2012

A BILL TO BE ENTITLED

1
2 AN ACT TO ADJUST THE BOUNDARIES OF THE TOWN OF WOODFIN AND THE
3 CITY OF ASHEVILLE, AS REQUESTED BY THE GOVERNING BOARDS OF THOSE
4 MUNICIPALITIES, BY (1) ANNEXING INTO THE CITY OF ASHEVILLE CERTAIN
5 STATE-OWNED PROPERTY, (2) REMOVING CERTAIN STATE-OWNED
6 PROPERTY FROM THE TOWN OF WOODFIN AND ANNEXING IT INTO THE CITY
7 OF ASHEVILLE, (3) REMOVING CERTAIN STATE-OWNED AND PRIVATE
8 PROPERTY FROM THE CITY OF ASHEVILLE AND ANNEXING IT INTO THE
9 TOWN OF WOODFIN, AND (4) UPON PETITION OF THE OWNER AND WITH THE
10 CONCURRENCE OF THE TOWN OF WOODFIN, ALLOWING THE CITY OF
11 ASHEVILLE TO ANNEX CERTAIN PROPERTY IN THE TOWN OF WOODFIN
12 THAT, AS A RESULT OF THE OPERATION OF THIS ACT, IS SURROUNDED BY
13 THE CITY OF ASHEVILLE OR A COMBINATION OF THE CITY OF ASHEVILLE
14 AND UNINCORPORATED AREA, AND PROVIDING FOR THE CITY OF
15 ASHEVILLE AND THE TOWN OF WOODFIN TO ENTER INTO AGREEMENTS
16 REGARDING THE PROVISION OF MUNICIPAL SERVICES TO CERTAIN
17 PROPERTIES IN EACH OTHER'S JURISDICTION.

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** All of that property shown on Sheet 1 of 6 of the "Survey for
20 Asheville/Woodfin Boundary Adjustments and Annexations," recorded in Plat Book 132 at
21 Pages 166 through 171 in the Buncombe County Registry (herein Asheville/Woodfin Boundary
22 Survey) and designated as "Proposed Annexation Area Town of Woodfin (currently City of
23 Asheville)" is hereby removed from the City of Asheville and annexed into the Town of
24 Woodfin.

25 **SECTION 2.** The corporate limits of the City of Asheville and the Town of
26 Woodfin are hereby adjusted and reestablished as shown on Sheets 2, 3, 4, 5, and 6 of the
27 Asheville/Woodfin Boundary Survey such that:

- 28 (1) Those areas designated as "Proposed Annexation Area City of Asheville
29 (currently Town of Woodfin)" are removed from the Town of Woodfin and
30 annexed into the City of Asheville;
- 31 (2) Those areas designated as "Proposed Annexation Area City of Asheville
32 (currently Buncombe County)" are annexed into the City of Asheville; and
- 33 (3) The remaining unincorporated area situated at the intersection of U.S. 19-23,
34 Broadway Street, and Riverside Drive is annexed into the Town of Woodfin.



1 **SECTION 3.** Except as adjusted herein, the boundaries of the City of Asheville
2 and the Town of Woodfin are unchanged.

3 **SECTION 4.** Any property shown on Sheets 2, 3, or 4 of the Asheville/Woodfin
4 Boundary Survey as being part of the Town of Woodfin, and which by operation of this act is
5 no longer contiguous with the primary limits of the Town of Woodfin, may be annexed by the
6 City of Asheville pursuant to Part 1 of Article 4A of Chapter 160A of the General Statutes (or
7 successor statute) upon petition of the property owner as provided in that Part, but only if the
8 petition is accompanied by an ordinance of the Town of Woodfin consenting to such
9 annexation. The annexation may only become effective on June 30 of a calendar year and does
10 not extinguish tax liens of the Town of Woodfin. Nothing in this act shall be construed as
11 limiting the powers of the City of Asheville or the Town of Woodfin under Article 4A of
12 Chapter 160A of the General Statutes (or successor statute) with respect to any unincorporated
13 area.

14 **SECTION 5.** In order to provide efficient delivery of services, the Town of
15 Woodfin, the City of Asheville, and Buncombe County are hereby authorized to enter into
16 intergovernmental agreements regarding delivery of municipal services to those parts of the
17 Town of Woodfin made noncontiguous by operation of this act, and to unincorporated areas of
18 Buncombe County that are completely surrounded by the City of Asheville or a combination of
19 the City of Asheville and the Town of Woodfin by operation of this act.

20 **SECTION 6.** This act becomes effective June 30, 2012.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 6/13/12

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE PCS SB28-CSRB-81

(to be filled in by
Principal Clerk)

Rep.) Weiss
Sen.)

1 moves to amend the bill on page 1, line 7, to page 2, line 7

2 () WHICH CHANGES THE TITLE

3 by deleting those lines;

4
5 and on page 2, line 16, to page 2 line
6 21, by deleting those lines; and

7
8 by renumbering SECTION 1.(a) and 1.(b)
9 to SECTION 1.(c) and 1.(d) respectively;

10
11 and by renumbering the remaining sections
12 accordingly; and

13
14 on page 2, line 8 by deleting "Further, the"
15 and substituting "The".

16
17
18
19

SIGNED Jennifer Weiss

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1202*

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

H1202-ALBx-185 [v.1]

Page 1 of 1

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

Date _____, 2012

Representative Jet 201

- 1 moves to amend the bill on page 1, line 13, by deleting "June 30, 2013" and substituting "June
- 2 30, 2012"
- 3
- 4

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1217 A BILL TO BE ENTITLED AN ACT TO ADJUST THE BOUNDARIES OF THE TOWN OF WOODFIN AND THE CITY OF ASHEVILLE, AS REQUESTED BY THE GOVERNING BOARDS OF THOSE MUNICIPALITIES, BY (1) ANNEXING INTO THE CITY OF ASHEVILLE CERTAIN STATE-OWNED PROPERTY, (2) REMOVING CERTAIN STATE-OWNED PROPERTY FROM THE TOWN OF WOODFIN AND ANNEXING IT INTO THE CITY OF ASHEVILLE, (3) REMOVING CERTAIN STATE-OWNED AND PRIVATE PROPERTY FROM THE CITY OF ASHEVILLE AND ANNEXING IT INTO THE TOWN OF WOODFIN, AND (4) UPON PETITION OF THE OWNER AND WITH THE CONCURRENCE OF THE TOWN OF WOODFIN, ALLOWING THE CITY OF ASHEVILLE TO ANNEX CERTAIN PROPERTY IN THE TOWN OF WOODFIN THAT, AS A RESULT OF THE OPERATION OF THIS ACT, IS SURROUNDED BY THE CITY OF ASHEVILLE OR A COMBINATION OF THE CITY OF ASHEVILLE AND UNINCORPORATED AREA, AND PROVIDING FOR THE CITY OF ASHEVILLE AND THE TOWN OF WOODFIN TO ENTER INTO AGREEMENTS REGARDING THE PROVISION OF MUNICIPAL SERVICES TO CERTAIN PROPERTIES IN EACH OTHER'S JURISDICTION.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1207 A BILL TO BE ENTITLED AN ACT TO ALLOW GRANVILLE COUNTY, PERSON COUNTY, THE CITY OF CREEDMOOR, THE TOWN OF BUTNER, AND THE TOWN OF STEM TO COLLECT DELINQUENT STORMWATER UTILITY FEES IN THE SAME MANNER AS DELINQUENT PERSONAL AND REAL PROPERTY TAXES.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1206 A BILL TO BE ENTITLED AN ACT TO MORE ACCURATELY DESCRIBE
THE CORPORATE LIMITS OF THE TOWN OF BUTNER.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1202 A BILL TO BE ENTITLED AN ACT TO DEANNEX FROM THE CITY OF ROANOKE RAPIDS A PARCEL PREVIOUSLY ANNEXED BY A LEGISLATIVE ANNEXATION AND AMENDING THE AUTHORIZING LEGISLATION FOR THE HALIFAX-NORTHAMPTON REGIONAL AIRPORT AUTHORITY.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1169 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED
PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF BURGAW.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1122 A BILL TO BE ENTITLED AN ACT TO VALIDATE CERTAIN LEVIES AND COLLECTION OF FIRE DISTRICT TAXES IN MARTIN COUNTY AND TO ALLOW MARTIN COUNTY TO ABOLISH BY RESOLUTION ITS CHAPTER 69 FIRE PROTECTION DISTRICTS UPON ESTABLISHMENT OF FIRE PROTECTION SERVICE DISTRICTS UNDER CHAPTER 153A OF THE GENERAL STATUTES.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1110 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTIES FROM THE CORPORATE LIMITS OF THE TOWN OF MATTHEWS AND ANNEX IT TO THE TOWN OF STALLINGS, BOTH AT THE REQUEST OF THE RESPECTIVE TOWN GOVERNING BOARDS.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1090 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE REMAINING NINE PERCENT OF THE COMMON BOUNDARY BETWEEN ALAMANCE COUNTY AND ORANGE COUNTY NOT ADDRESSED BY SESSION LAW 2011-88 AND AS AUTHORIZED BY THE GENERAL ASSEMBLY BY SESSION LAW 2010-61 ENABLING THE CHANGES IN THE HISTORIC ORANGE COUNTY-ALAMANCE COUNTY BOUNDARY LINE AS DESCRIBED IN THE 1849 SURVEY ESTABLISHING ALAMANCE COUNTY.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1088 A BILL TO BE ENTITLED AN ACT CONCERNING THE DIVISION
BETWEEN GRAHAM AND SWAIN COUNTIES OF TVA PAYMENTS IN LIEU OF TAXES, AND
CLARIFYING THE COMMON BOUNDARY BETWEEN THOSE COUNTIES.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 906 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF NAGS HEAD TO LEASE OUT PROPERTY FOR A LICENSED NURSING HOME FOR UP TO FORTY YEARS WITHOUT TREATING IT AS A SALE.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1041 A BILL TO BE ENTITLED AN ACT TO EXCHANGE CERTAIN
DESCRIBED TRACTS OF LAND BETWEEN THE CITY OF ARCHDALE AND THE CITY OF
HIGH POINT.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 828 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE
UNEMPLOYMENT INSURANCE LAWS.

With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill -1.

(FOR JOURNAL USE ONLY)

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

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

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

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 806 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE LAW DEALING WITH THE ANNUAL ASSESSMENTS OF MORTGAGE BANKERS, MORTGAGE BROKERS, AND MORTGAGE SERVICERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 824 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE SECRETARY OF REVENUE'S INTERPRETATION OF THE LAW CONCERNING THE SECRETARY'S AUTHORITY TO ADJUST NET INCOME OR REQUIRE A COMBINED RETURN BE MADE THROUGH RULE MAKING AND TO PROVIDE AN EXPEDITED PROCESS FOR RULE MAKING ON THIS ISSUE.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1032 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED
NONCONTIGUOUS PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF
MORGANTON.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1199 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE TOWN OF LAKE LURE TO CONVEY CERTAIN DESCRIBED PROPERTY BY GIFT, PRIVATE SALE, OR LONG-TERM LEASE.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 963 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED
PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF COLUMBIA.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 945 A BILL TO BE ENTITLED AN ACT TO ANNEX TO THE CITY OF MARION A SECTION OF RIGHT-OF-WAY OF US HIGHWAY 70 WEST WHERE A SIDEWALK TO BE MAINTAINED BY THE CITY IS TO BE CONSTRUCTED.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 957 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE VARIOUS SPECIAL REGISTRATION PLATES.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1181 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF EMERALD ISLE TO LEVY AN ADDITIONAL ONE PERCENT SALES AND USE TAX, THE PROCEEDS OF WHICH SHALL BE USED FOR BEACH NOURISHMENT.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1202*

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

H1202-ALBx-185 [v.1]

Page 1 of 1

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

Date _____, 2012

Representative

1 moves to amend the bill on page 1, line 13, by deleting "June 30, 2013" and substituting "June
2 30, 2012"
3
4

SIGNED
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* H 1 2 0 2 - A L B X - 1 8 5 - V - 1 *



Starnes

North Carolina General Assembly House Committee on Finance

Minutes

June 13, 2012

The House Committee on Finance met on Tuesday, June 12, 2012, at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, Setzer, and Folwell; Vice-Chair Lewis; and Representatives Brandon, Brawley, Carney, Collins, Cotham, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, Moffitt, T. Moore, Ross, Saine, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, Jesse Hayes and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Setzer called the meeting to order and recognized Representative Howard to present **SB 806, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE LAW DEALING WITH THE ANNUAL ASSESSMENTS OF MORTGAGE BANKERS, MORTGAGE BROKERS, AND MORTGAGE SERVICERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS.** Representative Howard moved for a favorable report to the bill. Motion passed.

The next matter of business was **SB 824, A BILL TO BE ENTITLED AN ACT TO REQUIRE THE SECRETARY OF REVENUE'S INTERPRETATION OF THE LAW CONCERNING THE SECRETARY'S AUTHORITY TO ADJUST NET INCOME OR REQUIRE A COMBINED RETURN BE MADE THROUGH RULE MAKING AND TO PROVIDE AN EXPEDITED PROCESS FRO RULE MAKING ON THIS ISSUE.** Representative Howard moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1032, A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED NONCONTIGUOUS PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF MORGANTON.** Representative Moffit moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1199, A BILL TO BE ENTITLED AN ACT AUTHORIZING THE TOWN OF LAKE LURE TO CONVEY CERTAIN DESCRIBED PROPERTY BY GIFT, PRIVATE SALE, OR LONG-TERM LEASE.** By motion of Representative Moffit, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Starnes moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

The next matter of business was **HB 963, A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF COLUMBIA**. Representative Setzer moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 945, A BILL TO BE ENTITLED AN ACT TO ANNEX TO THE CITY OF MARION A SECTION OF RIGHT-OF-WAY OF US HIGHWAY 70 WEST WHERE A SIDEWALK TO BE MAINTAINED BY THE CITY IS TO BE CONSTRUCTED**. Representative Stone moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 957, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE VARIOUS SPECIAL REGISTRATION PLATES**. By motion of Representative Warren, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Cotham moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

There being no further business presently before the Committee, the meeting adjourned at 9:50 am.

Rep. Mitchell Setzer, Presiding Chair



Andrew Henson, Committee Clerk

VISITOR REGISTRATION SHEET

Finance

6/13/12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Michael Muller	Rep. Tim Moffitt NC-116
DAVID BONE	MARTIN COUNTY
DANNY GRIFFIN	MARTIN COUNTY
elise quick	Troutman Sanders
Frank Rush	Town of Emerald Isle
Kara Weishaar	SA
John Monaghan	Piedmont Natural Gas
Angie Ell	NCRMA
Michelle Frazier	MF+S
Dea	NCRMA
DAVID Barnes	PS
Lillian Robinson	NCRMA

VISITOR REGISTRATION SHEET

Finance

6/13/12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mark Lanier

UNCW

Ther Lu

Lu

Wendy

Wendy

Fred Bone

Bone & Asso.

Allison Waller

Nelson Mullins

OS Nossitz

WM

Ben Schaumburg

NCSBA

Kelli Kulana

NCLM

VISITOR REGISTRATION SHEET

FINANCE

(Committee Name)

6/13/12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Lockhart Taylor	Commerce - DES
Jackson Cozart	NSS
Erzo Wayne	NC DOR
Tom Dixon	NC DOR
Michael Howard	NC DOR
David Baker	NC DOR
Kelly Alexander	NC Transp. Museum Fredt.
Police Chief Fred Baggart Tom Baggart Jr.	Fred Police Chief Director of Employment Service
Jack Cozart	NSS
Bill Howie	NC JC
Chip Kullian	Nelson Mullin
Harry Payne	NC JC
Jay Nichols	Cap Results
Jim Klingler	NC Zoo Society
Chuck Stone	SEAK
Chris McDonald	BWU

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 806*

Short Title: Modify Mortgage Regulation Funding.

(Public)

Sponsors: Senator Brown.

Referred to: Commerce.

May 21, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE LAW DEALING WITH THE ANNUAL
3 ASSESSMENTS OF MORTGAGE BANKERS, MORTGAGE BROKERS, AND
4 MORTGAGE SERVICERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE
5 COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING
6 LAWS.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Article 19B of Chapter 53 of the General Statutes is amended by
9 adding a new section to read:

10 "**§ 53-244.100A. Assessments.**

11 (a) For the purpose of meeting the cost of regulation under this Article, each mortgage
12 lender, mortgage broker, and mortgage servicer licensed under this Article shall pay into the
13 OCOB an assessment as provided in this subsection. The annual assessment shall consist of a
14 base amount of two thousand dollars (\$2,000) for volumes of no more than one million five
15 hundred thousand dollars (\$1,500,000) plus an additional sum, calculated on the loan and
16 servicing dollar volume reported by the licensee to the OCOB for the previous calendar year. If
17 a licensee has both loan and servicing volume, those amounts shall be added together and the
18 assessment shall be calculated from the table below as follows:

<u>Loan and/or Servicing Dollar Volume</u>	<u>Per Thousand</u>
<u>\$1,500,001 to \$2,500,000</u>	<u>\$0.07</u>
<u>\$2,500,001 to \$5,000,000</u>	<u>\$0.06</u>
<u>\$5,000,001 to \$10,000,000</u>	<u>\$0.05</u>
<u>\$10,000,001 to \$30,000,000</u>	<u>\$0.04</u>
<u>\$30,000,001 to \$100,000,000</u>	<u>\$0.03</u>
<u>\$100,000,001 to \$1,300,000,000</u>	<u>\$0.02</u>
<u>More Than \$1,300,000,001</u>	<u>\$0.01</u>

26
27 (b) The Commissioner may collect the assessment provided for in subsection (a) of this
28 section annually or in periodic installments as approved by the Commission."

29 SECTION 2. G.S. 53-244.101 reads as rewritten:

30 "**§ 53-244.101. License renewal.**

31 (a) All licenses issued by the Commissioner under the provisions of this Article shall
32 expire annually on the 31st day of December following issuance or on any other date that the
33 Commissioner may determine. The license is invalid after that date and shall remain invalid
34 unless renewed under subsection (b) of this section.



1 (b) A license may be renewed on or after November 1 of each year by complying with
2 the requirements of subsection (c) of this ~~section~~ section. A mortgage loan originator shall pay
3 a nonrefundable renewal fee of one hundred twenty-five dollars (\$125.00) and by paying to the
4 Commissioner, in addition to ~~plus~~ the actual cost of obtaining credit reports and State and
5 national criminal history record checks and ~~of~~ processing fees ~~of~~ for the nationwide system
6 Nationwide Mortgage Licensing System and Registry as the Commissioner shall ~~require,~~
7 ~~nonrefundable renewal fees as follows: require.~~

8 (1) ~~Licensed mortgage lenders, licensed mortgage brokers, and licensed~~
9 ~~mortgage servicers shall pay an annual renewal fee of six hundred~~
10 ~~twenty five dollars (\$625.00), licensed exclusive mortgage brokers shall pay~~
11 ~~an annual renewal fee of three hundred dollars (\$300.00), and licensed~~
12 ~~mortgage lenders and mortgage brokers shall pay three hundred dollars~~
13 ~~(\$300.00) for each licensed branch office.~~

14 (2) ~~Licensed mortgage loan originators shall pay an annual renewal fee of one~~
15 ~~hundred twenty five dollars (\$125.00).~~

16 (c) Licensees may apply to renew a mortgage loan originator, mortgage lender,
17 mortgage broker, and mortgage servicer license. The application for renewal shall demonstrate
18 that:

19 (1) The licensee continues to meet the initial minimum standards for licensure
20 under G.S. 53-244.060;

21 (2) The mortgage loan originator has satisfied the annual continuing education
22 requirements described in G.S. 53-244.102; and

23 (3) The licensee has paid all required fees ~~for renewal of the license and~~
24 assessments.

25 (d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed
26 prior to the expiration date, then the licensee shall pay two hundred fifty dollars (\$250.00) as a
27 nonrefundable late ~~fee in addition to the renewal fee set forth in subsection (b) of this section.~~
28 fee. If a mortgage loan originator's license is not renewed prior to the expiration date, then the
29 licensee shall pay a nonrefundable late fee of one hundred dollars (\$100.00) in addition to the
30 renewal fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a
31 reinstatement of the license prior to March 1, the Commissioner shall require the licensee to
32 comply with the requirements for the initial issuance of a license under the provisions of this
33 Article.

34 (e) When required by the Commissioner, each person shall furnish to the Commissioner
35 the person's consent to a criminal history record check and a set of the person's fingerprints in a
36 form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and
37 Registry. Refusal to consent to a criminal history record check shall constitute grounds for the
38 Commissioner to deny renewal of the license of the person as well as the license of any other
39 person by whom the person is employed, over which the person has control, or as to which the
40 person is the current or proposed qualifying individual or current or proposed branch manager."

41 **SECTION 3.** G.S. 53-244.115 reads as rewritten:

42 **"§ 53-244.115. Investigation and examination authority.**

43 (a) For purposes of initial licensing, license renewal, suspension, conditioning,
44 revocation, or termination, or general or specific inquiry, investigation, or examination to
45 determine compliance with this Article, the Commissioner ~~may, at the expense of the applicant~~
46 ~~or licensee, may~~ access, receive, and use any books, accounts, records, files, documents,
47 information, or evidence, including:

48 (1) Criminal, civil, and administrative history information, including
49 nonconviction data;

- 1 (2) Personal history and experience information, including independent credit
2 reports obtained from a consumer reporting agency described in section
3 603(p) of the Fair Credit Reporting Act; and
4 (3) Any other documents, information, or evidence the Commissioner deems
5 relevant to the inquiry, investigation, or examination regardless of the
6 location, possession, control, or custody of the documents, information, or
7 evidence.

8 (b) For purposes of investigating violations or complaints arising under this Article, or
9 for the purposes of examination, the Commissioner may review, investigate, or examine any
10 licensee, individual, or person subject to this Article as often as necessary in order to carry out
11 the purposes of this Article. The Commissioner may interview the officer, principals, person
12 with control, qualified individual, mortgage loan originators, employees, independent
13 contractors, agents, and customers of the licensee, individual, or person concerning their
14 business. The Commissioner may direct, subpoena, or order the attendance of and examine
15 under oath all persons whose testimony may be required about the loans or the business or
16 subject matter of any examination or investigation and may direct, subpoena, or order the
17 person to produce books, accounts, records, files, and any other documents the Commissioner
18 deems relevant to the inquiry. ~~The reasonable cost of the investigation or examination shall be~~
19 ~~charged against the licensee, individual, or person subject to this Article. The assessment set~~
20 forth in G.S. 53-244.100A is for the purpose of meeting the cost of regulation under this
21 Article. Any investigation or examination that, in the opinion of the Commissioner of Banks,
22 requires extraordinary review, investigation, or special examination shall be subject to the
23 actual costs of additional expenses and the hourly rate for the staff's time, to be determined
24 annually by the Banking Commission.

25 (c) Each licensee, individual, or person subject to this Article shall make available to
26 the Commissioner upon request the books and records relating to the operations of the licensee,
27 individual, or person. No licensee, individual, or person subject to investigation or examination
28 under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any
29 books, records, computer records, or other information. Each licensee, individual, or person
30 subject to this Article shall also make available for interview by the Commissioner the officers,
31 principals, persons with control, qualified individuals, mortgage loan originators, employees,
32 independent contractors, agents, and customers of the licensee, individual, or person
33 concerning their business.

34 (d) Each licensee, individual, or person subject to this Article shall make or compile
35 such reports or prepare other information as may be directed or requested by the Commissioner
36 in order to carry out the purposes of this section, including:

- 37 (1) Accounting compilations;
38 (2) Information lists and data concerning loan transactions in a format
39 prescribed by the Commissioner;
40 (3) Periodic reports, including:
41 a. Annual Report Questionnaire,
42 b. Servicer Activity Report,
43 c. Servicer Schedule of the Ranges of Costs and Fees,
44 d. Lender/Servicer Audited Statements of Financial Condition,
45 e. Broker Certified Statements of Financial Condition, and
46 f. Quarterly Loan Origination Reports.
47 (4) Any other information deemed necessary to carry out the purposes of this
48 section.

49 (e) In making any examination or investigation authorized by this Article, the
50 Commissioner may control access to any documents and records of the licensee or person
51 under examination or investigation. The Commissioner may take possession of the documents

1 and records or place a person in exclusive charge of the documents and records in the place
2 where they are usually kept. During the period of control, no individual or person shall remove
3 or attempt to remove any of the documents and records except pursuant to a court order or with
4 the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe
5 the documents or records of the licensee have been or are at risk of being altered or destroyed
6 for purposes of concealing a violation of this Article, the licensee or owner of the documents
7 and records shall have access to the documents or records as necessary to conduct its ordinary
8 business.

9 (f) In order to carry out the purposes of this section, the Commissioner may:

- 10 (1) Retain attorneys, accountants, or other professionals and specialists as
11 examiners, auditors, or investigators to conduct or assist in the conduct of
12 examinations or investigations;
- 13 (2) Enter into agreements or relationships with other government officials or
14 regulatory associations in order to improve efficiencies and reduce
15 regulatory burden by sharing resources, standardized or uniform methods or
16 procedures, documents, records, information, or evidence obtained under
17 this section;
- 18 (3) Use, hire, contract, or employ public or privately available analytical
19 systems, methods, or software to examine or investigate the licensee,
20 individual, or person subject to this Article;
- 21 (4) Accept and rely on examination or investigation reports made by other
22 government officials, within or without this State; or
- 23 (5) Accept audit reports made by an independent certified public accountant for
24 the licensee, individual, or person in the course of that part of the
25 examination covering the same general subject matter as the audit and may
26 incorporate the audit report in the report of the examination, report of
27 investigation, or other writing of the Commissioner.

28 (g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the
29 Commissioner is authorized to take action, including summary suspension of the license, if the
30 licensee fails, within 20 days or a lesser time if specifically requested for good cause, to:

- 31 (1) Respond to inquiries from the Commissioner or the Commissioner's
32 designee regarding any complaints filed against the licensee that allege or
33 appear to involve violation of this Article or any law or rule affecting the
34 mortgage lending business;
- 35 (2) Respond to and cooperate fully with notices from the Commissioner or the
36 Commissioner's designee relating to the scheduling and conducting of an
37 examination or investigation under this Article; or
- 38 (3) Consent to a criminal history record check. The refusal shall constitute
39 grounds for the Commissioner to deny licensure to the applicant as well as to
40 any entity:
 - 41 a. By whom or by which the applicant is employed,
 - 42 b. Over which the applicant has control, or
 - 43 c. As to which the applicant is the current or proposed qualifying
44 individual or a current or proposed branch manager.

45 (h) The authority of this section shall remain in effect, whether a licensee, individual, or
46 person subject to this Article acts or claims to act under any licensing law of the State, or
47 claims to act without such authority."

48 **SECTION 4.** G.S. 53-244.119(e) is repealed.

49 **SECTION 5.** This act becomes effective October 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 824
Second Edition Engrossed 5/31/12

Short Title: Expedited Rule Making for Forced Combination. (Public)

Sponsors: Senators Rucho, Hartsell (Primary Sponsors); Blue, Brunstetter, Clodfelter, Harrington, McKissick, Rabon, Rouzer, and Stevens.

Referred to: Finance.

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SECRETARY OF REVENUE'S INTERPRETATION OF THE LAW CONCERNING THE SECRETARY'S AUTHORITY TO ADJUST NET INCOME OR REQUIRE A COMBINED RETURN BE MADE THROUGH RULE MAKING AND TO PROVIDE AN EXPEDITED PROCESS FOR RULE MAKING ON THIS ISSUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-262(b) is repealed.

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-262.1. Rules to exercise authority under G.S. 105-130.5A.

(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject under G.S. 105-130.5A to have their net income adjusted or to be required to file a combined return. Except for a voluntary redetermination as allowed under G.S. 105-130.5A(c), the Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until a rule adopted by the Secretary in accordance with this section becomes effective. This section provides an expedited procedure for the adoption of rules needed to administer G.S. 105-130.5A. The Secretary may not interpret G.S. 105-130.5A in the form of a bulletin or directive under G.S. 105-264.

The Secretary is exempt from G.S. 150B-21.1 through G.S. 150B-21.4 of Part 2 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited procedure for the adoption of rules as established by this section. The Secretary is exempt from Part 3 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited review procedure as established by this section.

(b) Definitions. – The definitions in G.S. 150B-2 apply in this section.

(c) Fiscal Note. – The Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the proposed rule when the rule is submitted to the Codifier of Rules, and the Codifier of Rules must publish the fiscal note with the proposed rule on the Internet. The Secretary must accept a written comment on the fiscal note in the same manner the Secretary accepts written comments on the proposed rule. The Secretary is not subject to the fiscal note requirement under G.S. 105-262(c). For purposes of this section, a "substantial economic impact" has the same meaning as defined in G.S. 150B-21.4(b1).

(d) Adoption. – The Secretary may adopt a rule under this section by using the procedure for adoption of a temporary rule set forth in G.S. 150B-21.1(a3). The Secretary must



1 provide electronic notification of the adoption of a rule to persons on the mailing list
2 maintained in accordance with G.S. 150B-21.2(d) and any other interested parties, including
3 those originally given notice of the rule making and those who provided comment on the rule.
4 If the Secretary receives written comment objecting to the rule and requesting review by the
5 Commission, the rule must be reviewed in accordance with subsections (e) through (i) of this
6 section. A person may object to the rule and request review by the Commission at any point
7 prior to the adoption of the rule and by 5:00 P.M. on the third business day following electronic
8 notification from the Secretary of the adoption of a rule. If the Secretary receives no written
9 comment objecting to the rule and requesting review by the Commission, the Secretary must
10 deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the
11 North Carolina Administrative Code upon receipt of the rule.

12 (e) Review. – If the Secretary receives written comment objecting to the rule and
13 requesting review by the Commission, the Secretary must submit the rule to the Commission
14 for review. The Commission may not consider questions relating to the quality or efficacy of
15 the rule but must restrict its review to a determination of whether the rule meets all of the
16 following criteria:

17 (1) It is within the authority delegated to the agency by the General Assembly.

18 (2) It is clear and unambiguous.

19 (3) It is reasonably necessary to implement or interpret an enactment of the
20 General Assembly, or of Congress, or a regulation of a federal agency. The
21 Commission must consider the cumulative effect of all rules adopted by the
22 agency related to the specific purpose for which the rule is proposed.

23 (4) It was adopted in accordance with this section.

24 (f) Manner of Review. – When the Commission reviews a rule under this section, the
25 time limits in subsections (b) and (b1) of G.S. 150B-21.1 apply. The Commission must review
26 the rule to determine whether the rule meets the standards in subsection (e) of this section. The
27 Commission must direct a member of its staff who is an attorney licensed to practice law in
28 North Carolina to review the rule. The staff member must make a recommendation to the
29 Commission or its designee. The Commission's designee must be a panel of at least three
30 members of the Commission. The staff member, Commission's designee, or the Commission
31 may also request technical changes as allowed in G.S. 150B-21.10. In reviewing the rule, the
32 Commission may consider any information submitted by the Secretary or another person.

33 (g) Objection. – If the Commission or its designee finds that the rule does not meet the
34 standards in subsection (e) of this section and objects to the rule, the Commission or its
35 designee must send the Secretary a written statement of the objection and the reason for the
36 objection within one business day. The Secretary must take one of the following actions:

37 (1) Change the rule to satisfy the Commission's objection and submit the revised
38 rule to the Commission.

39 (2) Submit a written response to the Commission indicating that the Secretary
40 has decided not to change the rule.

41 (h) Changes. – When the Secretary changes a rule in response to an objection by the
42 Commission, the Commission must determine whether the change satisfies the Commission's
43 objection. If it does, the Commission must approve the rule. If it does not, the Commission
44 must send the Secretary a written statement of the Commission's continued objection and the
45 reason for the continued objection.

46 (i) Approval. – If the Commission or its designee finds that the rule meets the standards
47 in subsection (e) of this section, the Commission or its designee must approve the rule and
48 deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the
49 North Carolina Administrative Code upon receipt from the Commission or its designee.

50 (j) Return of Rule. – A rule to which the Commission has objected remains under
51 review by the Commission until the Secretary decides not to satisfy the Commission's objection

1 and makes a written request to the Commission to return the rule to the Secretary. When the
2 Commission returns a rule to the Secretary in accordance with this section, the Secretary may
3 file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26
4 of Chapter 1 of the General Statutes.

5 (k) Effective Date. – G.S. 150B-21.3 does not apply to a rule adopted under this
6 section. A rule adopted under this section becomes effective on the last day of the month the
7 Codifier of Rules enters the rule in the North Carolina Administrative Code."

8 **SECTION 3.** G.S. 150B-1(d)(4) reads as rewritten:

9 "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the
10 following:

11 ...
12 (4) The Department of Revenue, with respect to the notice and hearing
13 requirements contained in Part 2 of Article 2A. With respect to the Secretary
14 of Revenue's authority to redetermine the State net taxable income of a
15 corporation under G.S. 105-130.5A, the Department is subject to the
16 rule-making requirements of G.S. 105-262.1.

17"

18 **SECTION 4.** On June 30, 2011, the Governor signed into law S.L. 2011-390,
19 House Bill 619, as passed by the General Assembly. The law repealed the Secretary of
20 Revenue's authority to adjust a corporation's net income or require a combined return under
21 G.S. 105-130.6, 105-130.15, and 105-130.16 and replaced it with a new authority under
22 G.S. 105-130.5A. The Fiscal Research Division of the North Carolina General Assembly
23 prepared a fiscal memo on House Bill 619. Therefore, notwithstanding G.S. 105-262.1, as
24 enacted by Section 2 of this act, G.S. 105-262(c), and Section 7 of the Budget Manual prepared
25 by the Office of State Budget and Management, the Secretary of Revenue shall not be required
26 to prepare a fiscal note for a proposed new rule submitted to the Codifier of Rules under
27 G.S. 105-262.1, as enacted by this act, prior to December 31, 2012.

28 **SECTION 5.** On April 17, 2012, the Department of Revenue published a directive
29 pursuant to G.S. 105-264, CD-12-02, that explains the Secretary's authority under
30 G.S. 105-130.5A to redetermine a corporation's net income by adjusting the corporation's
31 intercompany transactions or requiring a corporation to file a combined income tax return for
32 tax years beginning on or after January 1, 2012. This act supersedes the Directive; however, a
33 taxpayer who relied upon the interpretation in the Directive and whose North Carolina taxable
34 income for the 2012 taxable year is less under the Directive's interpretation than under an
35 interpretation of G.S. 105-130.5A by a rule adopted pursuant to G.S. 105-262.1, as enacted by
36 this act, is entitled to rely on the interpretation under the Directive for the 2012 taxable year.

37 **SECTION 6.** S.L. 2011-390, as amended by S.L. 2011-411, enacted
38 G.S. 105-130.5A, effective for taxable years beginning on or after January 1, 2012. The
39 Secretary of Revenue's authority under G.S. 105-130.5A exists continuously for taxable years
40 beginning on or after January 1, 2012. G.S. 105-262.1, as enacted by Section 2 of this act,
41 prevents the Secretary from exercising the authority granted under G.S. 105-130.5A until a rule
42 adopted in accordance with G.S. 105-262.1 becomes effective. After the rule becomes
43 effective, the Secretary may issue a proposed denial of a refund or a proposed assessment under
44 the authority of G.S. 105-130.5A for any taxable year beginning on or after January 1, 2012,
45 subject to the applicable statute of limitations.

46 **SECTION 7.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1032*

Short Title: Morganton Deannexation. (Local)

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

Referred to: Government, if favorable, Finance.

May 22, 2012

1 A BILL TO BE ENTITLED
2 AN ACT REMOVING CERTAIN DESCRIBED NONCONTIGUOUS PROPERTY FROM
3 THE CORPORATE LIMITS OF THE CITY OF MORGANTON.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. The following described property is removed from the corporate
6 limits of the City of Morganton:
7 Tract 1: All that property designated as lots 1, 2, and 3 (2.57 acres total) as shown
8 on map recorded in Plat Book 39, pages 101-102, recorded in the Burke County Register of
9 Deeds; said property being located in Morganton Township, Burke County, and also assigned
10 Burke County Tax Record Numbers 60305, 35234, and 60306.
11 Tract 2: All that property designated as Parcel "A" (23.87 acres) as shown on map
12 recorded in Plat Book 37, Page 17, in the Burke County Register of Deeds; said property being
13 located in Morganton Township, Burke County, and also being assigned Burke County Tax
14 Record Number 59930.
15 SECTION 2. Section 1 of this act shall have no effect upon the validity of any
16 liens of the City of Morganton for ad valorem taxes or special assessments outstanding before
17 the effective date of this act. Such liens may be collected or foreclosed upon after the effective
18 date of this act as though the property was still within the corporate limits of the City of
19 Morganton.
20 SECTION 3. The property removed from the corporate limits of the City of
21 Morganton by Section 1 of this act shall remain under the jurisdiction of that city for the
22 purposes of Article 19 of Chapter 160A of the General Statutes under G.S. 160A-360 until
23 removed from that jurisdiction as provided in G.S. 160A-360.
24 SECTION 4. This act becomes effective June 30, 2012.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1199
PROPOSED COMMITTEE SUBSTITUTE H1199-PCS70309-TM-26

Short Title: Lake Lure Convey Property.

(Local)

Sponsors:

Referred to:

May 31, 2012

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING THE TOWN OF LAKE LURE TO CONVEY CERTAIN
3 DESCRIBED PROPERTY BY GIFT, PRIVATE SALE, OR LONG-TERM LEASE.
4 The General Assembly of North Carolina enacts:
5 SECTION 1.(a) Notwithstanding the provisions of Article 12 of Chapter 160A of
6 the General Statutes, the Town of Lake Lure may convey by gift, by private negotiation and
7 sale, or by lease for a term of more than 10 years, with or without monetary consideration,
8 under the terms and conditions it deems proper, any or all of its right, title, and interest in the
9 following described property to The Challenge Foundation Properties of North Carolina, LLC,
10 or CLASSICAL ACADEMIES CFA, INC., for the purpose of operating a public school,
11 including a public charter school:
12 Beginning at a found 1" open top pipe, being the SE property corner of the Cane
13 Creek Missionary Baptist Church property tax pin 1616957, with the NAD 83 coordinates of
14 N:619030.64 E:1048324.49; thence N.02°50'43"E. a distance of 226.93' to a found 1" pipe
15 being the NE corner of the said church property; thence a new line through the Town of Lake
16 Lure property, pin 1641654 N.02°50'43"E. 406.3' to a point in the centerline of a stream
17 passing a set #5 rebar with i.d. cap at 385.47'; thence with centerline of stream the next 8 calls
18 N.77°42'08"E. a distance of 36.69'; thence N.88°31'48"E. a distance of 70.51'; thence
19 S.66°22'32"E. a distance of 110.36'; thence N.88°38'41"E. a distance of 27.25'; thence
20 N.79°38'55"E. a distance of 136.47'; thence N.75°18'35"E. a distance of 156.62'; thence
21 N.65°51'02"E. a distance of 164.70'; thence N.43°37'41"E. a distance of 234.09'; thence
22 continuing with 3 new lines through the said Town of Lake Lure property S.65°45'51"E. a
23 distance of 459.85', passing a set #5 rebar with i.d. cap at 30.02'; thence S.44°45'47"E. a
24 distance of 197.90'; thence S.26°41'42"E. a distance of 421.43' to a 1/2" iron pipe being a NW
25 corner of the Willard Buford property pin 1627106; thence along the western property line of
26 said Buford property the next 2 calls S.03°42'18"W. a distance of 249.94' add to a found 3/4"
27 pipe; thence S.03°43'51"W. a distance of 1218.44' to a set #5 rebar with i.d. cap in the northern
28 50' right-of-way of Island Creek Rd. (S.R. 1185); thence with the northern right-of-way of
29 Island Creek Rd. the following 9 calls with a curve turning to the right with an arc length of
30 28.32', with a radius of 1042.80', with a chord bearing of S.53°57'22"W., with a chord length of
31 28.32'; thence S.55°43'28"W. a distance of 143.58'; thence with a curve turning to the left with
32 an arc length of 96.89', with a radius of 1038.94', with a chord bearing of S.53°03'11"W., with a
33 chord length of 96.85'; thence with a curve turning to the right with an arc length of 184.71',
34 with a radius of 754.91', with a chord bearing of S.57°23'27"W., with a chord length of 184.25';



1 thence with a curve turning to the right with an arc length of 180.86', with a radius of 496.79',
2 with a chord bearing of S.74°49'48"W., with a chord length of 179.86'; thence with a curve
3 turning to the right with an arc length of 297.75', with a radius of 1729.66', with a chord
4 bearing of N.89°48'33"W., with a chord length of 297.38'; thence with a curve turning to the
5 right with an arc length of 123.87', with a radius of 175.00', with a chord bearing of
6 N.64°36'00"W., with a chord length of 121.30'; thence N.44°19'20"W. a distance of 207.10';
7 thence with a curve turning to the left with an arc length of 254.65', with a radius of 335.12',
8 with a chord bearing of N.66°05'28"W., with a chord length of 248.57'; to a point being a set #5
9 rebar with i.d. cap, located N.77°59'58"E. 733.83' from a found right-of-way monument; thence
10 5 new lines through the said Town of Lake Lure property N.17°12'18"E. a distance of 242.06'
11 to a set #5 rebar with i.d. cap; thence N.47°08'09"W. a distance of 121.59' to a set #5 rebar with
12 i.d. cap; thence N.12°24'16"E. a distance of 165.25' to a set #5 rebar with i.d. cap; thence
13 N.76°09'17"W. a distance of 571.52' to a set #5 rebar with i.d. cap; thence S.13°18'15"W. a
14 distance of 304.03' to a set #5 rebar with i.d. cap; thence N.80°47'35"W. a distance of 130.01'
15 to a point in the NCDOT claimed eastern right-of-way of Highway 9 and being 5' from the
16 eastern edge of pavement of NC Highway 9 passing a set #5 rebar with i.d. cap at 120.83';
17 thence along said Highway 9 right-of-way the next 3 calls N.09°31'25"E. a distance of 147.74';
18 thence with a curve turning to the left with an arc length of 382.18', with a radius of 955.00'
19 with a chord bearing of N.01°56'27"W., with a chord length of 379.63'; thence N.13°24'19"W.
20 a distance of 109.92'; thence leaving said NC Highway 9 right-of-way along the southern
21 property line of said Baptist Church N.61°35'39"E. a distance of 636.12', passing a set #5 rebar
22 with i.d. cap at 38.51' to the point of beginning, said parcel contains 80.96 acres area by
23 coordinate computation.

24 Legal description of 80.96 acres located in Chimney Rock Township, Rutherford
25 County, North Carolina; being a portion of the Town of Lake Lure Property as described in
26 Deed Book 153, Page 356, also being a portion of Rutherford County, NC Tax PIN 1641654.
27 The following Legal Description was taken from a plat of survey for the Lake Lure Classical
28 Academy, dated April 10, 2012, prepared by WNC Professional Engineers & Surveyors, PLLC
29 – Job #120305.

30 **SECTION 1.(b)** The Town of Lake Lure may, in its discretion, include in a
31 document conveying all or any portion of the property described in subsection (a) of this
32 section a reversionary clause which provides that if the property ceases to be used for public
33 school purposes, the property shall revert back to the Town of Lake Lure.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 963

Short Title: Town of Columbia/Deannexation. (Local)

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

Referred to: Government, if favorable, Finance.

May 17, 2012

1 A BILL TO BE ENTITLED
2 AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE
3 LIMITS OF THE TOWN OF COLUMBIA.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. The property described in Section 1 of S.L. 2007-140 is removed
6 from the corporate limits of the Town of Columbia.
7 SECTION 2. This act has no effect upon the validity of any liens of the Town of
8 Columbia for ad valorem taxes or special assessments outstanding before the effective date of
9 this act. Such liens may be collected or foreclosed upon after the effective date of this act as
10 though the property was still within the corporate limits of the Town of Columbia.
11 SECTION 3. This act is effective when it becomes law.



* H 9 6 3 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 957
Committee Substitute Favorable 6/5/12
PROPOSED COMMITTEE SUBSTITUTE H957-PCS80387-SVf-50

Short Title: Authorize Various Special Plates.

(Public)

Sponsors:

Referred to:

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE VARIOUS
SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

Q Flag of the United States of America. – Issuable to the registered owner of a motor vehicle. The plate shall bear an image of a waving American flag. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

Q Municipality Plate. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a graphic selected by the municipality represented by the plate and approved by the Division.

...

Q North Carolina Cattlemen's Association. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the seal of the North Carolina Cattlemen's Association.

...

(172) Register of Deeds. – Issuable to a register of deeds. The plate shall bear the words "Register of Deeds" and the letter "R" followed by a number representing the county of the register of deeds. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list. A plate issued to a retired register of deeds shall bear the phrase "Register of Deeds, Retired," followed by a number that indicates the county where the register of deeds served and a designation indicating the retired status of the register of deeds.

...

Q RiverLink. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "RiverLink.org" and a logo representing RiverLink, Inc.

...



* H 9 5 7 - P C S 8 0 3 8 7 - S V F - 5 0 *

(224) Vietnam Veterans of America. – Issuable to a member of the Vietnam Veterans of America. The plate shall bear the words "Vietnam Veterans of America" or "VVA" and the emblem of the VVA. A person may obtain from the Division a special registration plate under this subdivision for a motor vehicle or a motorcycle registered in that person's name. The registration fees and the restrictions on the issuance of a specialized registration plate for a motorcycle are the same as for any motor vehicle. The Division may not issue either type of the plate authorized by this subdivision unless it receives at least 300 applications for the particular type of plate.

...."

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each year. The preceding special registration plates are subject to the regular motor vehicle registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000 pounds. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
American Red Cross	\$30.00
Animal Lovers	\$30.00
Arthritis Foundation	\$30.00
ARTS NC	\$30.00
Back Country Horsemen of NC	\$30.00
Boy Scouts of America	\$30.00
Brenner Children's Hospital	\$30.00
Carolina Raptor Center	\$30.00
Carolinas Credit Union Foundation	\$30.00
Carolinas Golf Association	\$30.00
Coastal Conservation Association	\$30.00
Coastal Land Trust	\$30.00
Crystal Coast	\$30.00
Daniel Stowe Botanical Garden	\$30.00
El Pueblo	\$30.00
Farmland Preservation	\$30.00
First in Forestry	\$30.00
Girl Scouts	\$30.00
Greensboro Symphony Guild	\$30.00
Historical Attraction	\$30.00
Home Care and Hospice	\$30.00
Home of American Golf	\$30.00
HOMES4NC	\$30.00
Hospice Care	\$30.00
In God We Trust	\$30.00
Maggie Valley Trout Festival	\$30.00
Mountains-to-Sea Trail	\$30.00
NC Civil War	\$30.00
NC Coastal Federation	\$30.00
NC Veterinary Medical Association	\$30.00
National Kidney Foundation	\$30.00
North Carolina 4-H Development Fund	\$30.00

1	<u>North Carolina Cattlemen's Association</u>	\$30.00
2	North Carolina Emergency Management Association	\$30.00
3	North Carolina Green Industry Council	\$30.00
4	North Carolina Libraries	\$30.00
5	Outer Banks Preservation Association	\$30.00
6	Pamlico-Tar River Foundation	\$30.00
7	P.E.O. Sisterhood	\$30.00
8	Personalized	\$30.00
9	Retired Legislator	\$30.00
10	<u>RiverLink</u>	\$30.00
11	Ronald McDonald House	\$30.00
12	Share the Road	\$30.00
13	S.T.A.R.	\$30.00
14	State Attraction	\$30.00
15	Stock Car Racing Theme	\$30.00
16	Support NC Education	\$30.00
17	Support Our Troops	\$30.00
18	Toastmasters Club	\$30.00
19	Topsail Island Shoreline Protection	\$30.00
20	Travel and Tourism	\$30.00
21	AIDS Awareness	\$25.00
22	Buffalo Soldiers	\$25.00
23	Choose Life	\$25.00
24	Collegiate Insignia	\$25.00
25	First in Turf	\$25.00
26	Goodness Grows	\$25.00
27	High School Insignia	\$25.00
28	Kids First	\$25.00
29	National Multiple Sclerosis Society	\$25.00
30	National Wild Turkey Federation	\$25.00
31	NC Agribusiness	\$25.00
32	NC Children's Promise	\$25.00
33	Nurses	\$25.00
34	Olympic Games	\$25.00
35	Rocky Mountain Elk Foundation	\$25.00
36	Special Olympics	\$25.00
37	Support Soccer	\$25.00
38	Surveyor Plate	\$25.00
39	The V Foundation for Cancer Research Division	\$25.00
40	University Health Systems of Eastern Carolina	\$25.00
41	Alpha Phi Alpha Fraternity	\$20.00
42	ALS Association, Jim "Catfish" Hunter Chapter	\$20.00
43	ARC of North Carolina	\$20.00
44	Audubon North Carolina	\$20.00
45	Autism Society of North Carolina	\$20.00
46	Battle of Kings Mountain	\$20.00
47	Be Active NC	\$20.00
48	Brain Injury Awareness	\$20.00
49	Breast Cancer Earlier Detection	\$20.00
50	Buddy Pelletier Surfing Foundation	\$20.00
51	Concerned Bikers Association/ABATE of North Carolina	\$20.00

1	Daughters of the American Revolution	\$20.00
2	Donate Life	\$20.00
3	Ducks Unlimited	\$20.00
4	Greyhound Friends of North Carolina	\$20.00
5	Guilford Battleground Company	\$20.00
6	Harley Owners' Group	\$20.00
7	Jaycees	\$20.00
8	Juvenile Diabetes Research Foundation	\$20.00
9	Kappa Alpha Order	\$20.00
10	Litter Prevention	\$20.00
11	March of Dimes	\$20.00
12	Morgan Horse Club	\$20.00
13	<u>Municipality Plate</u>	<u>\$20.00</u>
14	Native American	\$20.00
15	NC Fisheries Association	\$20.00
16	NC Horse Council	\$20.00
17	NC Mining	\$20.00
18	NC Tennis Foundation	\$20.00
19	NC Trout Unlimited	\$20.00
20	NC Victim Assistance	\$20.00
21	NC Wildlife Federation	\$20.00
22	NC Wildlife Habitat Foundation	\$20.00
23	NC Youth Soccer Association	\$20.00
24	North Carolina Master Gardener	\$20.00
25	Omega Psi Phi Fraternity	\$20.00
26	Phi Beta Sigma Fraternity	\$20.00
27	Piedmont Airlines	\$20.00
28	Prince Hall Mason	\$20.00
29	Save the Sea Turtles	\$20.00
30	Scenic Rivers	\$20.00
31	School Technology	\$20.00
32	SCUBA	\$20.00
33	Soil and Water Conservation	\$20.00
34	Special Forces Association	\$20.00
35	Support Public Schools	\$20.00
36	Sustainable Fisheries	\$20.00
37	US Equine Rescue League	\$20.00
38	USO of NC	\$20.00
39	Wildlife Resources	\$20.00
40	Zeta Phi Beta Sorority	\$20.00
41	Carolina Regional Volleyball Association	\$15.00
42	Carolina's Aviation Museum	\$15.00
43	Leukemia & Lymphoma Society	\$15.00
44	Lung Cancer Research	\$15.00
45	NC Beekeepers	\$15.00
46	Shag Dancing	\$15.00
47	Active Member of the National Guard	None
48	100% Disabled Veteran	None
49	Ex-Prisoner of War	None
50	Gold Star Lapel Button	None
51	Legion of Valor	None

1 Purple Heart Recipient None
 2 All Other Special Plates \$10.00."

3 **SECTION 3. G.S. 20-79.7(b) reads as rewritten:**

4 "(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate
 5 and Cultural Attraction Plate Account are established within the Highway Fund. The Division
 6 must credit the additional fee imposed for the special registration plates listed in subsection (a)
 7 of this section among the Special Registration Plate Account (SRPA), the Collegiate and
 8 Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which
 9 is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is
 10 established under G.S. 113-44.15, as follows:

11	<u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>	<u>PRTF</u>
12	AIDS Awareness	\$10	\$15	0	0
13	Alpha Phi Alpha Fraternity	\$10	\$10	0	0
14	ALS Association, Jim "Catfish"				
15	Hunter Chapter	\$10	\$10	0	0
16	American Red Cross	\$10	\$20	0	0
17	Animal Lovers	\$10	\$20	0	0
18	ARC of North Carolina	\$10	\$10	0	0
19	Arthritis Foundation	\$10	\$20	0	0
20	ARTS NC	\$10	\$20	0	0
21	Audubon North Carolina	\$10	\$10	0	0
22	Autism Society of North				
23	Carolina	\$10	\$10	0	0
24	Back Country Horsemen of NC	\$10	\$20	0	0
25	Battle of Kings Mountain	\$10	\$10	0	0
26	Be Active NC	\$10	\$10	0	0
27	Boy Scouts of America	\$10	\$20	0	0
28	Brain Injury Awareness	\$10	\$10	0	0
29	Breast Cancer Earlier Detection	\$10	\$10	0	0
30	Brenner Children's Hospital	\$10	\$20	0	0
31	Buddy Pelletier Surfing				
32	Foundation	\$10	\$10	0	0
33	Buffalo Soldiers	\$10	\$15	0	0
34	Carolina Raptor Center	\$10	\$20	0	0
35	Carolina Regional Volleyball				
36	Association	\$10	\$5	0	0
37	Carolina's Aviation Museum	\$10	\$5	0	0
38	Carolinas Credit Union				
39	Foundation	\$10	\$20	0	0
40	Carolinas Golf Association	\$10	\$20	0	0
41	Choose Life	\$10	\$15	0	0
42	Coastal Conservation				
43	Association	\$10	\$20	0	0
44	Coastal Land Trust	\$10	\$20	0	0
45	Concerned Bikers Association/ ABATE of North Carolina	\$10	\$10	0	0
47	Crystal Coast	\$10	\$20	0	0
48	Daniel Stowe Botanical Gardens	\$10	\$20	0	0
49	Daughters of the American				
50	Revolution	\$10	\$10	0	0
51	Donate Life	\$10	\$10	0	0

1	Ducks Unlimited	\$10	\$10	0	0
2	El Pueblo	\$10	\$20	0	0
3	Farmland Preservation	\$10	\$20	0	0
4	First in Forestry	\$10	\$10	\$10	0
5	First in Turf	\$10	\$15	0	0
6	Girl Scouts	\$10	\$20	0	0
7	Goodness Grows	\$10	\$15	0	0
8	Greensboro Symphony Guild	\$10	\$20	0	0
9	Greyhound Friends of North				
10	Carolina	\$10	\$10	0	0
11	Guilford Battleground				
12	Company	\$10	\$10	0	0
13	Harley Owners' Group	\$10	\$10	0	0
14	High School Insignia	\$10	\$15	0	0
15	Historical Attraction	\$10	\$20	0	0
16	Home Care and Hospice	\$10	\$20	0	0
17	Home of American Golf	\$10	\$20	0	0
18	HOMES4NC	\$10	\$20	0	0
19	Hospice Care	\$10	\$20	0	0
20	In God We Trust	\$10	\$20	0	0
21	In-State Collegiate Insignia	\$10	\$15	0	0
22	Jaycees	\$10	\$10	0	0
23	Juvenile Diabetes Research				
24	Foundation	\$10	\$10	0	0
25	Kappa Alpha Order	\$10	\$10	0	0
26	Kids First	\$10	\$15	0	0
27	Leukemia & Lymphoma				
28	Society	\$10	\$5	0	0
29	Litter Prevention	\$10	\$10	0	0
30	Lung Cancer Research	\$10	\$5	0	0
31	Maggie Valley Trout Festival	\$10	\$20	0	0
32	March of Dimes	\$10	\$10	0	0
33	Morgan Horse Club	\$10	\$20	0	0
34	Mountains-to-Sea Trail	\$10	\$20	0	0
35	<u>Municipality Plate</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>	<u>0</u>
36	National Kidney Foundation	\$10	\$20	0	0
37	National Multiple Sclerosis				
38	Society	\$10	\$15	0	0
39	National Wild Turkey				
40	Federation	\$10	\$15	0	0
41	Native American	\$10	\$10	0	0
42	NC Agribusiness	\$10	\$15	0	0
43	NC Beekeepers	\$10	\$5	0	0
44	NC Children's Promise	\$10	\$15	0	0
45	NC Civil War	\$10	\$20	0	0
46	NC Coastal Federation	\$10	\$20	0	0
47	NC 4-H Development Fund	\$10	\$20	0	0
48	NC Fisheries Association	\$10	\$10	0	0
49	NC Horse Council	\$10	\$10	0	0
50	NC Mining	\$10	\$10	0	0
51	NC Tennis Foundation	\$10	\$10	0	0

1	NC Trout Unlimited	\$10	\$10	0	0
2	NC Veterinary Medical				
3	Association	\$10	\$20	0	0
4	NC Victim Assistance	\$10	\$10	0	0
5	NC Wildlife Federation	\$10	\$10	0	0
6	NC Wildlife Habitat				
7	Foundation	\$10	\$10	0	0
8	NC Youth Soccer				
9	Association	\$10	\$10	0	0
10	<u>North Carolina Cattlemen's Association</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
11	North Carolina Emergency				
12	Management Association	\$10	\$20	0	0
13	North Carolina Green Industry				
14	Council	\$10	\$20	0	0
15	North Carolina Libraries	\$10	\$20	0	0
16	North Carolina Master Gardener	\$10	\$10	0	0
17	Nurses	\$10	\$15	0	0
18	Olympic Games	\$10	\$15	0	0
19	Omega Psi Phi Fraternity	\$10	\$10	0	0
20	Out-of-state Collegiate Insignia	\$10	0	\$15	0
21	Outer Banks Preservation				
22	Association	\$10	\$20	0	0
23	Pamlico-Tar River Foundation	\$10	\$20	0	0
24	P.E.O. Sisterhood	\$10	\$20	0	0
25	Personalized	\$10	0	\$15	\$5
26	Phi Beta Sigma Fraternity	\$10	\$10	0	0
27	Piedmont Airlines	\$10	\$10	0	0
28	Prince Hall Mason	\$10	\$10	0	0
29	Retired Legislator	\$10	\$20	0	0
30	<u>RiverLink</u>	<u>\$10</u>	<u>\$20</u>	<u>0</u>	<u>0</u>
31	Rocky Mountain Elk				
32	Foundation	\$10	\$15	0	0
33	Ronald McDonald House	\$10	\$20	0	0
34	Save the Sea Turtles	\$10	\$10	0	0
35	Scenic Rivers	\$10	\$10	0	0
36	School Technology	\$10	\$10	0	0
37	SCUBA	\$10	\$10	0	0
38	Shag Dancing	\$10	\$5	0	0
39	Share the Road	\$10	\$20	0	0
40	Soil and Water Conservation	\$10	\$10	0	0
41	Special Forces Association	\$10	\$10	0	0
42	Special Olympics	\$10	\$15	0	0
43	S.T.A.R.	\$10	\$20	0	0
44	State Attraction	\$10	\$20	0	0
45	Stock Car Racing Theme	\$10	\$20	0	0
46	Support NC Education	\$10	\$20	0	0
47	Support Our Troops	\$10	\$20	0	0
48	Support Public Schools	\$10	\$10	0	0
49	Support Soccer	\$10	\$15	0	0
50	Surveyor Plate	\$10	\$15	0	0
51	Sustainable Fisheries	\$10	\$20	0	0

1	The V Foundation for Cancer				
2	Research	\$10	\$15	0	0
3	Toastmasters Club	\$10	\$20	0	0
4	Topsail Island Shoreline				
5	Protection	\$10	\$20	0	0
6	Travel and Tourism	\$10	\$20	0	0
7	University Health Systems of				
8	Eastern Carolina	\$10	\$15	0	0
9	US Equine Rescue League	\$10	\$10	0	0
10	USO of NC	\$10	\$10	0	0
11	Wildlife Resources	\$10	\$10	0	0
12	Zeta Phi Beta Sorority	\$10	\$10	0	0
13	All other Special Plates	\$10	0	0	0."

14 **SECTION 4.** G.S. 20-81.12(b2) reads as rewritten:

15 "(b2) State Attraction Plates. – The Division must receive 300 or more applications for a
16 State attraction plate before the plate may be developed. The Division must transfer quarterly
17 the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of
18 State attraction plates to the organizations named below in proportion to the number of State
19 attraction plates sold representing that organization:

- 20 (1) Aurora Fossil Museum. – The revenue derived from the special plate shall
21 be transferred quarterly to the Aurora Fossil Museum Foundation, Inc., to be
22 used for educational programs, for enhancing collections, and for operating
23 expenses of the Aurora Fossil Museum.
- 24 (2) Blue Ridge Parkway Foundation. – The revenue derived from the special
25 plate shall be transferred quarterly to Blue Ridge Parkway Foundation for
26 use in promoting and preserving the Blue Ridge Parkway as a scenic
27 attraction in North Carolina. A person may obtain from the Division a
28 special registration plate under this subdivision for the registered owner of a
29 motor vehicle or a motorcycle. The registration fees and the restrictions on
30 the issuance of a specialized registration plate for a motorcycle are the same
31 as for any motor vehicle. The Division must receive a minimum of 300
32 applications to develop a special registration plate for a motorcycle.
- 33 (3) Friends of the Great Smoky Mountains National Park. – The revenue derived
34 from the special plate shall be transferred quarterly to the Friends of the
35 Great Smoky Mountains National Park, Inc., to be used for educational
36 materials, preservation programs, capital improvements for the portion of the
37 Great Smoky Mountains National Park that is located in North Carolina, and
38 operating expenses of the Great Smoky Mountains National Park.
- 39 (4) Friends of the Appalachian Trail. – The revenue derived from the special
40 plate shall be transferred quarterly to The Appalachian Trail Conference to
41 be used for educational materials, preservation programs, trail maintenance,
42 trailway and viewshed acquisitions, trailway and viewshed easement
43 acquisitions, capital improvements for the portions of the Appalachian Trail
44 and connecting trails that are located in North Carolina, and related
45 administrative and operating expenses.
- 46 (5) North Carolina State Parks. – One-half of the revenue derived from the
47 special plate shall be transferred quarterly to Natural Heritage Trust Fund
48 established under G.S. 113-77.7, and the remaining revenue shall be
49 transferred quarterly to the Parks and Recreation Trust Fund established
50 under G.S. 113-44.15.

- 1 (6) "Old Baldy," Bald Head Island Lighthouse. – The revenue derived from the
2 special plate shall be transferred quarterly to the Old Baldy Foundation, Inc.,
3 for its programs in support of the Bald Head Island Lighthouse.
- 4 (7) The North Carolina Aquariums. – The revenue derived from the special plate
5 shall be transferred quarterly to the North Carolina Aquarium Society, Inc.,
6 for its programs in support of the North Carolina Aquariums.
- 7 (8) The North Carolina Arboretum. – The revenue derived from the special plate
8 shall be transferred quarterly to The North Carolina Arboretum Society and
9 used to help the Society obtain grants for the North Carolina Arboretum and
10 for capital improvements to the North Carolina Arboretum.
- 11 (9) The North Carolina Maritime Museum. – The revenue derived from the
12 special plate shall be transferred quarterly to Friends of the Museum, North
13 Carolina Maritime Museum, Inc., to be used for educational programs and
14 conservation programs and for operating expenses of the North Carolina
15 Maritime Museum.
- 16 (10) The North Carolina Museum of Natural Sciences. – The revenue derived
17 from the special plate shall be transferred quarterly to the Friends of the
18 North Carolina State Museum of Natural Sciences for its programs in
19 support of the museum.
- 20 (11) The North Carolina Transportation Museum. – The revenue derived from the
21 special plate shall be transferred quarterly to the North Carolina
22 Transportation Museum Foundation to be used for educational programs and
23 conservation programs and for operating expenses of the North Carolina
24 Transportation Museum.
- 25 (11)(12) The North Carolina Zoological Society. – The revenue derived from the
26 special plate shall be transferred quarterly to The North Carolina Zoological
27 Society, Incorporated, to be used for educational programs and conservation
28 programs at the North Carolina Zoo at Asheboro and for operating expenses
29 of the North Carolina Zoo at Asheboro.
- 30 (12)(13) U.S.S. North Carolina Battleship Commission. – The revenue derived from
31 the special plate shall be transferred quarterly to the U.S.S. North Carolina
32 Battleship Commission to be used for educational programs and preservation
33 programs on the U.S.S. North Carolina (BB-55) and for operating expenses
34 of the U.S.S. North Carolina Battleship Commission."

35 **SECTION 5.** G.S. 20-81.12 is amended by adding the following new subsections

36 to read:

37 "(b126) North Carolina Cattlemen's Association. – The Division must receive 300 or more
38 applications for the "North Carolina Cattlemen's Association" plate before the plate may be
39 developed. The Division shall transfer quarterly the money in the Collegiate and Cultural
40 Attraction Plate Account derived from the sale of "North Carolina Cattlemen's Association"
41 plates to the North Carolina Cattlemen's Association, Inc.

42 (b127) RiverLink. – The Division must receive 300 or more applications for a "RiverLink"
43 plate before the plate may be developed. The Division shall transfer quarterly the money in the
44 Collegiate and Cultural Attraction Plate Account derived from the sale of "RiverLink" plates to
45 RiverLink, Inc., to support the economic and environmental revitalization of the French Broad
46 River and its tributaries as a place to work, live, and play.

47 (b128) Municipality Plate. – The Division must receive 300 or more applications for a
48 municipality plate for a municipality before a municipality plate may be developed. The color,
49 design, and material for the plate must be approved by both the Division and the municipality.
50 The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate

1 Account derived from the sale of a municipality plate to the municipality represented by the
2 plate."

3 **SECTION 6.** The Revisor of Statutes is authorized to alphabetize, number, and
4 renumber the special registration plates listed in G.S. 20-79.4(b) to ensure that all the special
5 registration plates are listed in alphabetical order and numbered accordingly.

6 **SECTION 7.** This act is effective when it becomes law.



North Carolina General Assembly
House Committee on Finance

Minutes

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June 19, 2012

The House Committee on Finance met on Tuesday, June 19, 2012, at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Starnes, and Setzer; Vice-Chair Lewis; and Representatives K. Alexander, Brawley, Carney, Cotham, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, Moffitt, McGuirt, T. Moore, Ross, Saine, Samuelson, Stam, Stone, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, Young Bae and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Setzer called the meeting to order and recognized Representative Howard to present **HB 391, A BILL TO BE ENTITLED AN ACT TO REVISE THE LAWS RELATING TO COUNTY RESEARCH AND PRODUCTION SERVICE DISTRICTS TO REFLECT CHANGED CIRCUMSTANCES, TO ALLOW FLEXIBILITY IN PROVISION OF SERVICES IN URBAN AREAS OF SUCH DISTRICTS, AND TO AMEND THE COUNTY SERVICE DISTRICT ACT OF 1973 RELATING TO APPROVAL OF PROPERTY TAXES IN MULTIJURISDICTIONAL INDUSTRIAL PARK DISTRICTS.** Representative Luebke moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1216, A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN RESTRICTIONS ON SATELLITE ANNEXATIONS FOR THE TOWN OF WALLACE.** Representative T. Moore moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1106, A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF APEX.** Representative Weiss moved for a favorable report to the bill. Motion passed.

The next matter of business was **HB 1105, A BILL TO BE ENTITLED AN ACT TO SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS.** By motion of Representative McGee, a proposed committee substitute was placed before the committee and adopted for discussion. Representative McGee moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

The next matter of business was SB 426, A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFICATIONS AND MODIFICATIONS TO THE PUBLIC FINANCE STATUTES OF NORTH CAROLINA FOR THE IMPROVEMENT OF VARIOUS FINANCING STRUCTURES AND THE TERMS AND PROVISIONS OF THE FINANCING STRUCTURES AND TO AUTHORIZE A RESOLUTION ESTABLISHING A MUNICIPAL SERVICE DISTRICT TO BECOME EFFECTIVE UPON A DATE SPECIFIED IN THE RESOLUTION IF SPECIAL OBLIGATION BONDS ARE ANTICIPATED TO BE AUTHORIZED FOR A PROJECT. By motion of Representative McGee, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Carney moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

The next matter of business was HB 1050, A BILL TO BE ENTITLED AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY REPEALING SPECIFIED INVOLUNTARY ANNEXATION ORDINANCES OF THE TOWN OF ELIZABETHTOWN RELATING TO THE INDUSTRIAL PARK AREA, AND BY PROHIBITING MUNICIPAL INITIATION OF ANY PROCEDURE TO INVOLUNTARILY ANNEX THOSE AREAS FOR TWELVE YEARS. Representative Cotham moved for a favorable report to the bill. Motion passed.

The next matter of business was HB 1051, A BILL TO BE ENTITLED AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY REPEALING SPECIFIED INVOLUNTARY ANNEXATION ORDINANCES OF THE TOWN OF ELIZABETHTOWN RELATING TO THE HAYFIELDS AREA, AND BY PROHIBITING MUNICIPAL INITIATION OF ANY PROCEDURE TO INVOLUNTARILY ANNEX THOSE AREAS FOR TWELVE YEARS. Representative Collins moved for a favorable report to the bill. Motion passed.

The next matter of business was SB 813, A BILL TO BE ENTITLED AN ACT TO REQUIRE THE DEPARTMENT OF CULTURAL RESOURCES TO STUDY VARIOUS REVENUE ENHANCEMENTS AND POTENTIAL SAVINGS AT STATE HISTORIC SITES AND MUSEUMS, THE STATE ZOO, STATE PARKS, AND STATE AQUARIUMS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE. Representative Carney moved for a favorable report to the bill. Motion passed.

The next matter of business was SB 826, A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS. Representative Carney moved for a favorable report to the bill. Motion passed.

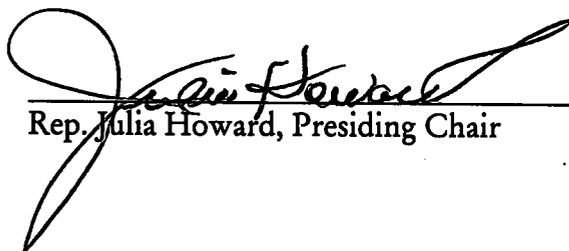
The next matter of business was SB 841, A BILL TO BE ENTITLED AN ACT TO ENSURE THAT THE RESOURCES OF THE PROGRAM EVALUATION DIVISION ARE UTILIZED EFFECTIVELY BY THE GENERAL ASSEMBLY, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE. Representative K. Alexander moved for a favorable report to the original bill. Motion passed.

The next matter of business was SB 572, A BILL TO BE ENTITLED AN ACT TO MAKE STATEWIDE THE AUTHORITY PREVIOUSLY GRANTED TO NASH COUNTY SO AS TO ALLOW COUNTIES TO PROVIDE GRANTS TO PROMOTE HIGH-SPEED INTERNET ACCESS SERVICE IN UNSERVED AREAS FOR ECONOMIC DEVELOPMENT AND TO MAKE OTHER CLARIFYING CHANGES. By motion of Representative Setzer, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Setzer moved for a favorable report to the committee substitute, which changes the title, unfavorable to the original bill. Motion passed.

The next matter of business was HB 988, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE AVERASBORO TOWNSHIP TOURISM DEVELOPMENT AUTHORITY. Representative McGee moved for a favorable report to the bill. Motion passed.

The next matter of business was HB 1084, A BILL TO BE ENTITLED AN ACT TO (1) REQUIRE ASSOCIATIONS TO RELEASE LIENS UPON PAYMENT IN FULL; (2) REQUIRE ALL ASSOCIATIONS TO CONDUCT FINANCIAL REVIEWS OR FINANCIAL AUDITS; (3) REQUIRE THAT NOTICE OF ASSOCIATION MEETINGS DESCRIBE THE GENERAL NATURE OF ANY MATERIAL MATTER FOR WHICH A VOTE IS TO BE TAKEN, AND VOID ACTIONS TAKEN AT MEETINGS HELD IN VIOLATION OF REQUIREMENTS OF THE PLANNED COMMUNITY ACT OR THE CONDOMINIUM ACT, AS APPLICABLE, OR AN ASSOCIATION'S DECLARATION OR BYLAWS; (4) AMEND VOTING PROVISIONS AS THEY APPLY TO USE OF PROXIES AND BALLOTS; AND (5) ALLOW USE OF ALTERNATIVE DISPUTE RESOLUTION FOR CONFLICTS ARISING UNDER THE PLANNED COMMUNITY ACT OR CONDOMINIUM ACT. By motion of Representative Carney, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Weiss moved for a favorable report to the committee substitute, unfavorable to the original bill. Motion passed.

There being no further business presently before the Committee, the meeting adjourned at 9:50 am.



Rep. Julia Howard, Presiding Chair



Andrew Henson, Committee Clerk

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE HOUSE FINANCE

DATE: JUNE 19, 2012 Room: 544

*Name: Andrew Hescock

County: Wake

Sponsor: Hilton

*Name: Mariah Bishop

County: Wake

Sponsor: Dollar

*Name: Sam Devine

County: Gaston

Sponsor: Hastings

*Name: Jessica Cotten

County: Harnett

Sponsor: Lewis

*Name: Alexandra Warren

County: Rowan

Sponsor: Dale Powell

House Sgt-At Arms:

1. Name: FRED HINES

4. Name: CARL MORELLO

2. Name: JOHN BRANDON

5. Name: _____

3. Name: YOUNG BAE

6. Name: _____

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE House Finance

DATE: June 19, 2012 Room: 544

*Name: Erin Brooks

County: Wake

Sponsor: Sager -

*Name: Jackson Kaplan

County: Wake

Sponsor: Tillis

*Name: _____

County: _____

Sponsor: _____

*Name: _____

County: _____

Sponsor: _____

*Name: _____

County: _____

Sponsor: _____

House Sgt-At Arms:

1. Name: _____

4. Name: _____

2. Name: _____

5. Name: _____

3. Name: _____

6. Name: _____

VISITOR REGISTRATION SHEET

HOUSE FINANCE

JUNE 19, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Andrew Caste	NC Sheriff's Assn.
Barbara Candel	BROWN
Maen Becke	GBK
Frank Robinson	NCENT
JAY PETERS	CSS
Angie Harris	WM
George Smith	WM
Stuart Books	Wood and Smith
Alexandra Van Vliet	Dept State Treasurer
LEWIS LORFORD	Parker
Kara Weishaar	SA

VISITOR REGISTRATION SHEET

JUNE 19, 12

House Finance Committee

~~May 23, 2012~~

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME

FIRM OR AGENCY AND ADDRESS

Chris Kitchin	Nelson Mullin
Jim Wynn	Hanger Hickes Wynn, PLLC
Steven Sawyer	Medical Mutual Raleigh, NC
Tom BEAN	EOP
Jimmy Phelan	True
Weldon Price	Jordan, Price
Amiteage	NMRS
Melanie Sore	DCR
Henry Jones	Jordan Price
Suzanne Beasley	SEANK
Mitch Leonard	SEANK

VISITOR REGISTRATION SHEET

HOUSE FINANCE

JUNE 19, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Eric Wayne	NCOOR
Michael Hauser	NC DOR
Regina Holley	The Longmire Group
Anne Murtha	NC DCR
David Baker	NC DOR
David Heenan	NC Center for Nonprofits
Bill Rowe	NC Justice Center

VISITOR REGISTRATION SHEET

JUNE 19, 12

House Finance Committee
Name of Committee

~~May 23, 2012~~
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO RENEE WEAVER

NAME	FIRM OR AGENCY AND ADDRESS
MIKE WATERS	NCRPA
Elise Quick	Trounax Solder
David Ferrell	NCLTA
Elizabeth Biscu	Brooks Piew
Ashleigh Thornton	MWC
Mike Winters	RTF
BNDUS	Wm
Judith Bon	Bon: Assn.
Terry Halby	Juan + car
Solari	DST
John McIner	mpas

VISITOR REGISTRATION SHEET

HOUSE FINANCE

JUNE 19, 2012

Name of Committee

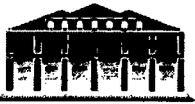
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Allison Waller	Nelson Munoz



**PROGRAM EVALUATION DIVISION
NORTH CAROLINA GENERAL ASSEMBLY**

February 2012

Operational Changes for State Attractions Could Yield \$1.9 Million Annually and Reduce Reliance on the State

Recommendations

The General Assembly directed the Program Evaluation Division to evaluate state attractions in part to determine whether administration could be consolidated. Based on the findings of this evaluation, complete consolidation of all attractions under one of the existing agencies is not recommended. However, efficiencies could be gained through the following recommendations for changes to site administration and operations.

Recommendation 1. The General Assembly should direct the Department of Cultural Resources (DCR) to coordinate the management of sites to increase efficiency, reduce operating costs by changing operating schedules and by closing sites partially or entirely, and develop and expand public-private partnerships with non-profit entities and fees to reduce reliance on state funds.

1 - A. Implement a coordinated management structure for Bennett Place, Duke Homestead, and Historic Stagville located in Durham County and analyze site proximity and span of control to identify other historic sites that could adopt a coordinated management structure. The list of additional sites that could adopt coordinated management structures should be reported to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government by December 31, 2012, so changes can be implemented for Fiscal Year 2013-14.

1 - B. Reduce days of operation for the following historic sites:

- Alamance Battleground
- Aycock Birthplace
- Bentonville Battlefield
- Historic Edenton
- Thomas Wolfe Memorial
- Town Creek Indian Mound
- Charlotte Hawkins Brown Memorial

1 - C. Close the Museum of the Albemarle and the Richard Caswell Memorial

1 - D. Explore opportunities to develop and expand public-private partnerships with non-profit entities and fees to reduce reliance on state funds. DCR should report the results of this analysis to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government by October 1, 2012, so changes can be implemented for Fiscal Year 2012-13.

Exhibit 14

Operational Changes for the Department of Cultural Resources Could Yield \$1.1 Million Annually

Recommended Operational Change for the Department of Cultural Resources	Estimated Cost Savings
Close one museum	\$ 738,243
Close one historic site	To be determined
Reduce seven historic sites to a five-day schedule	247,828
Coordinate management of historic sites in Durham County	92,100
Total Estimated Cost Savings	\$ 1,078,171

Note: The artifacts from the Museum of the Albemarle will be preserved.

Source: Program Evaluation Division based on budget, staffing, and operational data from the Department of Cultural Resources.

Recommendation 2. The General Assembly should direct the Department of Environment and Natural Resources (DENR) to coordinate the management of sites to increase efficiency, record daily visitation data at all parks to determine potential savings from daily or seasonal closure, and develop and expand public-private partnerships with non-profit entities and fees to reduce reliance on state funds.

- 2 - A.** Implement a coordinated management structure for the state parks in Bladen County and analyze site proximity and span of control to identify other state parks and recreation areas that could adopt a coordinated management structure. The list of additional sites that could adopt coordinated management structures should be reported to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources by December 31, 2012, so changes can be implemented for Fiscal Year 2013-14.
- 2 - B.** Record daily visitation counts for state parks and recreation areas and use the data to determine potential changes to daily or seasonal operations DENR should validate the number of visitors per car, report the results of their data collection, and make recommendations for daily and seasonal closure of state parks and recreation areas to the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Subcommittee on Natural and Economic Resources by April 1, 2013, so changes could be implemented for Fiscal Year 2013-14.
- 2 - C.** Adopt public-private partnerships with non-profit entities for the operations of the zoo and aquariums. A complete proposal of state costs and savings resulting from privatizing operations at the zoo and aquariums should be provided to the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Subcommittee on Natural and Economic Resources by December 31, 2012.
- 2 - D.** Explore opportunities to develop and expand public-private partnerships with non-profit entities and fees. DENR should report the results of this analysis to the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Subcommittee on Natural and Economic Resources by December 31, 2012, so changes could be implemented for Fiscal Year 2013-14.

Exhibit 15

Operational Changes for the Department of Environment and Natural Resources Could Yield \$858,100 Annually in the First Year

Recommended Operational Change for the Department of Environment and Natural Resources	Estimated Cost Savings
Coordinate management in Bladen County	\$ 58,100
Outsource zoo operations to non-profit entity	800,000
Total Estimated Cost Savings	\$ 858,100

Note: Savings from adopting a public-private partnership management structure for zoo operations are based on consultant estimates.

Source: Program Evaluation Division based on budget, staffing, and operational data from the Department of Environment and Natural Resources.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 841

Short Title: Effective Utilization of PED.

(Public)

Sponsors: Senator Hartsell.

Referred to: Program Evaluation.

May 22, 2012

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT THE RESOURCES OF THE PROGRAM EVALUATION DIVISION ARE UTILIZED EFFECTIVELY BY THE GENERAL ASSEMBLY, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-36.17. Program Evaluation Division impact statement.

(a) Every bill and resolution introduced in the General Assembly proposing a study or evaluation by the Program Evaluation Division shall have attached to it at the time of its consideration by the General Assembly an impact statement prepared by the Division. The impact statement shall identify and estimate, to complete all studies and reports required by the bill or resolution, all of the following: (i) the number of personnel required; (ii) the total number of hours required; and (iii) the estimated costs.

(1) If, after review, the Division determines that no estimates are possible, the impact statement shall contain a statement to that effect, setting forth the reasons why no estimate can be given.

(2) The Division shall indicate whether the Division, based upon its current annual work plan, has adequate and sufficient resources to undertake the study or evaluation as part of the current annual work plan, and shall explain the basis for its determination.

(3) If the Division determines that it would not be able to undertake the study or evaluation as part of its current annual work plan, it shall indicate a time frame in which it believes the study or evaluation could be accomplished.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for an impact statement to the Program Evaluation Division. Upon receipt of the request and the copy of the bill or resolution, the Program Evaluation Division shall prepare the impact statement as promptly as possible, but shall transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time. If the impact statement is not transmitted within two weeks, or by the end of any extension of time as provided under this subsection, then there shall be no impact statement required under this section.

(c) This impact statement shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as an impact statement. An



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1 impact statement attached to a bill or resolution pursuant to this subsection is not a part of the
2 bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

3 (d) If a committee of the General Assembly reports favorably a proposed bill or
4 resolution that directs the Program Evaluation Division to conduct a study or evaluation, the
5 chair of the committee shall obtain from the Program Evaluation Division, and attach to the bill
6 or resolution, an impact statement as provided in this section."

7 SECTION 2. G.S. 120-36.13(a) reads as rewritten:

8 "§ 120-36.13. **Work plan and requests for program evaluation.**

9 (a) Plan. – The Joint Legislative Program Evaluation Oversight Committee, in
10 consultation with the Director of the Program Evaluation Division, must establish an annual
11 work plan for the Division. The Division must adhere to this annual plan, unless the Joint
12 Legislative Program Evaluation Oversight Committee changes the annual plan to add a new
13 evaluation or remove a planned evaluation. Any enacted legislation that directs the Program
14 Evaluation Division to conduct a study or an evaluation is included in the annual work plan by
15 operation of ~~law-law~~; however, notwithstanding any other provision of law, if the enacted
16 legislation did not have an impact statement, as provided in G.S. 120-36.17, completed prior to
17 its consideration by the General Assembly, then the study or evaluation shall be included in the
18 next annual work plan adopted by the Committee and one year shall be added to any required
19 reporting dates included in the legislation, except that the impact statement is not required and
20 the evaluation may be included in the current work plan if the impact statement was not
21 provided pursuant to the time requirements in G.S. 120-36.17(b).

22 The annual work plan constitutes an information request and a drafting request made by the
23 Committee cochairs to legislative employees under Article 17 of Chapter 120 of the General
24 Statutes. Any document prepared by a legislative employee pursuant to the annual work plan
25 becomes available to the public only as provided in G.S. 120-131. Any document prepared by
26 an agency employee pursuant to a request under G.S. 120-131.1(a1) becomes available to the
27 public only as provided in G.S. 120-131."

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



SENATE BILL 841: Effective Utilization of PED

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Hartsell
Analysis of: First Edition

Date: June 18, 2012
Prepared by: Cindy Avrette
Committee Counsel

SUMMARY: *This act provides that a bill or resolution that proposes a study or evaluation by the Program Evaluation Division (PED) must have an impact statement attached to it prepared by PED indicating whether PED has adequate and sufficient resources to undertake the study as part of its current annual work plan. The bill is a recommendation of the Joint Legislative Program Evaluation Oversight Committee (Committee). The bill would become effective when it becomes law.¹*

CURRENT LAW: Standing legislative interim study committees, such as the Revenue Laws Study Committee and the various oversight committees, study issues that are directed to them for study by the General Assembly through legislation as well as issues that are brought before them through requests made by individual members to the committees' chairs. This process is codified for PED in G.S. 120-36.13. Under that statute, the Committee, in consultation with the Director of PED, develops an annual work plan for PED. A legislative member may submit a request to PED to study or evaluate an issue and the Director of PED must review the request. After review, the Director must make a recommendation to the Committee as to whether to include the request in the PED annual work plan based upon the work required to conduct the evaluation, the effect of the request on PED's ability to complete the other items in its work plan, the significance of the request compared to the evaluations included in its current work plan, and any overlap between the request and other evaluations conducted by PED or another agency. Any enacted legislation that directs PED to conduct a study or an evaluation is included in the current annual work plan by operation of law.

BILL ANALYSIS: Senate Bill 841 would modify the requirement that PED include, by operation of law, issues that are directed to it for study or evaluation through enacted legislation in its current annual work plan. Under the bill, the issue may not become part of PED's current annual work plan unless the legislation had attached to it at the time of its consideration an impact statement prepared by the PED. If the legislation failed to have an impact statement attached to it at the time of its consideration, then the issue must be included in the next annual work plan adopted by the Committee and one year shall be added to any required reporting dates included in the legislation.

The bill sponsor of legislation directing PED to study or evaluate an issue must provide the PED with a copy of the legislation. PED would be required to transmit the impact statement within two weeks after the request is made, unless an extended period of time is agreed upon. In the impact statement, PED would note whether it has adequate and sufficient resources to undertake the study, based upon its current annual work plan. The impact statement would need to specify (i) the number of personnel required to conduct the study; (ii) the total number of hours required to complete the study; and (iii) the estimated cost of performing the study.

If PED determines that it does not have sufficient and adequate resources to undertake the study, it must indicate a time frame in which it believes it could accomplish the legislative requested study. If PED is unable to provide an estimate, the impact statement would so indicate and explain the reasons.

¹ The House companion bill, H1012, introduced by Rep. Howard, is also in House Finance.
Research Division

Senate Bill 841

Page 2

If the impact statement is not provided by the PED within the deadline period, then there would be no requirement that it be attached to the legislation, and the evaluation may be included in the current year work plan.

If a bill or resolution is enacted without the impact statement, then the request would be included in the next annual work plan adopted by the Joint Legislative Program Evaluation Oversight Committee, and one year would be added to the reporting dates included in the legislation.

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

BACKGROUND: The General Assembly created PED in 2007 to assist the General Assembly in fulfilling its responsibility to oversee government functions by providing an independent, objective source of information to be used in evaluating whether public services are delivered in an effective and efficient manner and in accordance with law. The Joint Legislative Program Evaluation Oversight Committee noted in its meetings that the 2007 legislation created a process whereby the PED director would assess the feasibility of proposed projects, avoid duplicating other studies, and submit a proposed work plan to the Committee for approval that would set priorities for evaluations. However, in practice, this priority-setting process has been effectively bypassed. The Committee noted that the General Assembly, through special provisions and general bills, has mandated an increasing number and percentage of PED projects. From 2008 through May 29, 2012, PED completed a total of 36 reports. Of those, the Committee assigned only 15 or 42%. The General Assembly directly assigned the other 21, or 58%. The Committee noted this trend is increasing: from January 2011 to May 29, 2012, the General Assembly has assigned PED 12 of 16, or 75%, of the report projects.

Hal Pell, counsel to the Senate Program Evaluation Committee, contributed to this summary.

S841-SMRB-142(e1) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 572
Second Edition Engrossed 6/15/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S572-PCS75213-TD-68

Short Title: County Broadband Grants.

(Public)

Sponsors:

Referred to:

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE STATEWIDE THE AUTHORITY PREVIOUSLY GRANTED TO NASH COUNTY SO AS TO ALLOW COUNTIES TO PROVIDE GRANTS TO PROMOTE HIGH-SPEED INTERNET ACCESS SERVICE IN UNSERVED AREAS FOR ECONOMIC DEVELOPMENT AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 2011-163 reads as rewritten:

"SECTION 1. A county may provide grants to unaffiliated qualified private providers of high-speed Internet ~~broadband access service~~, as that term is defined in G.S. 160A-340(4), for the purpose of expanding service in unserved areas for economic development in the county. The grants shall be awarded on a technology neutral basis, shall be open to qualified applicants, and may require matching funds by the private provider. A county shall seek and consider request for proposals from qualified private providers within the county prior to awarding a broadband grant and shall use reasonable means to ensure that potential applicants are made aware of the grant, including, at a minimum, compliance with the notice procedures set forth in G.S. 160A-340.6(c). The county shall use only unrestricted general fund revenue for the grants. For the purposes of this section, a qualified private provider is a private provider of high-speed Internet access service in the State prior to the issuance of the grant proposal."

SECTION 2. Section 3 of S.L. 2011-163 is repealed.

SECTION 3. This act is effective when it becomes law. Section 1 of this act shall not apply to any broadband grant process initiated by Nash County prior to June 1, 2012.



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

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HOUSE BILL 1084
Committee Substitute Favorable 6/13/12
PROPOSED COMMITTEE SUBSTITUTE H1084-CSMCx-23 [v.1]

6/18/2012 2:59:57 PM

Short Title: HOAs/Planned Community Act Amends.

(Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

1 AN ACT TO (1) REQUIRE ASSOCIATIONS TO RELEASE LIENS UPON PAYMENT IN
2 FULL; (2) REQUIRE ALL ASSOCIATIONS TO CONDUCT FINANCIAL REVIEWS
3 OR FINANCIAL AUDITS; (3) REQUIRE THAT NOTICE OF ASSOCIATION
4 MEETINGS DESCRIBE THE GENERAL NATURE OF ANY MATERIAL MATTER
5 FOR WHICH A VOTE IS TO BE TAKEN, AND VOID ACTIONS TAKEN AT
6 MEETINGS HELD IN VIOLATION OF REQUIREMENTS OF THE PLANNED
7 COMMUNITY ACT OR THE CONDOMINIUM ACT, AS APPLICABLE, OR AN
8 ASSOCIATIONS DECLARATION OR BYLAWS; (4) AMEND VOTING PROVISIONS
9 AS THEY APPLY TO USE OF PROXIES AND BALLOTS; (5) ALLOW USE OF
10 ALTERNATIVE DISPUTE RESOLUTION FOR CONFLICTS ARISING UNDER THE
11 PLANNED COMMUNITY ACT OR CONDOMINIUM ACT; AND (6) SIMPLIFY THE
12 COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY
13 CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS.
14

15 The General Assembly of North Carolina enacts:

16
17 PART I. AMENDMENTS TO PLANNED COMMUNITY ACT

18 SECTION 1. Article 3 of Chapter 47F of the General Statutes is amended by
19 adding a new section to read:

20 **"§ 47F-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of**
21 **court upon full payment; liability for failure.**

22 (a) An association that has filed a claim of lien pursuant to G.S. 47F-3-116 shall
23 acknowledge satisfaction of the claim of lien securing the debt within 30 days after the
24 association receives full payment or performance of the debt, as provided in this section. The
25 association shall file with the clerk of court a notice of satisfaction of lien signed by the
26 association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon
27 the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

28 (b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to
29 this section by the end of the period specified in subsection (a) of this section is liable to the lot
30 owner for any actual damages caused by the failure, but not for punitive damages.

31 (c) An association that is required to acknowledge satisfaction of a claim of lien
32 pursuant to this section and does not do so by the end of the period specified in subsection (a)
33 of this section is also liable to the lot owner for one thousand dollars (\$1,000) and any



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1 reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified
2 in subsection (a) of this section, both of the following occur:

- 3 (1) The lot owner gives the association a notification, by certified mail and
4 first-class mail, that provides proof the association has received full
5 payment, demanding that the association acknowledge satisfaction with the
6 clerk of superior court.
- 7 (2) The association does not acknowledge satisfaction with the clerk of superior
8 court within 30 days after the association's receipt of the notification from
9 the lot owner."

10 SECTION 2.(a) G.S. 47F-3-118(a) reads as rewritten:

11 "**§ 47F-3-118. Association records.**

12 (a) The association shall keep financial records sufficiently detailed to enable the
13 association to comply with this Chapter. All financial and other records, including records of
14 meetings of the association and executive board, shall be made reasonably available for
15 examination by any lot owner and the lot owner's authorized agents as required in the bylaws
16 and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be
17 maintained, the association shall keep accurate records of all cash receipts and expenditures and
18 all assets and liabilities. In addition to any specific information that is required by the bylaws to
19 be assembled and reported to the lot owners at specified times, the association shall make an
20 annual income and expense statement and balance sheet available to all lot owners at no charge
21 and within 75 days after the close of the fiscal year to which the information relates.
22 ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's~~
23 ~~books and records for the current or immediately preceding fiscal year may be required by a~~
24 ~~vote of the majority of the executive board or by the affirmative vote of a majority of the lot~~
25 ~~owners present and voting in person or by proxy at any annual meeting or any special meeting~~
26 ~~duly called for that purpose."~~

27 SECTION 2.(b) Article 3 of Chapter 47F of the General Statutes is amended by
28 adding a new section to read:

29 "**§ 47F-3-118A. Financial review or audit requirements.**

30 (a) Except as provided in subsection (b) of this section, the board of directors shall
31 provide for an annual independent financial review of the association. The review shall be
32 completed no later than 90 days after the end of the association's fiscal year and shall be made
33 available upon request to the lot owners within 30 days after its completion.

34 (b) The board of directors shall provide for an annual independent financial audit of the
35 association, in lieu of an annual independent financial review, if any of the following
36 conditions are met:

- 37 (1) The declaration, bylaws, or other governing documents expressly require
38 conduct of an annual financial audit.
- 39 (2) The association has annual revenues or expenditures of at least four hundred
40 thousand dollars (\$400,000).
- 41 (3) An audit is requested by a vote of a majority of the board or by a vote of a
42 majority of the lot owners present and voting in person or by proxy at any
43 annual meeting or any special meeting duly called for that purpose."

44 SECTION 3. G.S. 47F-3-108 reads as rewritten:

45 "**§ 47F-3-108. Meetings.**

46 (a) A meeting of the association shall be held at least once each year. Special meetings
47 of the association may be called by the president, a majority of the executive board, or by lot
48 owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes
49 in the association. Not less than 10 nor more than 60 days in advance of any meeting, the
50 secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent
51 prepaid by United States mail to the mailing address of each lot or to any other mailing address

1 designated in writing by the lot owner, or sent by electronic means, including by electronic
2 mail over the Internet, to an electronic mailing address designated in writing by the lot owner.
3 The notice of any meeting shall state the time and place of the meeting and the items on the
4 agenda, including the general nature of any proposed amendment to the declaration or bylaws,
5 any budget changes, ~~and any proposal to remove a director or officer~~officer, and any material
6 matter for which a vote is to be taken.

7 (b) Meetings of the executive board shall be held as provided in the bylaws. At regular
8 intervals, the executive board meeting shall provide lot owners an opportunity to attend a
9 portion of an executive board meeting and to speak to the executive board about their issues or
10 concerns. The executive board may place reasonable restrictions on the number of persons who
11 speak on each side of an issue and may place reasonable time restrictions on persons who
12 speak.

13 (c) Except as otherwise provided in the bylaws, meetings of the association and the
14 executive board shall be conducted in accordance with the most recent edition of Robert's Rules
15 of Order Newly Revised.

16 (d) Actions taken at a meeting held in violation of the association's bylaws or any
17 provision of this Chapter shall be null and void, and no members of the association shall be
18 bound by any decision or ruling made in that meeting."

19 SECTION 4.(a) G.S. 47F-3-110 is repealed.

20 SECTION 4.(b) Article 3 of Chapter 47F of the General Statutes is amended by
21 adding a new section to read:

22 "§ 47F-3-110A. Voting; proxies; ballots.

23 (a) Unless prohibited or limited by the declaration or bylaws, lot owners may vote at a
24 meeting in person, by absentee ballot pursuant to subdivision (4) of subsection (b) of this
25 section, by a proxy pursuant to subsection (c) of the section, or, when a vote is conducted
26 without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

27 (b) At a meeting of lot owners, the following requirements apply:

28 (1) Lot owners who are present in person may vote by voice vote, show of
29 hands, standing, or any other method for accurately determining the votes of
30 lot owners, as designated by the person presiding at the meeting.

31 (2) If only one of several owners of a lot is present, that owner is entitled to cast
32 all the votes allocated to that lot. If more than one of the owners are present,
33 the votes allocated to that lot may be cast only in accordance with the
34 agreement of a majority in interest of the owners, unless the declaration
35 expressly provides otherwise. There is majority agreement if any one of the
36 owners casts the votes allocated to the lot without protest being made
37 promptly to the person presiding over the meeting by any of the other
38 owners of the lot.

39 (3) Unless a greater number or fraction of the votes in the association is required
40 for a particular matter to be voted on by this Chapter or the declaration, a
41 majority of the votes cast determines the outcome of any action of the
42 association.

43 (4) Subject to subsection (a) of this section, a lot owner may vote by absentee
44 ballot without being present at the meeting. The association promptly shall
45 deliver an absentee ballot to an owner that requests it if the request is made
46 at least seven days before the scheduled meeting. Votes cast by absentee
47 ballot must be included in the tally of a vote taken at that meeting.

48 (5) When a lot owner votes by absentee ballot, the association must be able to
49 verify that the ballot is cast by the lot owner having the right to do so.

50 (c) Except as otherwise provided in the declaration or bylaws, the following
51 requirements apply with respect to proxy voting:

- 1 (1) Votes allocated to a lot may be cast pursuant to a directed or undirected
2 proxy duly executed by a lot owner.
- 3 (2) If a lot is owned by more than one person, each owner of the lot may vote or
4 register protest to the casting of votes by the other owners of the lot through
5 a duly executed proxy.
- 6 (3) A lot owner may revoke a proxy given pursuant to this section only by actual
7 notice of revocation to the person presiding over a meeting of the
8 association.
- 9 (4) A proxy is void if it is not dated, if it purports to be revocable without notice,
10 or if it is given in favor of a board member.
- 11 (5) A proxy is valid only for the meeting at which it is cast and any recessed
12 session of that meeting.
- 13 (6) A proxy may be used to achieve the required quorum at a meeting.
- 14 (7) A proxy is valid only if the nature of the matter for which the vote is to be
15 taken is stated in the notice as required by G.S. 47F-3-108(a).
- 16 (8) A person may not cast proxies representing more than fifteen percent (15%)
17 of the votes in the association.
- 18 (d) Unless prohibited or limited by the declaration or bylaws, an association may
19 conduct a vote without a meeting. In that event, the following requirements apply:
- 20 (1) The association shall notify the lot owners that the vote will be taken by
21 ballot.
- 22 (2) The association shall deliver a paper or electronic ballot to every lot owner
23 entitled to vote on the matter.
- 24 (3) The ballot must set forth each proposed action and provide an opportunity to
25 vote for or against the action.
- 26 (4) When the association delivers the ballots, the association shall do all of the
27 following:
- 28 a. Indicate the number of responses needed to meet the quorum
29 requirements.
- 30 b. State the percentage of votes necessary to approve each matter other
31 than election of directors.
- 32 c. Specify the time and date, not fewer than seven days after the date
33 the association delivers the ballot, by which a ballot must be
34 delivered to the association to be counted.
- 35 d. Describe the time, date, and manner by which lot owners wishing to
36 deliver information to all lot owners regarding the subject of the vote
37 may do so.
- 38 (5) Except as otherwise provided in the declaration or bylaws, a ballot is not
39 revoked after delivery to the association by death or disability or attempted
40 revocation by the person that cast that vote.
- 41 (6) Approval by ballot pursuant to this subsection is valid only if the number of
42 votes cast by ballot equals or exceeds the quorum required to be present at a
43 meeting authorizing the action.
- 44 (e) If the declaration requires that votes on specified matters affecting the planned
45 community be cast by lessees rather than lot owners of leased lots, (i) the provisions of this
46 section apply to lessees as if they were lot owners; (ii) lot owners who have leased their lots to
47 other persons may not cast votes on those specified matters; and (iii) lessees are entitled to
48 notice of meetings, access to records, and other rights respecting those matters as if they were
49 lot owners. Lot owners shall also be given notice, in the manner provided in G.S. 47F-3-108, of
50 all meetings at which lessees may be entitled to vote.
- 51 (f) No votes allocated to a lot owned by the association may be cast.

1 (g) The declaration may provide that, on specified issues, only a defined subgroup of lot
2 owners may vote, provided both of the following apply:

3 (1) The issue being voted on is of special interest solely to the members of the
4 subgroup.

5 (2) All except de minimis costs that will be incurred based on the vote taken will
6 be assessed solely against those lot owners entitled to vote.

7 (h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted
8 on is not a special interest solely to a subgroup if it substantially affects the overall appearance
9 of the planned community or substantially affects living conditions of lot owners not included
10 in the voting subgroup."

11 SECTION 5. Article 3 of Chapter 47F of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 47F-3-120.1. Alternative dispute resolution allowed.**

14 Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or
15 rules and regulations may agree to resolve the dispute by any form of binding or nonbinding
16 alternative dispute resolution, except that a declarant may agree with the association to do so
17 only after the period of declarant control has expired. Parties electing to use alternative dispute
18 resolution for disputes arising under this Chapter shall use only mediators certified by the
19 Dispute Resolution Commission. An agreement to submit to any form of binding alternative
20 dispute resolution must be in a record authenticated by the parties."

21
22 **PART II. AMENDMENTS TO CONDOMINIUM ACT**

23 SECTION 6. Article 3 of Chapter 47C of the General Statutes is amended by
24 adding a new section to read:

25 **"§ 47C-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of**
26 **court upon full payment; liability for failure.**

27 (a) An association that has filed a claim of lien pursuant to G.S. 47C-3-116 shall
28 acknowledge satisfaction of the claim of lien securing the debt within 30 days after the
29 association receives full payment or performance of the debt, as provided in this section. The
30 association shall file with the clerk of court a notice of satisfaction of lien signed by the
31 association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon
32 the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

33 (b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to
34 this section by the end of the period specified in subsection (a) of this section is liable to the
35 unit owner for any actual damages caused by the failure, but not for punitive damages.

36 (c) An association that is required to acknowledge satisfaction of a claim of lien
37 pursuant to this section and does not do so by the end of the period specified in subsection (a)
38 of this section is also liable to the lot owner for one thousand dollars (\$1,000) and any
39 reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified
40 in subsection (a) of this section, both of the following occur:

41 (1) The lot owner gives the association a notification, by certified mail and
42 first-class mail, that provides proof the association has received full
43 payment, demanding that the association acknowledge satisfaction with the
44 clerk of superior court.

45 (2) The association does not acknowledge satisfaction with the clerk of superior
46 court within 30 days after the association's receipt of the notification from
47 the lot owner."

48 SECTION 7.(a) G.S. 47C-3-118(a) reads as rewritten:

49 **"§ 47C-3-118. Association records.**

50 (a) The association shall keep financial records sufficiently detailed to enable the
51 association to comply with this chapter. All financial and other records, including records of

1 meetings of the association and executive board, shall be made reasonably available for
2 examination by any unit owner and the unit owner's authorized agents as required by the
3 bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation.
4 If the bylaws do not specify particular records to be maintained, the association shall keep
5 accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to
6 any specific information that is required by the bylaws to be assembled and reported to the unit
7 owners at specified times, the association shall make an annual income and expense statement
8 and balance sheet available to all unit owners at no charge and within 75 days after the close of
9 the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive~~
10 ~~compilation, review, or audit of the association's books and records for the current or~~
11 ~~immediately preceding fiscal year may be required by a vote of the majority of the executive~~
12 ~~board or by the affirmative vote of a majority of the unit owners present and voting in person or~~
13 ~~by proxy at any annual meeting or any special meeting duly called for that purpose."~~

14 SECTION 7.(b) Article 3 of Chapter 47C of the General Statutes is amended by
15 adding a new section to read:

16 "**§ 47C-3-103A. Financial review or audit requirements.**

17 (a) Except as provided in subsection (b) of this section, the board of directors shall
18 provide for an annual independent financial review of the association. The review shall be
19 completed no later than 90 days after the end of the association's fiscal year and shall be made
20 available upon request to the unit owners within 30 days after its completion.

21 (b) The board of directors shall provide for an annual financial audit of the association,
22 in lieu of an annual independent financial review, if any of the following conditions are met:

- 23 (1) The declaration, bylaws, or other governing documents expressly require
24 conduct of an annual financial audit.
25 (2) The association has annual revenues or expenditures of at least four hundred
26 thousand dollars (\$400,000).
27 (3) An audit is requested by a vote of a majority of the board or by a vote of a
28 majority of the unit owners present and voting in person or by proxy at any
29 annual meeting or any special meeting duly called for that purpose."

30 SECTION 8. G.S. 47C-3-108 reads as rewritten:

31 "**§ 47C-3-108. Meetings.**

32 (a) A meeting of the association shall be held at least once each year. Special meetings
33 of the association may be called by the president, a majority of the executive board, or by unit
34 owners having twenty percent (20%) or any lower percentage specified in the bylaws of the
35 votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the
36 secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent
37 prepaid by United States mail to the mailing address of each unit or to any other mailing
38 address designated in writing by the unit owner, or sent by electronic means, including by
39 electronic mail over the Internet, to an electronic mailing address designated in writing by the
40 unit owner. The notice of any meeting must state the time and place of the meeting and the
41 items on the agenda, including the general nature of any proposed amendment to the
42 declaration or bylaws, any budget changes, ~~and any proposal to remove a director or officer.~~
43 officer, and any material matter for which a vote is to be taken.

44 (b) Meetings of the executive board shall be held as provided in the bylaws. At regular
45 intervals, the executive board meeting shall provide unit owners an opportunity to attend a
46 portion of an executive board meeting and to speak to the executive board about their issues
47 and concerns. The executive board may place reasonable restrictions on the number of persons
48 who speak on each side of an issue and may place reasonable time restrictions on persons who
49 speak.

1 (c) Except as otherwise provided for in the bylaws, meetings of the association and
2 executive board shall be conducted in accordance with the most recent edition of Robert's Rules
3 of Order Newly Revised.

4 (d) Actions taken at a meeting held in violation of the association's bylaws or any
5 provision of this Chapter shall be null and void, and no members of the association shall be
6 bound by any decision or ruling made in that meeting."

7 SECTION 9.(a) G.S. 47C-3-110 is repealed.

8 SECTION 9.(b) Article 3 of Chapter 47C of the General Statutes is amended by
9 adding a new section to read:

10 "**§ 47C-3-110A. Voting; proxies; ballots.**

11 (a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a
12 meeting in person, by absentee ballot pursuant to subdivision (4) of subsection (b) of this
13 section, by a proxy pursuant to subsection (c) of this section, or, when a vote is conducted
14 without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

15 (b) At a meeting of unit owners, all of the following requirements apply:

16 (1) Unit owners who are present in person may vote by voice vote, show of
17 hands, standing, or any other method for accurately determining the votes of
18 unit owners, as designated by the person presiding at the meeting.

19 (2) If only one of several owners of a unit is present, that owner is entitled to
20 cast all the votes allocated to that unit. If more than one of the owners are
21 present, the votes allocated to that unit may be cast only in accordance with
22 the agreement of a majority in interest of the owners, unless the declaration
23 expressly provides otherwise. There is majority agreement if any one of the
24 owners casts the votes allocated to the unit without protest being made
25 promptly to the person presiding over the meeting by any of the other
26 owners of the unit.

27 (3) Unless a greater number or fraction of the votes in the association is required
28 for a particular matter to be voted on by this Chapter or the declaration, a
29 majority of the votes cast determines the outcome of any action of the
30 association.

31 (4) Subject to subsection (a) of this section, a unit owner may vote by absentee
32 ballot without being present at the meeting. The association promptly shall
33 deliver an absentee ballot to an owner that requests it if the request is made
34 at least seven days before the scheduled meeting. Votes cast by absentee
35 ballot must be included in the tally of a vote taken at that meeting.

36 (5) When a unit owner votes by absentee ballot, the association must be able to
37 verify that the ballot is cast by the unit owner having the right to do so.

38 (c) Except as otherwise provided in the declaration or bylaws, the following
39 requirements apply with respect to proxy voting:

40 (1) Votes allocated to a unit may be cast pursuant to a directed or undirected
41 proxy duly executed by a unit owner.

42 (2) If a unit is owned by more than one person, each owner of the unit may vote
43 or register protest to the casting of votes by the other owners of the unit
44 through a duly executed proxy.

45 (3) A unit owner may revoke a proxy given pursuant to this section only by
46 actual notice of revocation to the person presiding over a meeting of the
47 association.

48 (4) A proxy is void if it is not dated, if it purports to be revocable without notice,
49 or if it is given in favor of a board member.

50 (5) A proxy is valid only for the meeting at which it is cast and any recessed
51 session of that meeting.

- 1 (6) A proxy may be used to achieve the required quorum at a meeting.
2 (7) A proxy is valid only if the nature of the matter for which the vote is to be
3 taken is stated in the notice as required by G.S. 47F-3-108(a).
4 (8) A person may not cast proxies representing more than fifteen percent (15%)
5 of the votes in the association.
6 (d) Unless prohibited or limited by the declaration or bylaws, an association may
7 conduct a vote without a meeting. In that event, the following requirements apply:
8 (1) The association shall notify the unit owners that the vote will be taken by
9 ballot.
10 (2) The association shall deliver a paper or electronic ballot to every unit owner
11 entitled to vote on the matter.
12 (3) The ballot must set forth each proposed action and provide an opportunity to
13 vote for or against the action.
14 (4) When the association delivers the ballots, the association shall do all of the
15 following:
16 a. Indicate the number of responses needed to meet the quorum
17 requirements.
18 b. State the percentage of votes necessary to approve each matter other
19 than election of directors.
20 c. Specify a time and date, not fewer than seven days after the date the
21 association delivers the ballot, by which a ballot must be delivered to
22 the association to be counted.
23 d. Describe the time, date, and manner by which unit owners wishing to
24 deliver information to all unit owners regarding the subject of the
25 vote may do so.
26 (5) Except as otherwise provided in the declaration or bylaws, a ballot is not
27 revoked after delivery to the association by death or disability or attempted
28 revocation by the person that cast that vote.
29 (6) Approval by ballot pursuant to this subsection is valid only if the number of
30 votes cast by ballot equals or exceeds the quorum required to be present at a
31 meeting authorizing the action.
32 (e) If the declaration requires that votes on specified matters affecting the condominium
33 be cast by lessees rather than unit owners of leased units, (i) the provisions of this section apply
34 to lessees as if they were unit owners; (ii) unit owners who have leased their units to other
35 persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of
36 meetings, access to records, and other rights respecting those matters as if they were unit
37 owners. Unit owners must also be given notice, in the manner provided in G.S. 47C-3-108, of
38 all meetings at which lessees may be entitled to vote.
39 (f) No votes allocated to a unit owned by the association may be cast.
40 (g) The declaration may provide that, on specified issues, only a defined subgroup of
41 unit owners may vote, provided both of the following apply:
42 (1) The issue being voted on is of special interest solely to members of the
43 subgroup.
44 (2) All except de minimis costs that will be incurred based on the vote taken will
45 be assessed solely against those unit owners entitled to vote.
46 (h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted
47 on is not of special interest solely to a subgroup if it substantially affects the overall appearance
48 of the condominium or substantially affects living conditions of unit owners not included in the
49 voting subgroup."

50 SECTION 10. Article 3 of Chapter 47C of the General Statutes is amended by
51 adding a new section to read:

1 "§ 47C-3-120. Alternative dispute resolution allowed.

2 Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or
3 rules and regulations may agree to resolve the dispute by any form of binding or nonbinding
4 alternative dispute resolution, except that a declarant may agree with the association to do so
5 only after the period of declarant control has expired. Parties electing to use alternative dispute
6 resolution for disputes arising under this Chapter shall only use mediators certified by the
7 Dispute Resolution Commission. An agreement to submit to any form of binding alternative
8 dispute resolution must be in a record authenticated by the parties."

9
10 **PART III. AMENDMENTS TO TAXATION OF PROPERTY OWNED BY**
11 **ASSOCIATIONS**

12 **SECTION 11.(a)** G.S. 105-277.8 reads as rewritten:

13 **"§ 105-277.8. Taxation of property of nonprofit homeowners' association.**

14 (a) ~~The~~ Except as provided in subsection (a1) of this section, the value of real and
15 personal property owned by a nonprofit homeowners' association shall be included in the
16 appraisals of property owned by members of the association and shall not be assessed against
17 the association if each of the following requirements is met:

- 18 (1) All property owned by the association is held for the use, benefit, and
19 enjoyment of all members of the association ~~equally;~~ equally.
20 (2) Each member of the association has an irrevocable right to use and enjoy, on
21 an equal basis, all property owned by the association, subject to any
22 restrictions imposed by the instruments conveying the right or the rules,
23 regulations, or bylaws of the ~~association;~~ association.
24 (3) Each irrevocable right to use and enjoy all property owned by the association
25 is appurtenant to taxable real property owned by a member of the
26 association.

27 The assessor may allocate the value of the association's property among the property of the
28 association's members on any fair and reasonable basis.

29 (a1) The value of extraterritorial common property shall be subject to taxation only in
30 the jurisdiction in which it is entirely contained and only in the amount of the local tax of the
31 jurisdiction in which it is entirely contained. The value of any property taxed pursuant to this
32 subsection, as determined by the latest schedule of values, shall not be included in the
33 appraisals of property owned by members of the association that are referenced in subsection
34 (a) of this section or otherwise subject to taxation. The assessor for the jurisdiction that imposes
35 a tax pursuant to this subsection shall provide notice of the property, the value, and any other
36 information to the assessor of any other jurisdiction so that the real properties owned by the
37 members of the association are not subject to taxation for that value.

38 (b) As used in this section, "nonprofit homeowners' association" means a homeowners'
39 association as defined in § 528(c) of the Internal Revenue ~~Code.~~ Code and "extraterritorial
40 common property" means real property that is (i) owned by a nonprofit homeowners
41 association that meets the requirements of subdivisions (1) through (3) of subsection (a) of this
42 section and (ii) entirely contained within a taxing jurisdiction that is different from that of the
43 taxable real property owned by members of the association and providing the appurtenant
44 rights to use and enjoy the association property."

45 **SECTION 11.(b)** This section is effective for taxes imposed for taxable years
46 beginning on or after July 1, 2012.

47
48 **PART IV. EFFECTIVE DATE**

49 **SECTION 12.** Except as otherwise provided, this act becomes effective July 1,
50 2012.



HOUSE BILL 1084: HOAs/Planned Community Act Amends

2011-2012 General Assembly

Committee: House Finance	Date: June 18, 2012
Introduced by: Reps. Jordan, Justice, R. Moore, Spear	Prepared by: Dan Eteffagh
Analysis of: H1084-CSMCx-23	Jennifer McGinnis Committee Counsel

SUMMARY: *The Proposed Committee Substitute makes technical changes to House Bill 1084, which would amend the Planned Community Act and Condominium Act by requiring associations to release liens upon full payment of the debt, by requiring all associations to conduct an annual financial review or audit, by specifying voting rights procedures, by allowing use of alternative dispute resolution for conflicts arising under the Planned Community Act or Condominium Act, and by simplifying the collection of property taxes due on property owned by certain nonprofit homeowners associations, as recommended by the House Select Committee on Homeowners Associations.*

BILL ANALYSIS:

Sections 1 and 6 create a new G.S. 47F-3-116.1 in the Planned Community Act (PCA) and a corresponding new G.S. 47C-3-116.1 in the Condominium Act (CA) to:

- require an association that has filed a claim of lien for unpaid assessments to acknowledge satisfaction of the claim of lien within 30 days after the association receives full payment or performance of the debt;
- make the association liable for actual but not punitive damages if it fails to acknowledge satisfaction of the debt as required; and
- makes the association liable for \$1,000, reasonable attorneys' fees and court costs if the lot owner both notifies the association of full payment and demands an acknowledge of satisfaction with the clerk of superior court, and the association fails to acknowledge satisfaction with the clerk within 30 days of receipt of the lot owner's demand.

Sections 2(a) and 7(a) eliminate current provisions in the PCA and CA which permit a more extensive review or audit of the association's financial records upon a majority vote or the executive board or owners.

Sections 2(b) and 7(b) create new sections in the PCA and CA which require the board of directors to provide for an annual independent financial review of the association, or an audit in lieu of a review if the governing documents require an audit, the association has annual revenues or expenditures of at least \$400,000, or upon a majority vote of the board or unit owners.

Sections 3 and 8 add a requirement that meeting notices include notice of "any material matter for which a vote is to be taken."

Sections 4(a) and 9(a) repeal the current sections pertaining to voting.

Sections 4(b) and 9(b) add new sections prescribing the specific procedures for voting at a meeting, whether by absentee ballot, by proxy, or without a meeting.

Sections 5 and 10 add sections allowing parties to resolve disputes through the use of alternative dispute resolution using certified mediators.

House Bill 1084

Page 2

Sections 11.(a) and 11.(b) modify the existing law that provides that the value of real and personal property owned by a nonprofit homeowners' association (HOA) must be included in the appraisals of property owned by members of the HOA and not be assessed against the HOA if:

- all property owned by the HOA is held for the use, benefit, and enjoyment of all members of the HOA equally;
- each member of the HOA has an irrevocable right to use and enjoy all the property owned by the HOA subject to the rules, regulations or bylaws of the HOA; and
- each irrevocable right to use and enjoy all the property owned by the HOA is appurtenant to taxable real property owned by a member of the HOA.

Effective for taxes imposed for taxable years beginning on or after July 1, 2012, common property of the association that meets the above requirements but is located in another taxing jurisdiction would be taxed in the jurisdiction in which it is located and to the owner of record, the HOA, which would, in turn, recoup the taxes owed from its members. The value of such common property would not be included in the appraisals of property owned by the members of the HOA.

EFFECTIVE DATE: This act becomes effective July 1, 2012.

H1084-SMMC-8(e2) v1

Jan Paul, counsel to House Judiciary Subcommittee C, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

4

HOUSE BILL 391
Senate Finance Committee Substitute Adopted 5/30/12
Third Edition Engrossed 6/5/12
Corrected Copy 6/5/12

Short Title: RTP District Amendments.

(Public)

Sponsors:

Referred to:

March 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE LAWS RELATING TO COUNTY RESEARCH AND
3 PRODUCTION SERVICE DISTRICTS TO REFLECT CHANGED CIRCUMSTANCES,
4 TO ALLOW FLEXIBILITY IN PROVISION OF SERVICES IN URBAN AREAS OF
5 SUCH DISTRICTS, AND TO AMEND THE COUNTY SERVICE DISTRICT ACT OF
6 1973 RELATING TO APPROVAL OF PROPERTY TAXES IN
7 MULTIJURISDICTIONAL INDUSTRIAL PARK DISTRICTS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Part 2 of Article 16 of Chapter 153A of the General Statutes reads as
10 rewritten:

11 "Part 2. County Research and Production Service ~~Districts~~ Districts and Urban Research
12 Service Districts.

13 "§ 153A-311. Purposes for which districts may be established.

14 The board of commissioners of any county may define a county research and production
15 service district in order to finance, provide, and maintain for the district any service, facility, or
16 function that a county or a city is authorized by general law to provide, finance, or maintain.
17 Such a service, facility, or function shall be financed, provided, or maintained in the district
18 either in addition to or to a greater extent than services, facilities, or functions are financed,
19 provided, or maintained for the entire county.

20 "§ 153A-312. Definition of research and production service district.

21 (a) Standards. – The board of commissioners may by resolution establish a research and
22 production service district for any area of the county that, at the time the resolution is adopted,
23 meets the following standards:

- 24 (1) All (i) real property in the district is being used for or is subject to covenants
25 that limit its use to ~~research~~ research; or scientifically-oriented ~~production~~ production
26 ~~or for production, technology, education; or associated commercial~~ technology, education; or associated commercial
27 ~~commercial, residential, or institutional purposes~~ commercial, residential, or institutional purposes; or for other
28 purposes specifically authorized pursuant to the terms and conditions of the
29 covenants, or (ii) if all the real property in the district is part of a
30 multijurisdictional industrial park that satisfies the criteria of
31 G.S. 143B-437.08(h), all such real property in the district is subject to
32 covenants that limit its use to research or scientifically oriented production,
33 associated commercial or institutional purposes, or other industrial and
34 associated commercial and institutional uses.



- 1 (2) The district (i) contains at least 4,000 acres or (ii) satisfies the criteria of
2 G.S. 143B-437.08(h).
- 3 (3) The district (i) includes research and production facilities that in
4 combination employ at least 5,000 persons or (ii) satisfies the criteria of
5 G.S. 143B-437.08(h).
- 6 ~~(4) All real property located in the district was at one time or is currently owned
7 by a nonprofit corporation, which developed or is developing the property as
8 a research and production park.~~
- 9 (5) A petition requesting creation of the district signed by at least fifty percent
10 (50%) of the owners of real property in the district who own at least fifty
11 percent (50%) of total area of the real property in the district has been
12 presented to the board of commissioners. In determining the total area of real
13 property in the district and the number of owners of real property, there shall
14 be excluded (1) real property exempted from taxation and real property
15 classified and excluded from taxation and (2) the owners of such exempted
16 or classified and excluded property.
- 17 ~~(6) The district has no more than 25 permanent residents.~~
- 18 (7) There exists in the district an association of owners and tenants, to which at
19 least seventy-five percent (75%) of the owners of nonresidential real
20 property belong, which association can make the recommendations provided
21 for in G.S. 153A-313. This subdivision shall not apply to a research and
22 production service district that satisfies the criteria of G.S. 143B-437.08(h).
- 23 (8) ~~There exists, or will exist when conveyed by the nonprofit corporation
24 described in subdivision (4) of this subsection, exist deed-imposed
25 conditions, covenants, restrictions, and reservations that apply to all real
26 property in the district other than property owned by the federal
27 government district, provided that the covenants, restrictions, and
28 reservations shall not be effective against the United States as long as it
29 owns or leases property in the district but shall apply to any subsequent
30 owner or lessee of such property.~~
- 31 (9) No part of the district lies within the boundaries of any incorporated city or
32 town.

33 The Board of Commissioners may establish a research and production service district if,
34 upon the information and evidence it receives, the Board finds that:

- 35 (1) The proposed district meets the standards set forth in this subsection; and
36 (2) It is impossible or impracticable to provide on a countywide basis the
37 additional or higher levels of services, facilities, or functions proposed for
38 the district; and
39 (3) It is economically feasible to provide the proposed services, facilities, or
40 functions to the district without unreasonable or burdensome tax levies.

41 (a) Additional Uses. – A developer of a research and production service district
42 established prior to June 1, 2012, may amend the covenants that limit the use of real property in
43 the district to include any of the following uses: research; or scientifically-oriented production,
44 technology, education; or associated commercial, residential, or institutional purposes; or for
45 other purposes specifically authorized pursuant to the terms and conditions of the covenants. A
46 research and production service district is presumed to be in compliance with the standards in
47 subsection (a) of this section if the district met the standards in subsection (a) of this section, as
48 that subsection was enacted at the time of the establishment of the district.

49 (b) Multi-County Districts. – If an area that meets the standards for creation of a
50 research and production service district lies in more than one county, the boards of
51 commissioners of those counties may adopt concurrent resolutions establishing a service

1 district, even if that portion of the district lying in any one of the counties does not by itself
2 meet the standards. Each of the county boards of commissioners shall follow the procedure set
3 out in this section for creation of a ~~service~~-district.

4 If a multi-county ~~service~~-district is established, as provided in this subsection, the boards of
5 commissioners of the counties involved shall jointly determine whether the same appraisal and
6 assessment standards apply uniformly throughout the ~~district~~ district, or, in the case of a
7 multijurisdictional industrial park that satisfies the criteria of G.S. 143B-437.08(h), whether
8 there is a current need in each participating county to levy a tax, which determination shall be
9 made by each participating county's board of commissioners. This determination shall be set
10 out in concurrent resolutions of the boards. If the same appraisal and assessment standards
11 apply uniformly throughout the district, the boards of commissioners of all the counties shall
12 levy the same rate of tax for the district, so that a uniform rate of tax is levied for district
13 purposes throughout the district. If the boards determine that the same standards do not apply
14 uniformly throughout the district, the boards shall agree on the extent of divergence between
15 the counties and on the resulting adjustments of tax rates that will be necessary in order that an
16 effectively uniform rate of tax is levied for district purposes throughout the district. In the event
17 that one or more of the boards of commissioners in one or more of the counties participating in
18 a multijurisdictional industrial park that satisfies the criteria of G.S. 143B-437.08(h) determines
19 that there is no current need to levy a tax for all or part of the property meeting said
20 requirements within its jurisdictional boundaries, then that county or those counties shall be
21 under no obligation to do so. That county or those counties participating in a multijurisdictional
22 industrial park that satisfies the criteria of G.S. 143B-437.08(h) that choose to levy a tax for all
23 or part of the property meeting said requirements within its jurisdictional boundaries may do so
24 without setting an effectively uniform rate of tax as described above, provided such rate shall
25 not exceed the rate allowed in G.S. 143B-317(b).

26 The boards of commissioners of the counties establishing a multi-county ~~service~~-district
27 pursuant to this subsection may, by concurrent resolution, provide for the administration of
28 services within the district by one or more counties on behalf of all the establishing counties."

29 (c) Report. – Before the public hearing required by subsection (d), the board of
30 commissioners shall cause to be prepared a report containing:

- 31 (1) A map of the proposed district, showing its proposed boundaries;
- 32 (2) A statement showing that the proposed district meets the standards set out in
33 subsection (a); and
- 34 (3) A plan for providing one or more services, facilities, or functions to the
35 district.

36 The report shall be available for public inspection in the office of the clerk to the board for
37 at least four weeks before the date of the public hearing.

38 (d) Hearing and Notice. – The board of commissioners shall hold a public hearing
39 before adopting any resolution defining a ~~service~~-district under this section. Notice of the
40 hearing shall state the date, hour, and place of the hearing and its subject, and shall include a
41 map of the proposed district and a statement that the report required by subsection (c) is
42 available for public inspection in the office of the clerk to the board. The notice shall be
43 published at least once not less than one week before the date of the hearing. In addition, it
44 shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail
45 which is fully prepaid to the owners as shown by the county tax records as of the preceding
46 January 1 (and at the address shown thereon) of all property located within the proposed
47 district. The person designated by the board to mail the notice shall certify to the board that the
48 mailing has been completed and his certificate is conclusive in the absence of fraud.

49 (e) Effective Date. – The resolution defining a ~~service~~-district shall take effect at the
50 beginning of a fiscal year commencing after its passage, as determined by the board of
51 commissioners.

1 **"§ 153A-313. ~~Advisory Research and production service district advisory committee.~~**

2 (a) The board or boards of commissioners, in the resolution establishing a research and
3 production service district, shall also provide for an advisory committee for the district. Such a
4 committee shall have at least 10 members, serving terms as set forth in the resolution; one
5 member shall be the representative of the developer of the research and production ~~park-park~~
6 established as a research and production service district. The resolution shall provide for the
7 appointment or designation of a ~~chairman-chair.~~ The board of commissioners or, in the case of
8 a multi-county ~~service~~-district, the boards of commissioners shall appoint the members of the
9 advisory committee. If a multi-county ~~service~~-district is established, the concurrent resolutions
10 establishing the district shall provide how many members of the advisory committee are to be
11 appointed by each board of commissioners. Before making the appointments, the appropriate
12 board shall request the association of owners and tenants, required by G.S. 153A-312(a), to
13 submit a list of persons to be considered for appointment to the committee; the association shall
14 submit at least two names for each appointment to be made. Except as provided in the next two
15 sentences, the board of commissioners shall make the appointments to the committee from the
16 list of persons submitted. In addition, the developer of the research and production park shall
17 appoint one person to the advisory committee as the developer's representative on the
18 committee. In addition, in a single county ~~service~~-district, the board of commissioners may
19 make two additional appointments of such other persons as the board of commissioners deems
20 appropriate, and in a multi-county ~~service~~-district, each board of county commissioners may
21 make one additional appointment of such other person as that board of commissioners deems
22 appropriate. Whenever a vacancy occurs on the committee in a position filled by appointment
23 by ~~a~~-the board of commissioners, the appropriate board, before filling the vacancy, shall request
24 the association to submit the names of at least two persons to be considered for the vacancy;
25 and the board shall fill the vacancy by appointing one of the persons so submitted, except that if
26 the vacancy is in a position appointed by the board of commissioners under the preceding
27 sentence of this section, the board of commissioners making that appointment shall fill the
28 vacancy with such person as that board of commissioners deems appropriate.

29 Each year, before adopting the budget for the ~~service~~-district and levying the tax for the
30 district, the board or boards of commissioners shall request recommendations from the advisory
31 committee as to the level of services, facilities, or functions to be provided for the district for
32 the ensuing year. The board or boards of commissioners shall, to the extent permitted by law,
33 expend the proceeds of any tax levied for the district in the manner recommended by the
34 advisory ~~board-committee.~~

35 (b) In the event that the research and production service district satisfies the criteria of
36 G.S. 143B-437.08(h), the board of directors for the nonprofit corporation which owns the
37 industrial park shall serve as the advisory committee described in subsection (a) of this section.

38 **"§ 153A-314. Extension of service districts.**

39 (a) Standards. – A board of commissioners may by resolution annex territory to a
40 research and production service district upon finding that:

- 41 (1) The conditions, covenants, restrictions, and reservations required by
42 G.S. 153A-312(a)(8) that apply to all real property in the ~~research district,~~
43 ~~other than property owned by the federal government,~~ district also apply or
44 will apply to the property, other than property owned by the federal
45 government, to be annexed property to be annexed, provided that the
46 covenants, restrictions, and reservations shall not be effective against the
47 United States as long as it owns or leases property in the district but shall
48 apply to any subsequent owner or lessee of such property.

- 49 (2) One hundred percent (100%) of the owners of real property in the area to be
50 annexed have petitioned for annexation.

- 1 (3) The district, following the annexation, will continue to meet the standards
2 set out in G.S. 153A-312(a).
3 (4) The area to be annexed requires the services, facilities, or functions
4 financed, provided, or maintained for the district.
5 (5) The area to be annexed is contiguous to the district.

6 (b) Report. – Before the public hearing required by subsection (c), the board shall cause
7 to be prepared a report containing:

- 8 (1) A map of the district and the adjacent territory proposed to be annexed,
9 showing the present and proposed boundaries of the district; and
10 (2) A statement showing that the area to be annexed meets the standards and
11 requirements of subsection (a) of this section.

12 The report shall be available for public inspection in the office of the clerk to the board for at
13 least four weeks before the date of the public hearing.

14 (c) Hearing and Notice. – The board shall hold a public hearing before adopting any
15 resolution extending the boundaries of a ~~service~~-district. Notice of the hearing shall state the
16 date, hour and place of the hearing and its subject, and shall include a statement that the report
17 required by subsection (b) of this section is available for inspection in the office of the clerk to
18 the board. The notice shall be published at least once not less than four weeks before the
19 hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing
20 by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax
21 records as of the preceding January 1 (and at the address shown thereon) of all property located
22 within the area to be annexed. The person designated by the board to mail the notice shall
23 certify to the board that the mailing has been completed, and the certificate shall be conclusive
24 in the absence of fraud.

25 (d) Effective Date. – The resolution extending the boundaries of the district shall take
26 effect at the beginning of a fiscal year commencing after its passage, as determined by the
27 board.

28 **"§ 153A-314.1. Removal of territory from ~~service~~-districts.**

29 (a) Standards. – A board of commissioners may by resolution remove territory from a
30 research and production service district upon finding that:

- 31 (1) ~~The owners of the territory to be removed contemplate placing residential~~
32 ~~uses on some of the territory to be removed.~~ removal has been recommended
33 by a vote of two-thirds of the eligible votes of the owners and tenants
34 association.
35 (2) One hundred percent (100%) of the owners of real property in the territory to
36 be removed have petitioned for removal.
37 (3) The territory to be removed no longer requires the services, facilities, or
38 functions financed, provided, or maintained for the district.

39 (b) Report. – Before the public hearing required by subsection (c) of this section, the
40 board shall cause to be prepared a report containing:

- 41 (1) A map of the district highlighting the territory proposed to be removed,
42 showing the present and proposed boundaries of the district; and
43 (2) A statement showing that the territory to be removed meets the standards
44 and requirements of subsection (a) of this section.

45 The report shall be available for public inspection in the office of the clerk to the board for at
46 least 10 days before the date of the public hearing.

47 (c) Hearing and Notice. – The board shall hold a public hearing before adopting any
48 resolution reducing the boundaries of a ~~service~~-district. Notice of the hearing shall state the
49 date, hour, and place of the hearing and its subject and shall include a statement that the report
50 required by subsection (b) of this section is available for inspection in the office of the clerk to
51 the board. The notice shall be published at least once not less than seven days before the

1 hearing. In addition, the notice shall be mailed at least two weeks before the date of the hearing
2 by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax
3 records as of the preceding January 1 (and at the address shown thereon) of all property located
4 within the territory to be removed. The person designated by the board to mail the notice shall
5 certify to the board that the mailing has been completed, and the certificate shall be conclusive
6 in the absence of fraud.

7 (d) **Municipal Annexation Allowed Under General Law.** – The general law concerning
8 annexation, Article 4A of Chapter 160A of the General Statutes, shall apply to any territory
9 removed from the district under this section, notwithstanding any local act to the contrary.

10 (e) **Effective Date.** – The resolution reducing the boundaries of the district shall take
11 effect at the beginning of a fiscal year commencing after its passage, as determined by the
12 board.

13 **"§ 153A-315. Required provision or maintenance of services.**

14 (a) **New District.** – When a county or counties define a research and production service
15 district, it or they shall provide, maintain, or let contracts for the services for which the district
16 is being taxed within a reasonable time, not to exceed one year, after the effective date of the
17 definition of the district.

18 (b) **Extended District.** – When a territory is annexed to a research and production
19 service district, the county or counties shall provide, maintain, or let contracts for the services
20 provided or maintained throughout the district to property in the area annexed to the district
21 within a reasonable time, not to exceed one year, after the effective date of the annexation.

22 **"§ 153A-316. Abolition of ~~service~~-districts.**

23 A board or boards of county commissioners may by resolution abolish a research and
24 production service district upon finding that (i) a petition requesting abolition, signed by at
25 least fifty percent (50%) of the owners of nonresidential real property in the district who own at
26 least fifty percent (50%) of the total area of nonresidential real property in the district, has been
27 submitted to the board or boards; and (ii) there is no longer a need for such ~~service~~-district. In
28 determining the total area of nonresidential real property in the district and the number of
29 owners of nonresidential real property, there shall be excluded (1) real property exempted from
30 taxation and real property classified and excluded from taxation and (2) the owners of such
31 exempted or classified and excluded property. The board or boards shall hold a public hearing
32 before adopting a resolution abolishing a district. Notice of the hearing shall state the date,
33 hour, and place of the hearing, and its subject, and shall be published at least once not less than
34 one week before the date of the hearing. The abolition of any ~~service~~-district shall take effect at
35 the end of a fiscal year following passage of the resolution, as determined by the board or
36 boards. If a multi-county ~~service~~-district is established, it may be abolished only by concurrent
37 resolution of the board of commissioners of each county in which the district is located.

38 **"§ 153A-316.1. Urban research service district (URSD).**

39 (a) **Standards.** – The board of commissioners of a county may establish one or more
40 urban research service districts ("URSD" as used in this Part) that meets the following
41 standards:

- 42 (1) The URSD is within a county research and production service district
43 located partly within that county.
- 44 (2) The URSD is located wholly within that county.
- 45 (3) The URSD is not contained within another URSD.
- 46 (4) A petition requesting creation of the URSD signed by at least fifty percent
47 (50%) of the owners of real property in the URSD who own at least fifty
48 (50%) of total area of the real property in the URSD has been presented to
49 the board of commissioners.

50 (b) **Report.** – Before the public hearing required by subsection (c) of this section, the
51 board of commissioners shall cause to be prepared and adopted by it a report. The report shall

1 be available for public inspection in the office of the clerk to the board for at least four weeks
2 before the date of the public hearing. The report shall contain the following:

- 3 (1) A map of the proposed URSD, showing its proposed boundaries.
4 (2) A statement showing that the proposed URSD is for the purpose of
5 providing urban services, facilities, or functions to a greater extent than (i) in
6 the entire county and (ii) in the county research and production service
7 district.
8 (3) A plan for providing one or more services, facilities, or functions to the
9 URSD.

10 (c) Hearing and Notice. – The board of commissioners shall hold a public hearing
11 before adopting any resolution defining a URSD under this section. Notice of the hearing shall
12 state the date, hour, and place of the hearing and its subject, and shall include a map of the
13 proposed URSD and a statement that the report required by subsection (b) of this section is
14 available for public inspection in the office of the clerk to the board. The notice shall be
15 published at least once not less than one week before the date of the hearing. In addition, it
16 shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail that
17 is fully prepaid to the owners, as shown by the county tax records as of the preceding January
18 1, of all property located within the proposed URSD. The person designated by the board to
19 mail the notice shall certify to the board that the mailing has been completed, and the
20 designated person's certificate is conclusive in the absence of fraud.

21 (d) Effective Date. – The resolution defining a URSD shall take effect at the beginning
22 of a fiscal year commencing after its passage, as determined by the board of commissioners.

23 **"§ 153A-316.2. URSD advisory committee.**

24 (a) Members. – The board of commissioners, in the resolution establishing a URSD,
25 shall also provide for an advisory committee for the URSD. The committee shall have at least
26 10 members, serving terms as set forth in the resolution. The resolution shall provide for the
27 appointment or designation of a chairperson. The board of commissioners shall appoint the
28 members of the URSD advisory committee. Before making the appointments, the board shall
29 request the association of owners and tenants, required by G.S. 153A-312(a), to submit a list of
30 persons to be considered for appointment to the committee. The association shall submit at
31 least two names for each appointment to be made. Except as provided in subsection (b) of this
32 section, the board of commissioners shall make the appointments to the committee from the list
33 of persons submitted.

34 (b) Additional Members. – In addition to the members provided in subsection (a) of this
35 section, the developer of the research and production park established as a research and
36 production service district shall appoint one person to the URSD advisory committee as the
37 developer's representative on the committee. The board of commissioners may make two
38 additional appointments of such other persons as the board of commissioners deems
39 appropriate.

40 (c) Vacancy. – Whenever a vacancy occurs on the committee in a position filled by
41 appointment by the board of commissioners, the board, before filling the vacancy, shall request
42 the association to submit the names of at least two persons to be considered for the vacancy,
43 and the board shall fill the vacancy by appointing one of the persons so submitted, except that if
44 the vacancy is in a position appointed by the board of commissioners under subsection (b) of
45 this section, the board of commissioners making that appointment shall fill the vacancy with
46 such person as the board of commissioners deems appropriate.

47 (d) Advisory Role. – Each year, before adopting the budget for the URSD and levying
48 the tax for the URSD, the board of commissioners shall request recommendations from the
49 URSD advisory committee as to the level of services, facilities, or functions to be provided for
50 the URSD for the ensuing year. The board of commissioners shall, to the extent permitted by

1 law, expend the proceeds of any tax levied for the URSD in the manner recommended by the
2 URSD advisory committee.

3 **"§ 153A-316.3. Extension of URSD.**

4 (a) Standards. – A board of commissioners may by resolution annex territory to a
5 URSD upon finding that:

6 (1) The conditions, covenants, restrictions, and reservations required by
7 G.S. 153A-312(a)(8) that apply to all real property in the URSD also apply
8 or will apply to the property to be annexed, provided that such covenants,
9 restrictions, and reservations shall not be effective against the United States
10 as long as it owns or leases property in the URSD but shall apply to any
11 subsequent owner or lessee of such property.

12 (2) One hundred percent (100%) of the owners of real property in the area to be
13 annexed have petitioned for annexation.

14 (3) The URSD, following the annexation, will continue to meet the standards set
15 out in G.S. 153A-316.1(a).

16 (4) The area to be annexed requires the services, facilities, or functions financed,
17 provided, or maintained for the URSD.

18 (5) The area to be annexed is contiguous to the URSD.

19 (b) Report. – Before the public hearing required by subsection (c) of this section, the
20 board shall cause to be prepared a report. The report shall be available for public inspection in
21 the office of the clerk to the board for at least four weeks before the date of the public hearing.

22 The report shall contain the following:

23 (1) A map of the URSD and the adjacent territory proposed to be annexed,
24 showing the present and proposed boundaries of the URSD.

25 (2) A statement showing that the area to be annexed meets the standards and
26 requirements of subsection (a) of this section.

27 (c) Hearing and Notice. – The board shall hold a public hearing before adopting any
28 resolution extending the boundaries of a URSD. Notice of the hearing shall state the date, hour,
29 and place of the hearing and its subject, and shall include a statement that the report required by
30 subsection (b) of this section is available for inspection in the office of the clerk to the board.
31 The notice shall be published at least once not less than four weeks before the hearing. In
32 addition, the notice shall be mailed at least four weeks before the date of the hearing by any
33 class of U.S. mail that is fully prepaid to the owners, as shown by the county tax records as of
34 the preceding January 1, of all property located within the area to be annexed. The person
35 designated by the board to mail the notice shall certify to the board that the mailing has been
36 completed, and the certificate shall be conclusive in the absence of fraud.

37 (d) Effective Date. – The resolution extending the boundaries of the URSD shall take
38 effect at the beginning of a fiscal year commencing after its passage, as determined by the
39 board.

40 **"§ 153A-316.4. Removal of territory from URSD.**

41 (a) Standards. – A board of commissioners may by resolution remove territory from a
42 URSD upon finding that:

43 (1) The removal has been recommended by a vote of two-thirds of the eligible
44 voters of the owners and tenants association.

45 (2) One hundred percent (100%) of the owners of real property in the territory to
46 be removed have petitioned for removal.

47 (3) The territory to be removed no longer requires the services, facilities, or
48 functions financed, provided, or maintained for the URSD.

49 (4) The county has not financed any project for which taxes levied on the URSD
50 provide debt service pursuant to G.S. 153A-317.1(c).

1 (b) Report. – Before the public hearing required by subsection (c) of this section, the
2 board shall cause to be prepared a report. The report shall be available for public inspection in
3 the office of the clerk to the board for at least 10 days before the date of the public hearing. The
4 report shall contain the following:

5 (1) A map of the URSD highlighting the territory proposed to be removed,
6 showing the present and proposed boundaries of the URSD.

7 (2) A statement showing that the territory to be removed meets the standards
8 and requirements of subsection (a) of this section.

9 (c) Hearing and Notice. – The board shall hold a public hearing before adopting any
10 resolution reducing the boundaries of the URSD. Notice of the hearing shall state the date,
11 hour, and place of the hearing and its subject, and shall include a statement that the report
12 required by subsection (b) of this section is available for inspection in the office of the clerk to
13 the board. The notice shall be published at least once not less than seven days before the
14 hearing. In addition, the notice shall be mailed at least two weeks before the date of the hearing
15 by any class of U.S. mail that is fully prepaid to the owners, as shown by the county tax records
16 as of the preceding January 1, of all property located within the territory to be removed. The
17 person designated by the board to mail the notice shall certify to the board that the mailing has
18 been completed, and the certificate shall be conclusive in the absence of fraud.

19 (d) Effective Date. – The resolution reducing the boundaries of the URSD shall take
20 effect at the beginning of a fiscal year commencing after its passage, as determined by the
21 board.

22 **§ 153A-316.5. Required provision or maintenance of services in URSD.**

23 (a) New URSD. – When a county defines a URSD, it shall provide, maintain, or let
24 contracts for the services for which the URSD is being taxed within a reasonable time, not to
25 exceed one year, after the effective date of the definition of the URSD. When a county defines
26 a URSD, it may designate the developer of the research and development park established as a
27 research and production service district in which the URSD is located as an agent that may
28 contract with any local government for the provision of services within the URSD.

29 (b) Extended URSD. – When a territory is annexed to a URSD, the county shall
30 provide, maintain, or let contracts for the services provided or maintained throughout the
31 URSD to property in the area annexed to the URSD within a reasonable time, not to exceed one
32 year, after the effective date of the annexation.

33 **§ 153A-316.6. Abolition of URSD.**

34 A county board of commissioners may by resolution abolish a URSD upon finding that (i) a
35 petition requesting abolition, signed by at least fifty percent (50%) of the owners of
36 nonresidential real property in the URSD who own at least fifty percent (50%) of the total area
37 of nonresidential real property in the URSD, has been submitted to the board or boards; (ii)
38 there is no longer a need for such URSD; and (iii) the county has not financed any project for
39 which there is outstanding debt serviced by tax revenues levied within the URSD. In
40 determining the total area of nonresidential real property in the URSD and the number of
41 owners of nonresidential real property, there shall be excluded (i) real property exempted from
42 taxation and real property classified and excluded from taxation and (ii) the owners of such
43 exempted or classified and excluded property. The board or boards shall hold a public hearing
44 before adopting a resolution abolishing a URSD. Notice of the hearing shall state the date,
45 hour, and place of the hearing and its subject, and shall be published at least once not less than
46 one week before the date of the hearing. The abolition of any URSD shall take effect at the end
47 of a fiscal year following passage of the resolution, as determined by the board.

48 **§ 153A-317. Research and production service district taxes**~~Taxes~~ authorized; rate
49 limitation.

50 (a) Tax Authorized. – A county, upon recommendation of the advisory committee
51 established pursuant to G.S. 153A-313, may levy property taxes within a research and

1 production service district in addition to those levied throughout the county, in order to finance,
2 provide, or maintain for the district services provided therein in addition to or to a greater
3 extent than those financed, provided, or maintained for the entire county. In addition, a county
4 may allocate to a ~~service~~-district any other revenues whose use is not otherwise restricted by
5 law. The proceeds of taxes only within a ~~service~~-district may be expended only for services
6 provided for the district.

7 Property subject to taxation in a newly established district or in an area annexed to an
8 existing district is that subject to taxation by the county as of the preceding January 1.

9 (b) Limit. – Such additional property taxes may not be levied within any district
10 established pursuant to this Article in excess of a rate of ten cents (10¢) on each one hundred
11 dollars (\$100.00) value of property subject to taxation or, in the event that the research and
12 production service district satisfies the criteria of G.S. 143B-437.08(h), such additional
13 property taxes may not be levied within said district in excess of a rate of ~~fifteen cents (15¢)~~
14 twenty cents (20¢) on each one hundred dollars (\$100.00) value of property subject to taxation.

15 (c) Public Transportation. – For the purpose of constructing, maintaining, or operating
16 public transportation as defined by G.S. 153A-149(c)(27), in addition to the additional property
17 taxes levied under subsections (a) and (b) of this section, a county, upon recommendation of
18 the advisory committee established pursuant to G.S. 153A-313, may levy additional property
19 taxes within any ~~service~~-district established pursuant to this Article not in excess of a rate of ten
20 cents (10¢) on each one hundred dollars (\$100.00) value of property subject to taxation. Such
21 property taxes for public transportation may only be used within the ~~service~~-district, or to
22 provide for public transportation from the ~~service~~-district to other public transportation systems
23 or to other places outside the ~~service~~-district including airports."

24 **"§ 153A-317.1. Urban research service district taxes authorized; rate.**

25 (a) Tax Authorized. – A county, upon recommendation of the advisory committee
26 established pursuant to G.S. 153A-316.2, may levy property taxes within a URSD in addition to
27 those levied throughout the county, and in addition to those levied throughout the county
28 research and production service district, in order to finance, provide, or maintain for the URSD
29 services provided therein in addition to or to a greater extent than those financed, provided, or
30 maintained both for the entire county and for the county research and production service
31 district. Only those services that cities are authorized by law to provide may be provided. In
32 addition, a county may allocate to a URSD any other revenue not otherwise restricted by law.

33 (b) Rate. – Property subject to taxation in a newly established URSD or in an area
34 annexed to an existing URSD is that subject to taxation by the county as of the preceding
35 January. The maximum tax rate set forth in G.S. 153A-317 shall not apply to the URSD. The
36 additional property taxes within any URSD may not be levied in excess of the rate levied in the
37 prior year by a city that:

38 (1) Is the largest city in population that is contiguous to the county research and
39 production service district where the URSD is located.

40 (2) Is located primarily within the same county the URSD is located.

41 (c) Use. – The proceeds of taxes levied within a URSD may be expended only for the
42 benefit of the URSD. The taxes levied for the URSD may be used for debt service on any debt
43 issued by the county that is used wholly or partly for capital projects located within the URSD,
44 but not in greater proportion than expense of projects located within the URSD bear to the
45 entire expense of capital projects financed by that borrowing of the county. For the purpose of
46 this subsection, "debt" includes (i) general obligation bonds and notes issued under Chapter 159
47 of the General Statutes, (ii) revenue bonds issued under Chapter 159 of the General Statutes,
48 (iii) financing agreements under Article 8 of Chapter 159 of the General Statutes, and (iv)
49 special obligation bonds issued by the county."

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



HOUSE BILL 391: RTP District Amendments

2011-2012 General Assembly

Committee: House Finance	Date: June 19, 2012
Introduced by: Reps. Avila, Torbett	Prepared by: Heather Fennell
Analysis of: Fourth Edition	Committee Counsel

SUMMARY: *House Bill 391 would amend the authorizing statutes for county research and production districts to allow for additional permitted uses in the districts, including mixed-use development that combines residential, retail, and business use. The bill also allows each county in which a multijurisdictional industrial park is located to determine whether or not to levy a tax in the portion of the park in that county, and increases the property tax limit in multijurisdictional industrial parks.*

CURRENT LAW: In 1985, the General Assembly authorized counties to establish research and production districts. A board of commissioners may, by resolution, establish a research and production district for any area of the county if it meets the statutory standards. A county may levy property taxes within the district in addition to those levied throughout the county with a cap of 10¢ on each \$100 value of taxable property.

The original standards for a research and production service district limited real property in the district to use for research or scientifically oriented production or for associated commercial or institutional purposes. The original standards also included acreage requirements, employment requirements, and a restriction on the number of permanent residents in the district. The standards also provided that no part of a district could be within the boundaries of any incorporated city or town.

A board of county commissioners may create a district by resolution after publication of a report outlining the district, and holding a public hearing on the formation of the district. Multi-county districts are also authorized. For multi-county districts, the boards of county commissioners may pass concurrent resolutions.

At the time the county research and production service district legislation was enacted it was assumed that the Research Triangle Park would be the only district created under the act due to the acreage and employment level standards need to qualify for the creation of a district.

In 2009, the General Assembly amended these standards to allow for the creation of a district when all of the real property in the district is part of a multijurisdictional industrial park. The maximum property tax rate for a district in a multijurisdictional industrial park is 15¢ on each \$100 value of taxable property. Currently there is one multijurisdictional industrial park, Triangle North, located in Franklin, Granville, Vance, and Warren Counties.

BILL ANALYSIS: House Bill 391 amends the authorizing statutes for county research and production districts to allow for additional permitted uses in the districts, including mixed-use development that combines residential, retail, and business use, and authorizes the creation of new sub-districts, urban service research districts. The bill also allows each county in which a multijurisdictional industrial park is located to determine whether or not to levy a tax in the portion of the park in that county, and increases the property tax limit in multijurisdictional industrial parks.

House Bill 391

Page 2

County Research and Production Service Districts:

New districts: The standards for a creation of a county research and production service district are amended to provide that real property in a district may be used for the following additional purposes:

- Scientifically-oriented technology and education.
- Residential purposes associated with scientifically-oriented production, technology, or education.
- Any other purpose specifically authorized in the covenants adopted to restrict the use of the real property.

Existing districts: Districts established prior to June 1, 2012 may amend the covenants that restrict the use of real property in those districts to include the additional purposes listed above.

Conforming changes: The statutes governing county research and production service districts are amended to reflect the expansion in the permitted uses of real property in the districts.

Urban Research Service Districts

The board of commissioners of a county (Board) may establish urban research districts (URSD) within existing county research and production districts. The method of formation and governance of URSDs are substantially similar to provisions for county research and production service districts.

Standards for USRD: The URSD must be located within a county research and production service district, must be wholly within the county that establishes the URSD, and may not be contained in any other URSD. Prior to establishing a URSD, the Board must receive a petition requesting creation of the URSD from 50% of the owners of real property in the proposed URSD that own at least 50% of the total area of the real property in the proposed URSD.

URSD Advisory Committee: The Board must provide an advisory committee for the URSD. The advisory committee will consist of owners and tenants of the URSD, an appointee of the developer of the district in which the URSD is located, and appointees of the Board. The committee will advise the Board on the services, facilities, and functions of the URSD.

Hearing and notice: Prior to establishing, extending, removing territory from, or abolishing a URSD, the Board must hold a public hearing regarding the action.

Standards for extension of USRD: To extend an URSD, the Board must find that the covenants restricting the use of real property will apply, 100% of the owners of real property in the area to be added petition to be added, the area to be added is contiguous, and the area requires the additional services, facilities, or functions served by the URSD.

Standards for removing area from USRD: To remove area from an URSD, the Board must find the removal is recommended by a vote of 2/3rds of the owners and tenants association and 100% of the owners of property in the area to be removed request removal, the area to be removed no longer requires the additional services, facilities, or functions served by the URSD, and the county has not financed any project for which taxes are levied on the area.

Services in the URSD: The Board must provide services for which the URSD is being taxed in a reasonable time. The Board may also designate the developer of the county research and production service district in which the URSD is located to contract with any local government for services within the URSD.

House Bill 391

Page 3

Taxes: The Board may levy taxes in the URSD that are in addition to the county taxes, and the taxes in the research and development district in order to finance and maintain services within the URSD.

The rate of the tax may not exceed the rate levied in the city with the largest population that is 1) contiguous to the county research and production service district in which the URSD is located, and 2) located primarily within the same county as the URSD.¹

The taxes levied may be used for services in the URSD, and debt service for debt incurred by the county for capital projects in the URSD.

Multijurisdictional Industrial Parks

The bill also allows each county in which a multijurisdictional industrial park is located to determine whether or not to levy a tax in the portion of the park in that county. The bill also increases the property tax limit in multijurisdictional industrial parks to 20¢ on each \$100 value of taxable property from 15¢ on each \$100 value of taxable property.

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

H391-SMTD-127(e4) v1

¹ There are three cities contiguous to RTP that could potentially meet this definition. Cary (tax rate of 33¢ per \$100 value of taxable property), Durham (tax rate 55¢ per \$100 value of taxable property), and Morrisville (tax rate 36¢ per \$100 value of taxable property).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

2

HOUSE BILL 1216*
Committee Substitute Favorable 6/14/12

Short Title: Town of Wallace/Satellite Annexations.

(Local)

Sponsors:

Referred to:

May 31, 2012

1 A BILL TO BE ENTITLED
2 AN ACT REMOVING CERTAIN RESTRICTIONS ON SATELLITE ANNEXATIONS FOR
3 THE TOWN OF WALLACE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 160A-58.1(b) reads as rewritten:

6 "(b) A noncontiguous area proposed for annexation must meet all of the following
7 standards:

- 8 (1) The nearest point on the proposed satellite corporate limits must be not more
9 than three miles from the primary corporate limits of the annexing city.
10 (2) No point on the proposed satellite corporate limits may be closer to the
11 primary corporate limits of another city than to the primary corporate limits
12 of the annexing city, except as set forth in subsection (b2) of this section.
13 (3) The area must be so situated that the annexing city will be able to provide
14 the same services within the proposed satellite corporate limits that it
15 provides within its primary corporate limits.
16 (4) ~~If the area proposed for annexation, or any portion thereof, is a subdivision~~
17 ~~as defined in G.S. 160A-376, all of the subdivision must be included.~~
18 (5) The area within the proposed satellite corporate limits, when added to the
19 area within all other satellite corporate limits, may not exceed ten percent
20 (10%) of the area within the primary corporate limits of the annexing city.

21 This subdivision does not apply to the Cities of Belmont, Claremont,
22 Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory,
23 Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton,
24 Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury,
25 Southport, Statesville, and Washington and the Towns of Ahoskie, Angier,
26 Apex, Ayden, Benson, Bladenboro, Bridgeton, Burgaw, Calabash, Catawba,
27 Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four
28 Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level,
29 Grimesland, Holly Ridge, Holly Springs, Huntersville, Jamestown,
30 Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg,
31 Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville,
32 Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level,
33 Princeton, Ranlo, Richlands, Rolesville, Rutherfordton, Shallotte,
34 Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville,
35 Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell,
36 Windsor, Yadkinville, and Zebulon."



- 1 **SECTION 2.** This act applies only to the annexation of the property on which the
- 2 Vidant Family Medicine facility is located.
- 3 **SECTION 3.** This act applies to the Town of Wallace only.
- 4 **SECTION 4.** This act is effective when it becomes law.



HOUSE BILL 1216: Town of Wallace/Satellite Annexations

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Dixon
Analysis of: Second Edition

Date: June 19, 2012
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 1216 changes the standards for voluntary satellite annexations applicable the Town of Wallace's voluntary satellite annexation of the property on which the Vidant Family Medicine facility is located.*

[As introduced, this bill was identical to S944, as introduced by Sen. Jackson, which is currently in Senate Finance.]

CURRENT LAW: G.S. 160A-58.1 governs voluntary municipal annexation of noncontiguous property (known as voluntary satellite annexation). If all property owners in a satellite area petition a municipality for voluntary annexation of the noncontiguous property, the municipality may annex the property, if it meets all of the following five standards:

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

BILL ANALYSIS: House Bill 1216 exempts the Town of Wallace from the fourth standard for voluntary satellite annexation of the property on which the Vidant Family Medicine facility is located. The Town of Wallace was already exempted from standard #5, above.¹ The Town of Wallace will be required to provide municipal services (standard #3) to the voluntarily annexed satellite area.

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

BACKGROUND: The General Assembly has exempted at least 16 other municipalities from the fourth standard.

Giles Perry, counsel to House Government, substantially contributed to this summary.

H1216-SMSV-117(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1106

Short Title: Apex Annexation.

(Local)

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

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

Referred to: Government, if favorable, Finance.

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE
LIMITS OF THE TOWN OF APEX.

The General Assembly of North Carolina enacts:

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

BEING all that tract of land containing 0.208 acres more or less, located in White Oak Township, Wake County, and bounded by lands owned by and/or in possession of persons as follows: on the north by the right-of-way (allowing 65 feet) of Beaver Creek Commons Drive Extension, on the northwest by the lands of Grayson G. Kelley, and wife Blaine Brown Kelley, on the northwest, northeast, southeast and south by the NC-540 Corridor (right-of-way width varies) and Beaver Creek Commons Drive Extension and being more particularly described by courses based on North Carolina Grid Coordinate System North (NAD 83) and distances according to a survey entitled "Annexation Plat of Section 2-Beaver Creek Commons Drive Extension Right-of-Way for The Town of Apex" by McKim and Creed, Inc., dated March 26, 2012, last revised April 20, 2012 and being more particularly described as follows: COMMENCING at NCGS Monument "JUNCTION 2", said monument having N.C. Grid (NAD 83) Coordinates N = 727,401.45 feet, E = 2,036,839.97 feet; thence as a tie line south 63 deg. 20 min. 35 sec. west 5400.73 feet to a computed point; said computed point being the POINT OF BEGINNING, said computed point also being within the right-of-way of the NC-540 Corridor; thence running as the southeastern right-of-way line (allowing 65 feet) of Beaver Creek Commons Drive Extension south 51 deg. 25 min. 18 sec. west 120.89 feet to a computed point, said computed point being in the southeastern right-of-way line (allowing 65 feet) of the Beaver Creek Commons Drive Extension, thence crossing the right-of-way (allowing 65 feet) of Beaver Creek Commons Drive Extension the following two calls: (1) north 81 deg. 37 min. 39 sec. west 75.05 feet to a computed point, and (2) north 38 deg. 34 min. 42 sec. west 10.16 feet to a computed point, said computed point being in a southeastern line of the Grayson G. Kelley, and wife Blaine Brown Kelley property, said computed point also being in the northwestern right-of-way line (allowing 65 feet) of the Beaver Creek Commons Drive Extension; thence with the northwestern right-of-way line (allowing 65 feet) of the Beaver Creek Commons Drive Extension and a southeastern line of the Grayson G. Kelley, and wife Blaine Brown Kelley property north 51 deg. 25 min. 18 sec. east 12.55 feet to a computed point, said computed point being a southeastern corner of the Grayson G. Kelley, and wife Blaine Brown Kelley property; thence continuing with the western right-of-way line (allowing 65 feet) of Beaver Creek Commons Drive Extension north 51 deg. 25 min. 18 sec.



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1 east 137.15 feet to a computed point; thence crossing the Beaver Creek Commons Drive
2 Extension right-of-way (allowing 65 feet) south 57 deg. 36 min. 31 sec. east 68.76 feet to a
3 computed point, the POINT OF BEGINNING.

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



HOUSE BILL 1106: Apex Annexation

2011-2012 General Assembly

Committee: House Finance	Date: June 19, 2012
Introduced by: Reps. Murry, Dollar, Stam	Prepared by: Trina Griffin
Analysis of: First Edition	Committee Counsel

SUMMARY: *House Bill 1106 annexes a described area into the Town of Apex.*

CURRENT LAW: Annexation is a method by which municipalities alter their boundaries. The municipality must follow the statutorily prescribed steps in order to add an area into its boundaries. As the municipality is receiving more tax revenue from the added area, the municipality must provide (or contract to provide) basic services to the area. These services include police protection, fire protection, solid waste collection and the extension of water and sewer lines to the area.

North Carolina law sets forth four basic ways in which a municipality may annex an area.

- **Voluntary Annexation.** The owners of all real property in an area contiguous to the municipality desiring to be annexed sign a petition requesting annexation.
- **Voluntary Satellite Annexation.** The owners of all real property in the area desiring to be annexed sign a petition requesting annexation, if it otherwise meets the statutory requirements.
- **Municipal-Initiated Annexation.** The municipality initiates annexation proceeding, pursuant to statutory requirements.
- **Legislative Act.** The General Assembly has the authority to extend the boundaries of any municipality.

BILL ANALYSIS: House Bill 1106 annexes a 0.208 acre tract into the corporate limits of the Town of Apex.

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

Giles Perry, counsel to House Government, substantially contributed to this summary.

H1106-SMSV-116(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1105
PROPOSED COMMITTEE SUBSTITUTE H1105-CSMCx-24 [v.1]

6/18/2012 5:42:06 PM

Short Title: Modify Taxation of HOA Property.

(Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON
PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.8 reads as rewritten:

"§ 105-277.8. Taxation of property of nonprofit homeowners' association.

(a) ~~The~~ Except as provided in subsection (a1) of this section, the value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association ~~if~~ if each of the following requirements is met:

- (1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association ~~equally~~; equally.
- (2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the ~~association~~; and association.
- (3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(a1) The value of extraterritorial common property shall be subject to taxation only in the jurisdiction in which it is entirely contained and only in the amount of the local tax of the jurisdiction in which it is entirely contained. The value of any property taxed pursuant to this subsection, as determined by the latest schedule of values, shall not be included in the appraisals of property owned by members of the association that are referenced in subsection (a) of this section or otherwise subject to taxation. The assessor for the jurisdiction that imposes a tax pursuant to this subsection shall provide notice of the property, the value, and any other information to the assessor of any other jurisdiction so that the real properties owned by the members of the association are not subject to taxation for that value.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code and "extraterritorial common property" means real property that is (i) owned by a nonprofit homeowners' association that meets the requirements of subdivisions (1) through (3) of subsection (a) of this section and (ii) entirely contained within a taxing jurisdiction that is different from that of the



1 | taxable real property owned by members of the association and providing the appurtenant
2 | rights to use and enjoy the association property."

3 | **SECTION 2.** This act is effective for taxes imposed for taxable years beginning on
4 | or after July 1, 2012.



HOUSE BILL 1105: Modify Taxation of HOA Property

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Justice
Analysis of: H1105-CSMCx-24

Date: June 18, 2012
Prepared by: Dan Ettefagh
Committee Counsel

SUMMARY: *The Proposed Committee Substitute replaces the language for House Bill 1105 and would simplify the collection of property taxes due on property owned by certain nonprofit homeowners associations, as recommended by the House Select Committee on Homeowners Associations.*

CURRENT LAW: Currently, G.S. 105-277.8 provides that the value of real and personal property owned by a nonprofit homeowners' association (HOA) must be included in the appraisals of property owned by members of the HOA and not be assessed against the HOA if:

- all property owned by the HOA is held for the use, benefit, and enjoyment of all members of the HOA equally;
- each member of the HOA has an irrevocable right to use and enjoy all the property owned by the HOA subject to the rules, regulations or bylaws of the HOA; and
- each irrevocable right to use and enjoy all the property owned by the HOA is appurtenant to taxable real property owned by a member of the HOA.

BILL ANALYSIS: The bill modifies treatment of common property of the association that meets the above requirements but is located in another taxing jurisdiction. Under the bill, HOA property would be taxed in the jurisdiction in which it is located and to the owner of record, the HOA, which would, in turn, recoup the taxes owed from its members. The value of such common property would not be included in the appraisals of property owned by the members of the HOA.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2012.

H1105-SMMC-9(H1105-CSMCx-24) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 426
Finance Committee Substitute Adopted 5/10/11
Finance Committee Substitute No. 2 Adopted 5/18/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S426-CSRbx-85 [v.2]

Short Title: Public Finance Laws/Municipal Service Dists. (Public)

Sponsors:

Referred to:

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFICATIONS AND MODIFICATIONS TO THE PUBLIC FINANCE STATUTES OF NORTH CAROLINA FOR THE IMPROVEMENT OF VARIOUS FINANCING STRUCTURES AND THE TERMS AND PROVISIONS OF THE FINANCING STRUCTURES AND TO AUTHORIZE A RESOLUTION ESTABLISHING A MUNICIPAL SERVICE DISTRICT TO BECOME EFFECTIVE UPON A DATE SPECIFIED IN THE RESOLUTION IF SPECIAL OBLIGATION BONDS ARE ANTICIPATED TO BE AUTHORIZED FOR A PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-28(a) reads as rewritten:

"(a) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this ~~subsection~~ subsection unless the obligation or a document related to the obligation has been approved by the Local Government Commission, in which case no certificate shall be required.

The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

(Signature of finance officer)."

Certificates in the form prescribed by G.S. 153-130 or 160-411 as those sections read on June 30, 1973, or by G.S. 159-28(b) as that section read on June 30, 1975, are sufficient until supplies of forms in existence on June 30, 1975, are exhausted.



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1 An obligation incurred in violation of this subsection is invalid and may not be enforced.
2 The finance officer shall establish procedures to assure compliance with this subsection."

3 **SECTION 2.** G.S. 159-54 reads as rewritten:

4 **"§ 159-54. The bond order.**

5 After or at the same time the application is filed ~~and accepted for submission to~~ with the
6 Commission, a bond order shall be introduced before the governing board of the issuing unit.
7 The bond order shall state:

- 8 (1) Briefly and generally and without specification of location or material of
9 construction, the purpose for which the bonds are to be issued, but not more
10 than one purpose may be stated. For funding or refunding bonds a brief
11 description of the debt, judgment, or obligation to be funded or refunded
12 shall be sufficient.
- 13 (2) The maximum aggregate principal amount of the bonds.
- 14 (3) That taxes will be levied in an amount sufficient to pay the principal and
15 interest of the bonds.
- 16 (4) The extent, if any, to which utility or enterprise revenues are, or may be,
17 pledged to payment of interest on and principal of the bonds pursuant to
18 G.S. 159-47.
- 19 (5) That a sworn statement of debt has been filed with the clerk and is open to
20 public inspection.
- 21 (6) If the bonds are to be approved by the voters, that the bond order will take
22 effect when approved by the voters.
- 23 (7) If the bonds are issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5), that the
24 bond order will take effect upon its adoption. If the bonds are to be issued
25 pursuant to G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) and
26 are not to be submitted to the voters, that the bond order will take effect 30
27 days after its publication following adoption, unless it is petitioned to a vote
28 of the people as provided in G.S. 159-60, and that in that event the order will
29 take effect when approved by the voters.

30 When the bond order is introduced, the board shall fix the time and place for a public
31 hearing thereon."

32 **SECTION 3.** G.S. 159-88(a) reads as rewritten:

33 "(a) At any time after an application is filed with the Commission ~~approves an~~
34 ~~application~~ for the issuance of revenue bonds, (i) in the case of the State, the Council of State
35 and (ii) in the case of a municipality, the governing board of the municipality may adopt a
36 revenue bond order pursuant to this Article."

37 **SECTION 4.** G.S. 160A-537(d) reads as rewritten:

38 "(d) Effective Date. – Except as otherwise provided in this subsection, the ~~The~~ resolution
39 defining a service district shall take effect at the beginning of a fiscal year commencing after its
40 passage, as determined by the city council, ~~except that if council.~~ If the governing body in the
41 resolution states that general obligation bonds or special obligation bonds are anticipated to be
42 authorized for the project, it may make the resolution effective immediately upon its adoption,
43 but adoption or as otherwise provided in the resolution. However, no ad valorem tax may be
44 levied for a partial fiscal year."

45 **SECTION 5.** If any provision of this act or its application is held invalid, the
46 invalidity does not affect the other provisions or applications of this act that can be given effect
47 without the invalid provisions or applications, and to this end the provisions of this act are
48 severable.

49 **SECTION 6.** This act is effective when it becomes law.



SENATE BILL 426: Modify/Clarify Public Finance Statutes

2011-2012 General Assembly

Committee:	House Finance	Date:	June 18, 2012
Introduced by:	Sen. Clodfelter	Prepared by:	Cindy Avrette
Analysis of:	PCS to Third Edition S426-CSRbx-85		Committee Counsel

SUMMARY: *Senate Bill 426 makes changes to the bond statutes designed to improve their efficiency. The House PCS for Senate Bill 426 does two things:*

- *It removes the original Section 4 from the bill. Section 4 would have extended the sunset on the ability of cities and counties to issue special assessments for critical infrastructure needs from July 1, 2013, until July 1, 2016.*
- *It adds a new Section 4 that would authorize a resolution establishing a municipal service district to become effective upon a date specified in the resolution if special obligation bonds are anticipated to be authorized as funding for a project, as opposed to property tax revenues.*

CURRENT LAW AND BILL ANALYSIS:

Section 1: Under the Local Government Budget and Fiscal Control Act, an obligation may not be incurred by a city or county unless there has been an approved appropriation authorizing the payment of the obligation. For an obligation evidenced by a contract, an agreement, or a purchase order, the finance officer must have a certificate attached to the appropriate instrument stating the instrument has been pre-audited to assure that the obligation is an approved appropriation. An obligation incurred in violation of this requirement is invalid and may not be enforced. This section would eliminate the need for the pre-audit certificate if the document has been approved by the Local Government Commission (LGC). The LGC approves all contractual obligations related to the financing of capital projects. These would include bond purchase agreements¹, credit facilities, repayment agreements, remarketing agreements, interest swap agreements, and installment purchase contracts.²

Section 2: Under the Local Government Bond Act, the governing body of a local government unit initiates the general obligation bond process when it authorizes the filing of an application to issue general obligation bonds with the LGC. This authorization takes place in a formal meeting. After the LGC has received and acknowledged receipt of the application requesting approval to issue GO bonds, the governing body must introduce a bond order, which also takes place in a formal meeting. The bond order is the formal resolution which specifies the details of the bonds being put to a vote: the purpose of the bond, the amount of the bond, the source of revenues for repayment of the bond, etc. The law then requires other meetings after the bond order is introduced, such as a public hearing. This section would allow the governing body to adopt the bond order at the same meeting in which it initiates the bond process. It does not eliminate the requirement of public notice of intent or the publication of notice of hearing on the bond order.

Section 3: Under the State and Local Government Revenue Bond Act, a bond order may not be adopted until after the LGC approves the application for the issuance of the revenue bonds. This section would

¹ Bond purchase agreements would include GO bonds, revenue bonds, and special obligation bonds.

² Installment purchase contracts may also be known as financing agreements, lease-purchase agreements, capital leases, certificates of participation, and limited obligation bonds.

Senate PCS 426

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remove this restriction. The current restriction means that the LGC is approving the issuance of bonds before the bond order has been finalized by the governing body.

Section 4: Section 4 would authorize a resolution establishing a municipal service district to become effective upon a date specified in the resolution if special obligation bonds are anticipated to be authorized as funding for a project, as opposed to property tax revenues. Under current law, a resolution establishing a municipal service district becomes effective either (1) at the beginning of the next fiscal year, or (2) immediately, if it is anticipated that general obligation bonds will be issued for a project.

Article V, Sec. 2(4) of the North Carolina Constitution allows the General Assembly to enact general laws authorizing the governing board of a local governmental unit to define territorial areas and to levy additional taxes within those areas to finance a service that is provided to a greater extent in that area than is provided to the entire area of the governmental unit. The purposes for which a service district may be created are: Beach erosion control and flood and hurricane protection works; any service which the municipality may by law provide, such as placing utility wiring underground; downtown revitalization projects; transit-oriented development projects; drainage projects; sewage collection and disposal systems; lighting at interstate highway interchange ramps; off-street parking facilities; and watershed improvement projects.

Based on that provision, Article 23 of Chapter 160A authorizes a city to define a municipal service district and to levy a property tax in that district that is in addition to those levied through the city. A city may also incur debt, as allowed under general law, to finance services within a service district and may allocate any other revenues whose use is not otherwise restricted by law. When there is no longer a need for the service district, the district may be abolished.

To create a district, a city must hold a public hearing on a proposed resolution. The resolution must define the service district and find that the area defined is in need of one or more of the services for which a district may be created to a demonstrably greater extent than the remainder of the city. The resolution may become effective at the beginning of a fiscal year, except if the resolution states that general obligation bonds are anticipated to be authorized for the project, the resolution may become effective immediately, but no ad valorem tax may be levied for partial fiscal year.

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

S426-SMRB-144(CSRBx-85) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1050

Short Title: Elizabethtown Industr. Park Deannexation. (Local)

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

Referred to: Government, if favorable, Finance.

May 23, 2012

A BILL TO BE ENTITLED

1 AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER
2 SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX
3 THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT
4 DEEMS ADVISABLE BY REPEALING SPECIFIED INVOLUNTARY ANNEXATION
5 ORDINANCES OF THE TOWN OF ELIZABETHTOWN RELATING TO THE
6 INDUSTRIAL PARK AREA, AND BY PROHIBITING MUNICIPAL INITIATION OF
7 ANY PROCEDURE TO INVOLUNTARILY ANNEX THOSE AREAS FOR TWELVE
8 YEARS.
9

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** Repeal annexation ordinances. – All annexation ordinances described
12 in Section 3 of this act are repealed as of the effective date of this act.

13 **SECTION 2.** Twelve-year prohibition on involuntary annexation. – All areas
14 affected by the annexation ordinances described in Section 3 of this act shall not be subject to
15 any annexation proceeding, other than a voluntary annexation under Part 1 or Part 4 of Article
16 4A of Chapter 160A of the General Statutes, or local act of the General Assembly, for a period
17 of 12 years from and after the effective date of this act. After the 12-year period, the area may
18 be subject to annexation in accordance with State law effective at that time.

19 **SECTION 3.** Repealed involuntary annexation ordinances. –

20 (1) Elizabethtown Annexation Ordinance 2011-04 (Area A) adopted June 6,
21 2011.

22 (2) Elizabethtown Annexation Ordinance 2011-05 (Area B) adopted June 6,
23 2011.

24 (3) Elizabethtown Annexation Ordinance 2011-06 (Area C) adopted June 6,
25 2011.

26 (4) Elizabethtown Annexation Ordinance 2011-07 (Area D) adopted June 6,
27 2011.

28 **SECTION 4.** Severability. – If any provision of this act or its application is held
29 invalid, the invalidity does not affect other provisions or applications of this act that can be
30 given effect without the invalid provisions or application, and to this end the provisions of this
31 act are severable.

32 **SECTION 5.** This act is effective from and after June 29, 2012.





HOUSE BILL 1050: Elizabethtown Industr. Park Deannexation

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Brisson
Analysis of: First Edition

Date: June 19, 2012
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *House Bill 1050 would deannex 4 tracts of land that were involuntarily annexed by the Town of Elizabethtown in an industrial park area and would prohibit involuntary annexation of those tracts for 12 years.*

CURRENT LAW: Under Section 1 of Article VII of the NC Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." The General Assembly has not enacted any method for municipalities to deannex property – that power remains with the General Assembly.

BILL ANALYSIS:

Section 1 repeals the local involuntary annexation ordinances listed in Section 3 of the bill.

Section 2 provides that the 4 tracts covered by the bill shall not be subject to any involuntary annexation for 12 years after the effective date.

Section 3 lists the 4 tracts covered by the bill.

Section 4 is a severability clause, providing that if any provision of the bill is held invalid then the remainder of the bill can be enforced.

EFFECTIVE DATE: This act is effective from and after June 29, 2012.

Kelly Quick with the Research Division substantially contributed to this summary.

H1050-SMTM-79(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 813*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/11/12

Short Title: DCR and DENR/Study State Attractions Savings.

(Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF CULTURAL RESOURCES AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY VARIOUS REVENUE ENHANCEMENTS AND POTENTIAL SAVINGS AT STATE HISTORIC SITES AND MUSEUMS, THE STATE ZOO, STATE PARKS, AND STATE AQUARIUMS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Cultural Resources shall implement the following recommendations:

- (1) Study site proximity and span of control to identify historic sites that could adopt a coordinated management structure and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government.
- (2) Study reduced schedules for historic sites and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government.
- (3) Study the feasibility of implementing more reliable mechanisms for counting visitors and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government.
- (4) Determine the appropriate operating schedule for the Richard Caswell Memorial after the CSS Neuse moves to its new location.
- (5) Study potential savings from introducing and expanding admission fees; eliminating discounts or raising fees; adopting corporate sponsorship for some sites; and transferring operations to nonprofit support groups, municipalities, or other appropriate entities and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government. The report should specifically address potential savings at the following historic sites:
 - a. Alamance Battleground.
 - b. Aycock Birthplace.



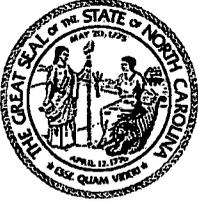
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- 1 c. Bennett Place.
- 2 d. Bentonville Battlefield.
- 3 e. Charlotte Hawkins Brown Memorial.
- 4 f. Duke Homestead.
- 5 g. Historic Edenton.
- 6 h. Historic Stagville.
- 7 i. Museum of the Albemarle.
- 8 j. Thomas Wolfe Memorial.
- 9 k. Town Creek Indian Mound.

10 **SECTION 2.** The Department of Environment and Natural Resources shall
11 implement the following recommendations:

- 12 (1) Study site proximity and span of control to identify parks that could adopt a
13 coordinated management structure and report no later than December 15,
14 2012, to the House Appropriations Subcommittee on Natural and Economic
15 Resources and the Senate Appropriations Committee on Natural and
16 Economic Resources.
- 17 (2) Study daily visitation data to determine potential changes from daily or
18 seasonal closure of specific parks and report no later than December 15,
19 2012, to the House Appropriations Subcommittee on Natural and Economic
20 Resources and the Senate Appropriations Committee on Natural and
21 Economic Resources.
- 22 (3) Validate no less frequently than every five years the number of visitors per
23 car used in the calculation of visitor counts at State parks. The first report on
24 this analysis shall be presented to the House Appropriations Subcommittee
25 on Natural and Economic Resources and the Senate Appropriations
26 Committee on Natural and Economic Resources no later than October 1,
27 2013.
- 28 (4) Provide an analysis of anticipated State costs and savings from partnering
29 with nonprofits for operations at the zoo and aquariums and
30 recommendations for partnering based on the analysis no later than
31 December 15, 2012, to the House Appropriations Subcommittee on Natural
32 and Economic Resources and the Senate Appropriations Committee on
33 Natural and Economic Resources.
- 34 (5) Study and report no later than December 15, 2012, to the House
35 Appropriations Subcommittee on Natural and Economic Resources and the
36 Senate Appropriations Committee on Natural and Economic Resources
37 regarding potential savings from each of the following changes:
 - 38 a. Introducing or expanding admissions fees, eliminating discounts, or
39 raising fees.
 - 40 b. Adopting corporate sponsorship for some sites.
 - 41 c. Transferring operations to nonprofit support groups, municipalities,
42 or other appropriate entities.

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



SENATE BILL 813: DCR and DENR/Study State Attractions Savings

2011-2012 General Assembly

Committee: House Finance
Introduced by: Sen. Hartsell
Analysis of: Second Edition

Date: June 18, 2012
Prepared by: Cindy Avrette
Committee Counsel

SUMMARY: *Senate Bill 813 would require the Department of Cultural Resources and the Department of Environment and Natural Resources to study and implement recommendations by the Joint Legislative Program Evaluation Oversight Committee in an effort to increase revenue and potential savings.*

The House companion bill, House Bill 944, introduced by Rep. Howard, was on the House calendar last night for 2nd and 3rd readings. The House bill received a favorable recommendation from the House Government Committee on June 14, 2012. The Senate bill differs from the House bill in one respect: the reporting due date for the first report on the number of visitors per car, used to calculate visitor counts at state parks, is changed from April 1, 2013, to October 1, 2013.

BACKGROUND: Senate Bill 813 would implement the recommendations found in the Program Evaluation Division's Report Number 2012-01, "Operational Changes for State Attractions Could Yield \$2 Million Annually and Reduce Reliance on the State," dated February 14, 2012, and the recommendations of the State Attractions Subcommittee dated March 21, 2012.

BILL ANALYSIS: Section 1 would require the Department of Cultural Resources (DCR) to do the following:

- Identify historic sites that could adopt a coordinated management structure.
- Study reduced schedules for historic sites.
- Study the feasibility of implementing more reliable mechanisms for counting visitors.
- Determine the appropriate operating schedule for the Richard Caswell Memorial after the CSS Neuse moves to its new location.
- Study potential savings through various cost-saving measures. Reporting requirements would be specific to certain historic sites.¹
- Report on the provisions of Section 1 to the Senate Appropriations Subcommittee on General Government and Information Technology and the House Appropriations Subcommittee on General Government no later than December 15, 2012.

Section 2 would require the Department of Environment and Natural Resources (DENR) to do the following:

- Identify parks that could adopt a coordinated management structure.
- Study daily visitation data to determine potential changes from daily or seasonal closure of specific parks.

¹ Alamance Battleground, Aycock Birthplace, Bennett Place, Bentonville Battlefield, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Historic Stagville, Museum of the Albemarle, Thomas Wolfe Memorial, and Town Creek Indian Mound.

Senate Bill 813

Page 2

- Provide an analysis of anticipated State costs and savings from partnering with nonprofits for operations at the zoo and aquariums.
- Study and report potential savings from various cost-saving measures.
- Report on the provisions above to the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Subcommittee on Natural and Economic Resources no later than December 15, 2012,
- Validate no less frequently than every five years the number of visitors per car used in the calculation of visitor counts at State parks. DENR would be required to report their findings on this provision to the Senate Appropriations Subcommittee on Natural and Economic Resources and the House Appropriations Subcommittee on Natural and Economic Resources no later than October 1, 2013.

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

BACKGROUND: The Program Evaluation Division was directed to review state attraction management with a specific focus on potential administration consolidation and optimal operating schedules for sites. The study included 23 state historic sites, nine museums, and three commissions, administered by the Department of Cultural Resources; and 39 state parks and recreation areas, three aquariums, Jennette's Pier, the North Carolina Zoological Park, the North Carolina Museum of Natural Sciences, and the North Carolina Museum of Forestry, administered by the Department of Environment and Natural Resources. The Division issued a report as a result of their work, PED Report-2012-01.

On March 21, 2012, the State Attractions Subcommittee made specific recommendations, (Subcommittee Recommendations) which are contained in this bill.

Mariah Matheson, staff to the Senate Agriculture/Environment/Natural Resources Committee, and Theresa Matula, staff to the House Government Committee, substantially contributed to this summary.

S813-SMRB-143(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

3

SENATE BILL 826*
Finance Committee Substitute Adopted 5/31/12
Third Edition Engrossed 6/6/12

Short Title: Revenue Laws Tech., Clarifying, & Admin Chngs.

(Public)

Sponsors:

Referred to:

May 21, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES
3 TO THE TAX AND RELATED LAWS.

4 The General Assembly of North Carolina enacts:

5
6 PART I. TECHNICAL CHANGES

7 SECTION 1.1. G.S. 105-130.5(b) reads as rewritten:

8 "(b) The following deductions from federal taxable income shall be made in determining
9 State net income:

10 ...

11 (14) The amount by which the basis of a depreciable asset is required to be
12 reduced under the Code for federal tax purposes because of a tax credit
13 allowed against the corporation's federal income tax ~~liability~~ liability or
14 because of a grant allowed under section 1603 of the American Recovery
15 and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be
16 claimed only in the year in which the Code requires that the asset's basis be
17 reduced. In computing gain or loss on the asset's disposition, this deduction
18 shall be considered as depreciation.

19"

20 SECTION 1.2. G.S. 105-134.5 reads as rewritten:

21 "§ 105-134.5. (Effective for taxable years beginning on or after January 1, 2012) North
22 Carolina taxable income defined.

23 ...

24 (b) Nonresidents. – For a nonresident individual, the term "North Carolina taxable
25 income" means the taxpayer's adjusted gross income as modified in G.S. 105-134.6, multiplied
26 by a fraction the denominator of which is the taxpayer's ~~adjusted~~ gross income as modified in
27 G.S. 105-134.6, and the numerator of which is the amount of that ~~adjusted~~ gross income, as
28 modified, that is derived from North Carolina sources and is attributable to the ownership of
29 any interest in real or tangible personal property in this State, is derived from a business, trade,
30 profession, or occupation carried on in this State, or is derived from gambling activities in this
31 State.

32 (c) Part-year Residents. – If an individual was a resident of this State for only part of
33 the taxable year, having moved into or removed from the State during the year, the term "North
34 Carolina taxable income" has the same meaning as in subsection (b) of this section except that



1 the numerator includes ~~adjusted~~ gross income, as modified under G.S. 105-134.6, derived from
2 all sources during the period the individual was a resident.

3"

4 **SECTION 1.3.** G.S. 105-134.6 reads as rewritten:

5 "**§ 105-134.6. (Effective for taxable years beginning on or after January 1, 2012)**

6 **Modifications to adjusted gross income.**

7 ...

8 (a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may
9 deduct either the North Carolina standard deduction amount listed in the table below for that
10 taxpayer's filing status or the itemized deductions amount claimed under the Code. The North
11 Carolina standard deduction amount is the lesser of the amount shown in the table below or the
12 amount allowed under the Code. In the case of a married couple filing separate returns, a
13 taxpayer may not deduct the standard deduction amount if the taxpayer or the taxpayer's spouse
14 claims itemized deductions for State purposes.

15 A taxpayer that deducts the standard deduction amount under this subsection and is entitled
16 to an additional deduction amount under section 63(f) of the Code for the aged or blind may
17 deduct an additional amount under this subsection. The additional amount the taxpayer may
18 deduct is six hundred dollars (\$600.00) in the case of an individual who is married and seven
19 hundred fifty dollars (\$750.00) in the case of an individual who is not married and is not a
20 surviving spouse. The taxpayer is allowed the same number of additional amounts that the
21 taxpayer claimed under the Code for the taxable year.

Filing Status	Standard Deduction
Married, filing jointly	\$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000.

22"

23 **SECTION 1.4.** G.S. 105-164.13 reads as rewritten:

24 "**§ 105-164.13. Retail sales and use tax.**

25 The sale at retail and the use, storage, or consumption in this State of the following tangible
26 personal property, digital property, and services are specifically exempted from the tax imposed
27 by this Article:

28 ...

29 (11) Any of the following fuel:

- 30 a. Motor fuel, as ~~defined in G.S. 105-449.60,~~ taxed in Article 36C of
31 this Chapter, except motor fuel for which a refund of the per gallon
32 excise tax is allowed under G.S. 105 449.105A or G.S. 105 449.107.
33 b. Alternative fuel taxed under Article 36D of this Chapter, unless a
34 refund of that tax is allowed under G.S. 105 449.107.

35 ...

36 (49) Installation charges when the charges are separately stated on ~~the an~~ invoice
37 or similar billing document given to the purchaser at the time of sale.

38 (49a) Delivery charges for delivery of direct mail if the charges are separately
39 stated on an invoice or similar billing document given to the
40 purchaser-purchaser at the time of sale.

41"

42 **SECTION 1.5.** The title of Article 5F of Chapter 105 of the General Statutes reads
43 as rewritten:

44 "Article 5F.

45 Manufacturing Fuel and Certain Machinery and Equipment."

1 **SECTION 1.6.** The catchline of G.S. 105-187.70, as enacted by Section 6 of S.L.
2 2011-122, reads as rewritten:

3 "**§ 105-187.70. Department comply with Article 43 of Chapter 62A of the General**
4 **Statutes.**

5 **SECTION 1.7.(a)** G.S. 105-228.90(b)(1b) reads as rewritten:

6 "(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2011,~~
7 January 1, 2012, including any provisions enacted as of that date that
8 become effective either before or after that date."

9 **SECTION 1.7.(b)** This section is effective when it becomes law. Notwithstanding
10 subsection (a) of this section, any amendments to the Internal Revenue Code enacted after
11 January 1, 2011, that increase North Carolina taxable income for the 2011 taxable year become
12 effective for taxable years beginning on or after January 1, 2012.

13 **SECTION 1.8.** G.S. 105-263(a) reads as rewritten:

14 "(a) Mailed Document. –~~Section Sections 7502 and 7503~~ of the Code ~~governs govern~~
15 when a return, report, payment, or any other document that is mailed to the Department is
16 timely filed."

17 **SECTION 1.9.** G.S. 105-277.1F(a)(1) reads as rewritten:

18 "(a) Scope. – This section applies to the following deferred tax programs:

19 (1) ~~G.S. 105-275(12)f., real property held for future transfer to government unit~~
20 for conservation purposes. G.S. 105-275(12), real property owned by a
21 nonprofit corporation held as a protected natural area."

22 **SECTION 1.10.** G.S. 105-468 reads as rewritten:

23 "**§ 105-468. Scope of use tax.**

24 The use tax authorized by this Article is a tax at the rate of one percent (1%) of the cost
25 price of each item or article of tangible personal property that is not sold in the taxing county
26 but is used, consumed, or stored for use or consumption in the taxing county. The tax applies to
27 the same items that are subject to tax under G.S. 105-467.

28 Every retailer who is engaged in business in this State and in the taxing county and is
29 required to collect the use tax levied by G.S. 105-164.6 shall collect the one percent (1%) use
30 tax when the property is to be used, consumed, or stored in the taxing county. The use tax
31 contemplated by this section shall be levied against the purchaser, and the purchaser's liability
32 for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the
33 retailer is required to collect the tax, or to the Secretary, where the retailer is not required to
34 collect the tax.

35 Where a local sales or use tax was due and has been paid with respect to tangible personal
36 property by the ~~purchaser, either purchaser~~ in another taxing county within the State, or where
37 a local sales or use tax was due and has been paid in a taxing jurisdiction outside the State
38 where the purpose of the tax is similar in purpose and intent to the tax which may be imposed
39 pursuant to this Article, the tax paid may be credited against the tax imposed under this section
40 by a taxing county upon the same property. If the amount of sales or use tax so paid is less than
41 the amount of the use tax due the taxing county under this section, the purchaser shall pay to
42 the Secretary an amount equal to the difference between the amount so paid in the other taxing
43 county or jurisdiction and the amount due in the taxing county. The Secretary may require such
44 proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use
45 tax levied under this Article is not subject to credit for payment of any State sales or use tax not
46 imposed for the benefit and use of counties and municipalities. No credit shall be given under
47 this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing
48 jurisdiction does not grant similar credit for sales taxes paid under this Article."

49 **SECTION 1.11.** G.S. 160A-536(e)(2) reads as rewritten:

50 "(2) The city must receive a petition signed by at least sixty percent (60%) of the
51 lot owners of the owners' association requesting the city to establish a

1 municipal service district for the purpose of paying the costs related to
2 converting private residential streets to public streets. The executive board of
3 an owners' association for which the city has received a petition under this
4 subsection may transfer street-related common elements to the city,
5 notwithstanding the provisions of either the North Carolina Planned
6 Community Act in Chapter 47F of the General Statutes, Statutes or the
7 North Carolina Condominium Act in Chapter 47C of the General Statutes, or
8 related articles of declaration, deed covenants, or any other similar document
9 recorded with the Register of Deeds."

10 **SECTION 1.12.(a)** G.S. 20-63 reads as rewritten:

11 "(b1) **(Effective until July 1, 2016)** The following special registration plates do not have
12 to be a "First in Flight" plate as provided in subsection (b) of this section. The design of the
13 plates that are not "First in Flight" plates must be approved by the Division and the State
14 Highway Patrol for clarity and ease of identification. When the Division registers a vehicle or
15 renews the registration of a vehicle on or after July 1, 2015, the Division must send the owner a
16 replacement special license plate in a standardized format in accordance with subsection (b) of
17 this section and G.S. 20-79.4(a3).

- 18 (1) Friends of the Great Smoky Mountains National Park.
- 19 (2) Rocky Mountain Elk Foundation.
- 20 (3) Blue Ridge Parkway Foundation.
- 21 (4) Friends of the Appalachian Trail.
- 22 (5) NC Coastal Federation.
- 23 (6) In God We Trust.
- 24 (7) Stock Car Racing Theme.
- 25 (8) Buddy Pelletier Surfing Foundation.
- 26 (9) Guilford Battleground Company.
- 27 (10) National Wild Turkey Federation.
- 28 (11) North Carolina Aquarium Society.
- 29 (12) First in Forestry.
- 30 (13) North Carolina Wildlife Habitat Foundation.
- 31 (14) NC Trout Unlimited.
- 32 (15) Ducks Unlimited.
- 33 (16) Lung Cancer Research.
- 34 (17) NC State Parks.
- 35 (18) Support Our Troops.
- 36 (19) US Equine Rescue League.
- 37 (20) Fox Hunting.
- 38 (21) Back Country Horsemen of North Carolina.
- 39 (22) Hospice Care.
- 40 (23) Home Care and Hospice.
- 41 (24) NC Tennis Foundation.
- 42 (25) AIDS Awareness.
- 43 (26) Donate Life.
- 44 (27) Farmland Preservation.
- 45 (28) Travel and Tourism.
- 46 (29) Battle of Kings Mountain.
- 47 (30) NC Civil War.
- 48 (31) North Carolina Zoological Society.
- 49 (32) United States Service Academy.
- 50 (33) Carolina Raptor Center.
- 51 (34) Carolinas Credit Union Foundation.

- 1 (35) North Carolina State Flag.
 2 (36) NC Mining.
 3 (37) Coastal Land Trust.
 4 (38) ARTS NC.
 5 (39) Choose Life.
 6 (40) North Carolina Green Industry Council.
 7 (41) NC Horse Council.
 8 (42) Core Sound Waterfowl Museum and Heritage Center.
 9 (43) Mountains-to-Sea Trail, Inc."

10 SECTION 1.12.(b) G.S. 20-79.7(a) reads as rewritten:

11 "§ 20-79.7. Fees for special registration plates and distribution of the fees.

12 (a) Fees. – Upon request, the Division shall provide and issue free of charge a single
 13 Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a
 14 recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each
 15 year. The preceding special registration plates are subject to the regular motor vehicle
 16 registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000
 17 pounds. All other special registration plates are subject to the regular motor vehicle registration
 18 fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

19	Special Plate	Additional Fee Amount
20	American Red Cross	\$30.00
21	Animal Lovers	\$30.00
22	Arthritis Foundation	\$30.00
23	ARTS NC	\$30.00
24	Back Country Horsemen of NC	\$30.00
25	Boy Scouts of America	\$30.00
26	Brenner Children's Hospital	\$30.00
27	Carolina Raptor Center	\$30.00
28	Carolinas Credit Union Foundation	\$30.00
29	Carolinas Golf Association	\$30.00
30	Coastal Conservation Association	\$30.00
31	Coastal Land Trust	\$30.00
32	Crystal Coast	\$30.00
33	Daniel Stowe Botanical Garden	\$30.00
34	El Pueblo	\$30.00
35	Farmland Preservation	\$30.00
36	First in Forestry	\$30.00
37	Girl Scouts	\$30.00
38	Greensboro Symphony Guild	\$30.00
39	Historical Attraction	\$30.00
40	Home Care and Hospice	\$30.00
41	Home of American Golf	\$30.00
42	HOMES4NC	\$30.00
43	Hospice Care	\$30.00
44	In God We Trust	\$30.00
45	Maggie Valley Trout Festival	\$30.00
46	<u>Morgan Horse Club</u>	<u>\$30.00</u>
47	Mountains-to-Sea Trail	\$30.00
48	NC Civil War	\$30.00
49	NC Coastal Federation	\$30.00
50	NC Veterinary Medical Association	\$30.00
51	National Kidney Foundation	\$30.00

1	North Carolina 4-H Development Fund	\$30.00
2	North Carolina Emergency Management Association	\$30.00
3	North Carolina Green Industry Council	\$30.00
4	North Carolina Libraries	\$30.00
5	Outer Banks Preservation Association	\$30.00
6	Pamlico-Tar River Foundation	\$30.00
7	P.E.O. Sisterhood	\$30.00
8	Personalized	\$30.00
9	Retired Legislator	\$30.00
10	Ronald McDonald House	\$30.00
11	Share the Road	\$30.00
12	S.T.A.R.	\$30.00
13	State Attraction	\$30.00
14	Stock Car Racing Theme	\$30.00
15	Support NC Education	\$30.00
16	Support Our Troops	\$30.00
17	<u>Sustainable Fisheries</u>	<u>\$30.00</u>
18	Toastmasters Club	\$30.00
19	Topsail Island Shoreline Protection	\$30.00
20	Travel and Tourism	\$30.00
21	AIDS Awareness	\$25.00
22	Buffalo Soldiers	\$25.00
23	Choose Life	\$25.00
24	Collegiate Insignia	\$25.00
25	First in Turf	\$25.00
26	Goodness Grows	\$25.00
27	High School Insignia	\$25.00
28	Kids First	\$25.00
29	National Multiple Sclerosis Society	\$25.00
30	National Wild Turkey Federation	\$25.00
31	NC Agribusiness	\$25.00
32	NC Children's Promise	\$25.00
33	Nurses	\$25.00
34	Olympic Games	\$25.00
35	Rocky Mountain Elk Foundation	\$25.00
36	Special Olympics	\$25.00
37	Support Soccer	\$25.00
38	Surveyor Plate	\$25.00
39	The V Foundation for Cancer Research Division	\$25.00
40	University Health Systems of Eastern Carolina	\$25.00
41	Alpha Phi Alpha Fraternity	\$20.00
42	ALS Association, Jim "Catfish" Hunter Chapter	\$20.00
43	ARC of North Carolina	\$20.00
44	Audubon North Carolina	\$20.00
45	Autism Society of North Carolina	\$20.00
46	Battle of Kings Mountain	\$20.00
47	Be Active NC	\$20.00
48	Brain Injury Awareness	\$20.00
49	Breast Cancer Earlier Detection	\$20.00
50	Buddy Pelletier Surfing Foundation	\$20.00
51	Concerned Bikers Association/ABATE of North Carolina	\$20.00

1	Daughters of the American Revolution	\$20.00
2	Donate Life	\$20.00
3	Ducks Unlimited	\$20.00
4	Greyhound Friends of North Carolina	\$20.00
5	Guilford Battleground Company	\$20.00
6	Harley Owners' Group	\$20.00
7	Jaycees	\$20.00
8	Juvenile Diabetes Research Foundation	\$20.00
9	Kappa Alpha Order	\$20.00
10	Litter Prevention	\$20.00
11	March of Dimes	\$20.00
12	Morgan Horse Club	\$20.00
13	Native American	\$20.00
14	NC Fisheries Association	\$20.00
15	NC Horse Council	\$20.00
16	NC Mining	\$20.00
17	NC Tennis Foundation	\$20.00
18	NC Trout Unlimited	\$20.00
19	NC Victim Assistance	\$20.00
20	NC Wildlife Federation	\$20.00
21	NC Wildlife Habitat Foundation	\$20.00
22	NC Youth Soccer Association	\$20.00
23	North Carolina Master Gardener	\$20.00
24	Omega Psi Phi Fraternity	\$20.00
25	Phi Beta Sigma Fraternity	\$20.00
26	Piedmont Airlines	\$20.00
27	Prince Hall Mason	\$20.00
28	Save the Sea Turtles	\$20.00
29	Scenic Rivers	\$20.00
30	School Technology	\$20.00
31	SCUBA	\$20.00
32	Soil and Water Conservation	\$20.00
33	Special Forces Association	\$20.00
34	Support Public Schools	\$20.00
35	Sustainable Fisheries	\$20.00
36	US Equine Rescue League	\$20.00
37	USO of NC	\$20.00
38	Wildlife Resources	\$20.00
39	Zeta Phi Beta Sorority	\$20.00
40	Carolina Regional Volleyball Association	\$15.00
41	Carolina's Aviation Museum	\$15.00
42	Leukemia & Lymphoma Society	\$15.00
43	Lung Cancer Research	\$15.00
44	NC Beekeepers	\$15.00
45	Shag Dancing	\$15.00
46	Active Member of the National Guard	None
47	100% Disabled Veteran	None
48	Ex-Prisoner of War	None
49	Gold Star Lapel Button	None
50	Legion of Valor	None
51	Purple Heart Recipient	None

1 All Other Special Plates \$10.00."

2 **SECTION 1.13.(a)** The General Assembly makes the following findings:

- 3 (1) Section 1.3 of S.L. 2010-147 was intended to address concerns about the
4 stringency of the environmental impact test used in determining eligibility
5 for credits under Article 3J of Chapter 105 of the General Statutes.
6 (2) The General Assembly purposefully decided to adjust that standard
7 retroactively to January 1, 2007, the effective date of Article 3J of Chapter
8 105 of the General Statutes.
9 (3) By retroactively changing this standard, the General Assembly intended to
10 address instances where the application of this standard had resulted in a
11 finding that a taxpayer was ineligible for credits contrary to the intent of the
12 General Assembly in enacting the original legislation.
13 (4) The General Assembly intended for taxpayers to receive the benefits of this
14 retroactive change.
15 (5) The provisions of G.S. 105-129.84(d) that require a taxpayer to claim a
16 credit under Article 3J of Chapter 105 of the General Statutes within six
17 months after the date set by statutes for the filing of return had the effect of
18 limiting the benefits of this retroactive change.

19 **SECTION 1.13.(b)** Notwithstanding the provisions of G.S. 105-129.84(d), for the
20 2007 through 2010 taxable years, a taxpayer that satisfies all of the following conditions may
21 claim a credit under Article 3J of Chapter 105 of the General Statutes on an amended return
22 that is filed before January 1, 2013:

- 23 (1) The taxpayer did not timely claim a credit under Article 3J of Chapter 105 of
24 the General Statutes.
25 (2) The taxpayer would have been ineligible to claim a credit under Article 3J of
26 Chapter 105 of the General Statutes because it failed to meet the
27 environmental impact standard under G.S. 105-129.83(e) prior to the
28 enactment of S.L. 2010-147.
29 (3) The taxpayer satisfies the environmental impact standard under
30 G.S. 105-129.83(e) after the enactment of S.L. 2010-147.

31 **SECTION 1.13.(c)** This section is effective when it becomes law.

32 **SECTION 1.14.(a)** G.S. 105-122(b1) reads as rewritten:

33 "(b1) Definitions. – The following definitions apply in subsection (b) of this section:

- 34 (1) Affiliate. – The same meaning as specified in G.S. ~~105-130.6~~105-130.2.
35 (2) Indebtedness. – All loans, credits, goods, supplies, or other capital of
36 whatsoever nature furnished by a parent, subsidiary, or affiliated
37 corporation, other than indebtedness endorsed, guaranteed, or otherwise
38 supported by one of these corporations.
39 (3) Parent. – The same meaning as specified in G.S. ~~105-130.6~~105-130.2.
40 (4) Subsidiary. – The same meaning as specified in G.S. ~~105-130.6~~105-130.2."

41 **SECTION 1.14.(b)** G.S. 105-130.2 reads as rewritten:

42 "**§ 105-130.2. Definitions.**

43 The following definitions apply in this Part:

- 44 (1) Affiliate. – A corporation is an affiliate of another corporation when both are
45 directly or indirectly controlled by the same parent corporation or by the
46 same or associated financial interests by stock ownership, interlocking
47 directors, or by any other means whatsoever, whether the control is direct or
48 through one or more subsidiary, affiliated, or controlled corporations.
49 (2) Code. – Defined in G.S. 105-228.90.
50 (1a)(3) Corporation. – A joint-stock company or association, an insurance company,
51 a domestic corporation, a foreign corporation, or a limited liability company.

- 1 ~~(1b)~~(4) C Corporation. – A corporation that is not an S Corporation.
2 ~~(1e)~~(5) Department. – The Department of Revenue.
3 ~~(2)~~ (6) Domestic corporation. – A corporation organized under the laws of this
4 State.
5 ~~(3)~~ (7) Fiscal year. – An income year, ending on the last day of any month other
6 than December. A corporation that pursuant to the provisions of the Code
7 has elected to compute its federal income tax liability on the basis of an
8 annual period varying from 52 to 53 weeks shall compute its taxable income
9 under this Part on the basis of the same period used by the corporation in
10 computing its federal income tax liability for the income year.
11 (4) (8) Foreign corporation. – Any corporation other than a domestic corporation.
12 ~~(4a)~~(9) Gross income. – Defined in section 61 of the Code.
13 ~~(4b)~~(10) Income year. – The calendar year or the fiscal year upon the basis of which
14 the net income is computed under this Part. If no fiscal year has been
15 established, the income year is the calendar year. In the case of a return
16 made for a fractional part of a year under the provisions of this Part or under
17 rules adopted by the Secretary, the income year is the period for which the
18 return is made.
19 ~~(5)~~ (11) Limited liability company. – Either a domestic limited liability company
20 organized under Chapter 57C of the General Statutes or a foreign limited
21 liability company authorized by that Chapter to transact business in this
22 State that is classified for federal income tax purposes as a corporation. As
23 applied to a limited liability company that is a corporation under this Part,
24 the term "shareholder" means a member of the limited liability company and
25 the term "corporate officer" means a member or manager of the limited
26 liability company.
27 (12) Parent. – A corporation is a parent of another corporation when, directly or
28 indirectly, it controls the other corporation by stock ownership, interlocking
29 directors, or by any other means whatsoever exercised by the same or
30 associated financial interests, whether the control is direct or through one or
31 more subsidiary, affiliated, or controlled corporations.
32 ~~(5a)~~(13) S Corporation. – Defined in G.S. 105-131(b).
33 ~~(5b)~~(14) Secretary. – The Secretary of Revenue.
34 ~~(5e)~~(15) State net income. – The taxpayer's federal taxable income as determined
35 under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a
36 corporation that has income from business activity that is taxable both within
37 and without this State, allocated and apportioned to this State as provided in
38 G.S. 105-130.4.
39 (16) Subsidiary. – A corporation is a subsidiary of another corporation when,
40 directly or indirectly, it is subject to control by the other corporation by stock
41 ownership, interlocking directors, or by any other means whatsoever
42 exercised by the same or associated financial interest, whether the control is
43 direct or through one or more subsidiary, affiliated, or controlled
44 corporations.
45 ~~(5d)~~(17) Taxable year. – Income year.
46 ~~(6)~~ (18) Taxpayer. – A corporation subject to the tax imposed by this Part."

47 **SECTION 1.14.(c) G.S. 105-130.14 reads as rewritten:**

48 **"§ 105-130.14. Corporations filing consolidated returns for federal income tax purposes.**

49 Any corporation electing or required to file a consolidated income tax return with the
50 Internal Revenue Service must determine its State net income as if the corporation had filed a

1 separate federal return and shall not file a consolidated or combined return with the Secretary
2 unless one of the following applies:

- 3 (1) The corporation is specifically directed in writing by the Secretary under
4 G.S. ~~105-130.6~~ 105-130.5A to file a consolidated or combined return.
- 5 (2) ~~The corporation's facts and circumstances meet the facts and circumstances~~
6 ~~described in a permanent rule adopted under G.S. 105-130.6 and the~~
7 ~~corporation files a consolidated or combined return in accordance with that~~
8 ~~rule.~~
- 9 (3) Pursuant to a written request from the ~~corporation,~~ corporation under
10 G.S. 105-130.5A, the Secretary has provided written advice to the
11 corporation stating that the Secretary will ~~require~~ allow a consolidated or
12 combined return under the facts and circumstances set out in the request and
13 the corporation files a consolidated or combined return in accordance with
14 that written advice."

15 **SECTION 1.14.(d)** G.S. 105-262(b) is repealed.

16 **SECTION 1.14.(e)** G.S. 153A-279(a)(1) reads as rewritten:

- 17 "(1) "Claim" means a claim, action, suit, or request for damages, whether
18 compensatory, punitive, or otherwise, made by any person or entity against:
- 19 a. The County, a railroad, or an operating rights railroad; or
20 b. An officer, director, trustee, employee, parent, subsidiary, or
21 affiliated corporation as defined in G.S. ~~105-130.6,~~ 105-130.2, or
22 agent of: the County, a railroad, or an operating rights railroad."

23 **SECTION 1.14.(f)** G.S. 160A-326(a)(1) reads as rewritten:

- 24 "(1) "Claim" means a claim, action, suit, or request for damages, whether
25 compensatory, punitive, or otherwise, made by any person or entity against:
- 26 a. The City, a railroad, or an operating rights railroad; or
27 b. An officer, director, trustee, employee, parent, subsidiary, or
28 affiliated corporation as defined in G.S. ~~105-130.6,~~ 105-130.2, or
29 agent of: the City, a railroad, or an operating rights railroad."

30 **SECTION 1.14.(g)** G.S. 160A-626(a)(1) reads as rewritten:

- 31 "(1) "Claim" means a claim, action, suit, or request for damages, whether
32 compensatory, punitive, or otherwise, made by any person or entity against:
- 33 a. The Authority, a railroad, or an operating rights railroad; or
34 b. An officer, director, trustee, employee, parent, subsidiary, or
35 affiliated corporation as defined in G.S. ~~105-130.6,~~ 105-130.2, or
36 agent of: the Authority, a railroad, or an operating rights railroad."

37 **PART II. CLARIFYING AND ADMINISTRATIVE CHANGES**

38 **SECTION 2.1.** G.S. 105-113.38 reads as rewritten:

39 **"§ 105-113.38. ~~Bond.~~ Bond or irrevocable letter of credit.**

40 The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an
41 amount that adequately protects the State from loss if the dealer fails to pay taxes due under
42 this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the
43 State, and shall be in the form required by the Secretary. The Secretary shall proportion a bond
44 amount to the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary
45 shall periodically review the sufficiency of bonds required of dealers, and shall increase the
46 amount of a required bond when the amount of the bond furnished no longer covers the
47 anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall decrease the
48 amount of a required bond when the Secretary determines that a smaller bond amount will
49 adequately protect the State from loss. For purposes of this section, a bond may also include an
50 irrevocable letter of credit."

1 **SECTION 2.2.(a)** G.S. 105-113.107(1a) reads as rewritten:

2 "(1a) At the rate of three dollars and fifty cents (\$3.50) for each gram, or fraction
3 thereof, of marijuana, other than separated stems and stalks taxed under
4 subdivision (1) of this ~~section~~section, or synthetic cannabinoids."

5 **SECTION 2.2.(b)** This section becomes effective June 1, 2011.

6 **SECTION 2.3.** G.S. 105-120.2(c) reads as rewritten:

7 "(c) For purposes of this section, a "holding company" is a corporation that ~~receives~~
8 satisfies at least one of the following conditions:

9 (1) It has no assets other than ownership interests in corporations in which it
10 owns, directly or indirectly, more than fifty percent (50%) of the outstanding
11 voting stock or voting capital interests.

12 (2) It receives during its taxable year more than eighty percent (80%) of its
13 gross income from corporations in which it owns directly or indirectly more
14 than fifty percent (50%) of the outstanding voting stock or voting capital
15 interests."

16 **SECTION 2.4.** G.S. 105-129.81(4) reads as rewritten:

17 "(4) Business property. – Tangible personal property that is used in a business
18 and capitalized by the taxpayer for tax purposes under the Code."

19 **SECTION 2.5.** G.S. 105-152(e) reads as rewritten:

20 "(e) Joint Returns. – A husband and wife whose federal taxable income is determined on
21 a joint federal return shall file a single income tax return jointly if each spouse either is a
22 resident of this State or has North Carolina taxable income and may file a single income tax
23 return jointly if one spouse is not a resident and has no North Carolina taxable income. Except
24 as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer
25 for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly
26 are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits
27 allowable including tax payments made by or on behalf of the husband and wife. However, if a
28 spouse ~~has been relieved of~~ qualifies for relief of liability for federal tax attributable to a
29 substantial understatement by the other spouse pursuant to section 6015 of the Code, that
30 spouse is not liable for the corresponding tax imposed by this Part attributable to the same
31 substantial understatement by the other spouse. A wife and husband filing jointly have
32 expressly agreed that if the amount of the payments made by them with respect to the taxes for
33 which they are liable, including withheld and estimated taxes, exceeds the total of the taxes
34 due, refund of the excess may be made payable to both spouses jointly or, if either is deceased,
35 to the survivor alone."

36 **SECTION 2.6.** G.S. 105-160.3(b) reads as rewritten:

37 "(b) The following credits are not allowed to an estate or trust:

38 (1) G.S. 105-151. Tax credits for income taxes paid to other states by
39 individuals.

40 (2) G.S. 105-151.11. Credit for child care and certain employment-related
41 expenses.

42 (3) G.S. 105-151.18. Credit for the disabled.

43 (4) G.S. 105-151.24. Credit for children.

44 (5) G.S. 105-151.26. Credit for charitable contributions by nonitemizers.

45 (6) Repealed by Session Laws 2004-170, s. 17, effective August 2, 2004.

46 (7) G.S. 105-151.28. Credit for long-term care insurance.

47 (8) (Expires for taxable years beginning on or after January 1, 2013)
48 G.S. 105-151.30. Credit for recycling oyster shells.

49 (9) G.S. 105-151.31. Earned income tax credit.

50 (10) G.S. 105-151.32. Credit for adoption expenses.

51 (11) G.S. 105-151.33. Education expenses credit."

SECTION 2.7. G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...
(25a) Over-the-counter drug. – A drug that ~~can be dispensed under federal law without a prescription and is~~ contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66-§ 201.66. The label includes either of the following:

- a. ~~to have a label containing a~~ "Drug Facts" panel.
- b. ~~and a~~ statement of its active ingredients ~~ingredients with a list of those ingredients contained in the compound, substance, or preparation.~~

...
(26b) Prepaid calling service. – A right that meets all of the following requirements:

- a. Authorizes the exclusive purchase of telecommunications service.
- b. Must be paid for in advance.
- c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
- d. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...
(27a) Prepaid wireless calling service. – A right that meets all of the following requirements:

- a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
- b. Must be paid for in advance.
- c. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...
(36) Sale or selling. – The transfer for consideration of ~~title~~ title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term includes the following:

- a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.
- b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.
- c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.
- d. A lease or rental.
- e. Transfer of a digital code.

...
(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~May 12, 2009~~ December 19, 2011.

1"

2 SECTION 2.8. G.S. 105-164.4B(a) reads as rewritten:

3 "(a) General Principles. – The following principles apply in determining where to source
4 the sale of a product. These principles apply regardless of the nature of the ~~product-product~~,
5 except as otherwise noted in this section:

6 (1) ~~Over the counter.~~—When a purchaser receives a product at a business
7 location of the seller, the sale is sourced to that business location.

8 (2) ~~Delivery to specified address.~~—When a purchaser or purchaser's donee
9 receives a product at a location specified by the purchaser and the location is
10 not a business location of the seller, the sale is sourced to the location where
11 the purchaser or the purchaser's donee receives the product.

12 (3) ~~Delivery address unknown.~~—When a seller of a product does not know the
13 address where a product is received, the sale is sourced to the first address or
14 location listed in this subdivision that is known to the seller:

15 a. ~~The business or home address of the purchaser.~~

16 b. ~~The billing address of the purchaser or, if the product is prepaid~~
17 ~~wireless calling service, the location associated with the mobile~~
18 ~~telephone number.~~

19 e. ~~The address from which tangible personal property was shipped or~~
20 ~~from which a service was provided.~~

21 (3) When subdivisions (1) and (2) of this subsection do not apply, the sale is
22 sourced to the location indicated by an address for the purchaser that is
23 available from the business records of the seller that are maintained in the
24 ordinary course of the seller's business when use of this address does not
25 constitute bad faith.

26 (4) When subdivisions (1), (2), and (3) of this subsection do not apply, the sale
27 is sourced to the location indicated by an address for the purchaser obtained
28 during the consummation of the sale, including the address of a purchaser's
29 payment instrument, if no other address is available, when use of this
30 address does not constitute bad faith.

31 (5) When subdivisions (1), (2), (3), and (4) of this subsection do not apply,
32 including the circumstance in which the seller is without sufficient
33 information to apply the rules, the location will be determined based on the
34 following:

35 a. Address from which tangible personal property was shipped.

36 b. Address from which the digital good or the computer software
37 delivered electronically was first available for transmission by the
38 seller, or

39 c. Address from which the service was provided."

40 SECTION 2.9. G.S. 105-164.7 reads as rewritten:

41 "§ 105-164.7. **Retailer to collect sales tax from purchaser as trustee for State.**

42 The sales tax imposed by this Article is intended to be passed on to the purchaser of a
43 taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax
44 due on an item when the item is sold at retail. The tax is a debt from the purchaser to the
45 retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A
46 retailer is considered to act as a trustee on behalf of the State when it collects tax from the
47 purchaser of a taxable item. The tax must be stated and charged separately on the invoices or
48 other documents of the retailer given to the purchaser at the time of the sale except for either of
49 the following:

50 (1) Vending machine sales.

1 (2) Where a retailer displays a statement indicating the sales price includes the
2 tax."

3 SECTION 2.10.(a) Part 2 of Article 5 of Chapter 105 of the General Statutes is
4 amended by adding the following new section:

5 **"§ 105-164.12C. Items given away by merchants.**

6 If a retailer engaged in the business of selling prepared food and drink for immediate or
7 on-premises consumption also gives prepared food or drink to its patrons or employees free of
8 charge, for the purpose of this Article, the property given away is considered sold along with
9 the property sold. If a retailer gives an item of inventory to a customer free of charge on the
10 condition that the customer purchase similar or related property, the item given away is
11 considered sold along with the item sold. In all other cases, property given away or used by any
12 retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale
13 merchant recovers its cost of the property from sales of other property."

14 SECTION 2.10.(b) This section becomes effective August 7, 2009.

15 SECTION 2.11. G.S. 105-164.14(a) reads as rewritten:

16 "(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with
17 this section, of part of the sales and use taxes paid by it on the purchase in this State of railway
18 cars and locomotives, and fuel, lubricants, repair parts, and accessories for a motor vehicle,
19 railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who
20 is engaged in transporting persons or property in interstate commerce for compensation. The
21 Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or
22 otherwise, with respect to which refunds may be claimed, and shall prescribe the time within
23 which, following these periods, an application for refund may be made.

24 An applicant for refund shall furnish the following information and any proof of the
25 information required by the Secretary:

- 26 (1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts,
27 and accessories purchased by the applicant inside or outside this State during
28 the refund period.
- 29 (2) The purchase price of the items listed in subdivision (1) of this subsection.
- 30 (3) The sales and use taxes paid in this State on the listed items.
- 31 (4) The number of miles the applicant's motor vehicles, railroad cars,
32 locomotives, and airplanes were operated both inside and outside this State
33 during the refund period. Airplane miles are not in this State if the airplane
34 does not depart or land in this State.
- 35 (5) Any other information required by the Secretary.

36 For each applicant, the Secretary shall compute the amount to be refunded as follows. First,
37 the Secretary shall determine the ~~ratio of~~ mileage ratio. The numerator of the mileage ratio is
38 the number of miles the applicant operated its all motor vehicles, railroad cars, locomotives,
39 and airplanes in this State during the refund period to period. The denominator of the mileage
40 ratio is the number of miles it the applicant operated them all motor vehicles, railroad cars,
41 locomotives, and airplanes both inside and outside this State during the refund period. Second,
42 the Secretary shall determine the applicant's proportional liability for the refund period by
43 multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of
44 this subsection and then multiplying the resulting product by the tax rate that would have
45 applied to the items if they had all been purchased in this State. Third, the Secretary shall
46 refund to each applicant the excess of the amount of sales and use taxes the applicant paid in
47 this State during the refund period on these items over the applicant's proportional liability for
48 the refund period."

49 SECTION 2.12. G.S. 105-164.27A reads as rewritten:

50 **"§ 105-164.27A. Direct pay permit.**

1 (a) General. – A general direct pay permit authorizes its holder to purchase any tangible
2 personal property, digital property, or service without paying tax to the seller and authorizes the
3 seller to not collect any tax on a sale to the permit holder. A person who purchases an item
4 under a direct pay permit issued under this subsection is liable for use tax due on the purchase.
5 The tax is payable when the property is placed in use or the service is received. A direct pay
6 permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on
7 electricity.

8 A person who purchases an item for storage, use, or consumption in this State whose tax
9 status cannot be determined at the time of the purchase because of one of the reasons listed
10 below may apply to the Secretary for a general direct pay permit:

- 11 (1) The place of business where the item will be ~~used~~stored, used, or consumed
12 is not known at the time of the purchase and a different tax consequence
13 applies depending on where the item is used.
14 (2) The manner in which the item will be ~~used~~stored, used, or consumed is not
15 known at the time of the purchase and one or more of the potential uses is
16 taxable but others are not taxable.

17 ...

18 (b) Telecommunications Service. – A direct pay permit for telecommunications service
19 authorizes its holder to purchase telecommunications service and ancillary service without
20 paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit
21 holder. A person who purchases these services under a direct pay permit must file a return and
22 pay the tax due monthly or quarterly to the Secretary. A direct pay permit issued under this
23 subsection does not apply to any tax other than the tax on telecommunications service and
24 ancillary service.

25 A call center that purchases telecommunications service that originates outside this State
26 and terminates in this State may apply to the Secretary for a direct pay permit for
27 telecommunications service and ancillary service. A call center is a business that is primarily
28 engaged in providing support services to customers by telephone to support products or
29 services of the business. A business is primarily engaged in providing support services by
30 telephone if at least sixty percent (60%) of its calls are incoming.

31"

32 **SECTION 2.13.** G.S. 105-187.43(b) reads a rewritten:

33 "(b) Prepayment. – A taxpayer who is consistently liable for at least ~~ten~~twenty thousand
34 dollars (~~\$10,000~~)\$20,000 of tax a month must make a monthly prepayment of the next
35 month's tax liability. This requirement applies when the taxpayer meets the threshold and the
36 Secretary notifies the taxpayer to make prepayments. A prepayment is due on the date a
37 monthly payment is due. The prepayment must equal at least sixty five percent (65%) of any of
38 the following:

- 39 (1) The amount of tax due for the current month.
40 (2) The amount of tax due for the same month in the preceding year.
41 (3) The average monthly amount of tax due in the preceding calendar year."

42 **SECTION 2.14.** G.S. 143-59.1(a) reads as rewritten:

43 "(a) Ineligible Vendors. – The Secretary of Administration and other entities to which
44 this Article applies shall not contract for goods or services with either of the following:

- 45 (1) A vendor if the vendor or an affiliate of the vendor if the Secretary of
46 Revenue has determined that the vendor or affiliate of the vendor meets one
47 or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use
48 tax levied under Article 5 of Chapter 105 of the General Statutes on its sales
49 delivered to North Carolina. The Secretary of Revenue shall provide the
50 Secretary of Administration periodically with a list of vendors to which this
51 section applies.

1 (2) A vendor if the vendor or an affiliate of the vendor incorporates or
2 reincorporates in a tax haven country after December 31, 2001, but the
3 United States is the principal market for the public trading of the stock of the
4 corporation incorporated in the tax haven country."

5 **SECTION 2.15.** G.S. 105-241(b)(2a) reads as rewritten:

6 "(2a) Motor fuel taxes. – A taxpayer that ~~is required to file~~ files an electronic
7 return under Subchapter V of this Chapter or Article 3 of Chapter 119 of the
8 General Statutes must pay the tax by electronic funds transfer."

9 **SECTION 2.16.** Effective when it becomes law, but expiring at the same time as
10 Section 1 of S.L. 2011-296 expires (currently July 1, 2013), G.S. 161-10(a), as rewritten by
11 S.L. 2011-296, reads as rewritten:

12 "**§ 161-10. Uniform fees of registers of deeds.**

13 (a) Except as otherwise provided in this Article, all fees collected under this section
14 shall be deposited into the county general fund. While performing the duties of the office, the
15 register of deeds shall collect the following fees which shall be uniform throughout the State:

16 (1) Instruments in General. – For registering or filing any instrument for which
17 no other provision is made by this section, the fee shall be twenty-six dollars
18 (\$26.00) for the first 15 pages plus four dollars (\$4.00) for each additional
19 page or fraction thereof.

20 ~~When a subsequent instrument, as defined in G.S. 161-14.1(a)(3), is~~
21 ~~presented for registration with reference to more than one original~~
22 ~~instrument for which recording data are required to be indexed pursuant to~~
23 ~~G.S. 161-14.1(b), the fee shall be an additional twenty five dollars (\$25.00)~~
24 ~~for each additional reference. For any instrument that assigns more than one~~
25 ~~security instrument as defined in G.S. 45-36.4(18) by reference to previously~~
26 ~~recorded instrument recording data that are required to be indexed pursuant~~
27 ~~to G.S. 161-14.1(b), the fee shall be an additional ten dollars (\$10.00) for~~
28 ~~each additional reference.~~

29 When a document is presented for registration that consists of multiple
30 instruments, the fee shall be an additional ten dollars (\$10.00) for each
31 additional instrument. A document consists of multiple instruments when it
32 contains two or more instruments with different legal consequences or
33 intent, each of which is separately executed and acknowledged and could be
34 recorded alone.

35"

36 **SECTION 2.17.(a)** G.S. 45-102(6) reads as rewritten:

37 "(6) The address, telephone number, and other contact information for the
38 ~~consumer complaint section~~ State Home Foreclosure Prevention Project of
39 ~~the Housing Finance Agency. Office of Commissioner of Banks, or,~~
40 ~~alternatively, if the loan is serviced by a credit union, the address, telephone~~
41 ~~number, and other contact information for the consumer complaint section of~~
42 ~~the Credit Union Division."~~

43 **SECTION 2.17.(b)** G.S. 45-103(a) reads as rewritten:

44 "(a) Within three business days of mailing the notice required by G.S. 45-102, the
45 mortgage servicer shall file certain information with the Administrative Office of the Courts.
46 The filing shall be in an electronic format, as designated by the Administrative Office of the
47 Courts, and shall contain the name and address of the borrower, the due date of the last
48 scheduled payment made by the borrower, and the date the notice was mailed to the borrower.
49 The Administrative Office of the Courts shall establish an internal database to track
50 information required by this section. ~~The Commissioner of Banks~~ Housing Finance Agency
51 shall design and develop the State Home Foreclosure Prevention Project database, in

1 consultation with the Administrative Office of the Courts. Only the Administrative Office of
2 the Courts, ~~the Office of Commissioner of Banks,~~ the Housing Finance Agency, and the clerk
3 of court as provided by G.S. 45-107 shall have access to the database."

4 **SECTION 2.17.(c)** G.S. 45-104 reads as rewritten:

5 **"§ 45-104. State Home Foreclosure Prevention Project and Fund.**

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

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

16 (c) Upon the filing of the information required under G.S. 45-103, the mortgage
17 servicer shall pay a fee of seventy-five dollars (\$75.00) to the State Home Foreclosure
18 Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered
19 by this act. ~~The Office of the Commissioner of Banks~~ Housing Finance Agency shall collect the
20 fee. Upon receipt of the fee the Housing Finance Agency ~~Commissioner~~ shall deposit the funds
21 ~~into a separate account. The funds shall be transferred no less than monthly~~ into the State Home
22 Foreclosure Prevention Trust Fund. The Housing Finance Agency shall manage the State Home
23 Foreclosure Prevention Trust Fund.

24 (d) The Housing Finance Agency shall use funds from the State Home Foreclosure
25 Prevention Trust Fund to compensate performance-based service contracts or other contracts
26 and grants necessary to implement the purposes of this act in the following manner:

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

1 Prevention Trust Fund upon the expiration of each subsequent fiscal year
2 shall be directed to the North Carolina Housing Trust Fund.

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

7 **SECTION 2.17.(d)** G.S. 45-105 reads as rewritten:

8 "**§ 45-105. Extension of foreclosure process.**

9 ~~The Commissioner of Banks upon referral from the Housing Finance Agency shall review~~
10 ~~information provided in the database created by G.S. 45-103 to determine which home loans~~
11 ~~are appropriate for efforts to avoid foreclosure. If the Commissioner-Housing Finance Agency~~
12 ~~reasonably believes, based on a full review of the loan information, the mortgage servicer's loss~~
13 ~~mitigation efforts, the borrower's capacity and interest in staying in the home, and other~~
14 ~~appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer~~
15 ~~a reasonable prospect to avoid foreclosure on primary residences, the Commissioner-Executive~~
16 ~~Director of the Housing Finance Agency shall have the authority to extend one time under this~~
17 ~~Article the allowable filing date for any foreclosure proceeding on a primary residence by up to~~
18 ~~30 days beyond the earliest filing date established by the pre-foreclosure notice. If the~~
19 ~~Commissioner-Executive Director of the Housing Finance Agency makes the determination~~
20 ~~that a loan is subject to this section, the Commissioner-Housing Finance Agency shall notify~~
21 ~~the borrower, mortgage servicer, and the Administrative Office of the Courts. If the mortgage~~
22 ~~servicer is a state or federally chartered credit union, the Commissioner shall also notify the~~
23 ~~Administrator of the Credit Union Division of the determination."~~

24 **SECTION 2.17.(e)** G.S. 45-106 reads as rewritten:

25 "**§ 45-106. Use and privacy of records.**

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

37 **SECTION 2.17.(f)** Section 5 of S.L. 2008-226 reads as rewritten:

38 "**SECTION 5.** ~~The Office of the Commissioner of Banks-Housing Finance Agency shall~~
39 ~~report to the General Assembly describing the operation of the program established by this act~~
40 ~~not later than May 1 of each year until the funds are completely disbursed from the reserve-~~
41 ~~State Home Foreclosure Prevention Trust Fund. Information in the report shall be presented in~~
42 ~~aggregate form and may include the number of clients helped, the effectiveness of the funds in~~
43 ~~preventing home foreclosure, recommendations for further efforts needed to reduce~~
44 ~~foreclosures, and provide any other aggregated information the Commissioner-Housing Finance~~
45 ~~Agency determines is pertinent or that the General Assembly requests."~~

46 **SECTION 2.17.(g)** Section 6 of S.L. 2008-226, as amended by Section 9 of S.L.
47 2010-168, reads as rewritten:

48 "**SECTION 6.** Section 4 of this act becomes effective July 1, 2008. Sections 1, 2, 3, and 5
49 become effective November 1, 2008, and expire May 31, 2013-2008. The remainder of this act
50 is effective when it becomes law."

1 **SECTION 2.17.(h)** This section becomes effective December 1, 2012. The North
2 Carolina Housing Finance Agency shall assume the responsibilities designated in this section
3 for operation of the State Home Foreclosure Prevention Project no later than December 31,
4 2012.

5 **SECTION 2.18.(a)** G.S. 105-236 reads as rewritten:

6 **"§ 105-236. Penalties; situs of violations; penalty disposition.**

7 (a) Penalties. – The following civil penalties and criminal offenses apply:

8 ...
9 (3) Failure to File Return. – In case of failure to file any return on the date it is
10 shall assess a penalty equal to five percent (5%) of the amount of the tax if
11 the failure is for not more than one month, with an additional five percent
12 (5%) for each additional month, or fraction thereof, during which the failure
13 continues, not exceeding twenty-five percent (25%) in the aggregate, or five
14 dollars (\$5.00), whichever is the greater aggregate.

15 (4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when
16 due, without intent to evade the tax, the Secretary shall assess a penalty
17 equal to ten percent (10%) of the tax, subject to a minimum of five dollars
18 (\$5.00).—tax. This penalty does not apply in any of the following
19 circumstances:

20 a. When the amount of tax shown as due on an amended return is paid
21 when the return is filed.

22 b. When the Secretary proposes an assessment for tax due but not
23 shown on a return and the tax due is paid within 45 days after the
24 later of the following:

25 1. The date of the notice of proposed assessment of the tax, if
26 the taxpayer does not file a timely request for a Departmental
27 review of the proposed assessment.

28 2. The date the proposed assessment becomes collectible under
29 one of the circumstances listed in G.S. 105-241.22(3) through
30 (6), if the taxpayer files a timely request for a Departmental
31 review of the proposed assessment.

32 c. When a taxpayer timely files a consolidated or combined return at
33 the request of the Secretary under Part 1 of Article 4 of this Chapter
34 and the tax due is paid within 45 days after the latest of the
35 following:

36 1. The date the return is filed.

37 2. The date of a notice of proposed assessment based on the
38 return, if the taxpayer does not file a timely request for a
39 Departmental review of the proposed assessment.

40 3. The date the Departmental review of the proposed assessment
41 ends as a result of the occurrence of one of the actions listed
42 in G.S. 105-241.22(3) through (6), if the taxpayer files a
43 timely request for a Departmental review.

44 "

45 **SECTION 2.18.(b)** This section becomes effective January 1, 2014.

46 **SECTION 2.19.(a)** G.S. 121-5(e) reads as rewritten:

47 "**(e) Program Funding—Archives and Records Management Fund. – The Archives and**
48 **Records Management Fund is established as a special revenue fund. The Fund consists of the**
49 **fees Fees credited to the Department it under G.S. 161-11.6 shall Chapter 161 of the General**
50 **Statutes. Revenue in the Fund may be used only to offset the Department's costs in providing**
51

1 essential records management and archival services for public records pursuant to Chapter 121
2 and Chapter 132 of the General Statutes."

3 SECTION 2.19.(b) This section becomes effective July 1, 2012.
4

5 PART III. MOTOR VEHICLE/PROPERTY TAX CHANGES

6 SECTION 3.1. G.S. 105-321(f) reads as rewritten:

7 "(f) Minimal Taxes. – Notwithstanding the provisions of G.S. 105-380, the governing
8 body of a taxing unit that collects its own taxes may, by resolution, direct its assessor and tax
9 collector not to collect minimal taxes charged on the tax records and receipts. Minimal taxes
10 are the combined taxes and fees of the taxing unit and any other units for which it collects
11 taxes, due on a tax receipt prepared pursuant to G.S. 105-320 ~~or on a tax notice prepared~~
12 ~~pursuant to G.S. 105-330.5~~, in a total original principal amount that does not exceed an amount,
13 up to five dollars (\$5.00), set by the governing body. The amount set by the governing body
14 should be the estimated cost to the taxing unit of billing the taxpayer for the amounts due on a
15 tax receipt or tax notice. Upon adoption of a resolution pursuant to this subsection, the tax
16 collector shall not bill the taxpayer for, or otherwise collect, minimal taxes but shall keep a
17 record of all minimal taxes by receipt number and amount and shall make a report of the
18 amount of these taxes to the governing body at the time of the settlement. These minimal taxes
19 shall not be a lien on the taxpayer's real property and shall not be collectible under Article 26 of
20 this Subchapter. A resolution adopted pursuant to this subsection must be adopted on or before
21 June 15 preceding the first taxable year to which it applies and remains in effect until amended
22 or repealed by resolution of the taxing unit. A resolution adopted pursuant to this subsection
23 shall not apply to taxes on registered motor vehicles."

24 SECTION 3.2. G.S. 105-330.2 reads as rewritten:

25 "§ 105-330.2. (Effective July 1, 2013 – See Editor's note) Appraisal, ownership, and situs.
26

27 (b1) Valuation Appeal. – The owner of a classified motor vehicle may appeal the
28 appraised value ~~or taxability~~ of the vehicle by filing a request for appeal with the assessor
29 within 30 days of the date taxes are due on the vehicle under G.S. 105-330.4. An owner who
30 appeals the appraised value ~~or taxability~~ of a classified motor vehicle must pay the tax on the
31 vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

32 The combined tax and registration notice or tax receipt for a classified motor vehicle must
33 explain the right to appeal the appraised value ~~and taxability~~ of the vehicle. A lessee of a
34 vehicle that is required by the terms of the lease to pay the tax on the vehicle is considered the
35 owner of the vehicle for purposes of filing an appeal under this subsection. Appeals filed under
36 this subsection shall proceed in the manner provided by G.S. 105-312(d).

37 (b2) Exemption or Exclusion Appeal. – The owner of a classified motor vehicle may
38 appeal the vehicle's eligibility for an exemption or exclusion by filing a request for appeal with
39 the assessor within 30 days of the assessor's initial decision on the exemption or exclusion
40 application filed by the owner pursuant to G.S. 105-330.3(b). Appeals filed under this
41 subsection shall proceed in the manner provided by G.S. 105-312(d).

42"

43 SECTION 3.3. G.S. 105-330.3 reads as rewritten:

44 "§ 105-330.3. (Effective July 1, 2013 – See Editor's note) Listing requirements for
45 classified motor vehicles; application for exempt status.
46

47 (a1) Unregistered Vehicles. – The owner of an unregistered classified motor vehicle
48 must list the vehicle for taxes by filing an abstract with the assessor of the county in which the
49 vehicle is located on or before January 31 following the date the owner acquired the
50 unregistered vehicle or, in the case of a registration that is not renewed, January 31 following
51 the date the registration expires, and on or before January 31 of each succeeding year that the

1 vehicle is unregistered. If a classified motor vehicle required to be listed pursuant to this
2 subsection is registered during the calendar before the end of the fiscal year in for which it was
3 listed, the vehicle is taxed for the fiscal year that opens in the calendar year of listing as an
4 unregistered vehicle. required to be listed, the following applies:

5 (1) The vehicle is taxed as a registered vehicle, and the tax assessed pursuant to
6 this subsection for the fiscal year in which the vehicle was required to be
7 listed shall be released and/or refunded.

8 (2) For any months for which the vehicle was not taxed between the date the
9 registration expired and the start of the current registered vehicle tax year,
10 the vehicle is taxed as an unregistered vehicle as follows:

11 a. The value of the motor vehicle is determined as of January 1 of the
12 year in which the registration of the motor vehicle expires.

13 b. In computing the taxes, the assessor must use the tax rates and any
14 additional motor vehicle taxes of the various taxing units in effect on
15 the date the taxes are computed.

16 c. The tax on the motor vehicle is the product of a fraction and the
17 number of months for which the vehicle was not taxed between the
18 date the registration expires and the start of the current registered
19 vehicle tax year. The numerator of the fraction is the product of the
20 appraised value of the motor vehicle and the tax rate of the various
21 taxing units. The denominator of the fraction is 12.

22 d. The taxes are due on the first day of the second month following the
23 month the notice was prepared.

24 e. Interest accrues on unpaid taxes for these unregistered classified
25 motor vehicles at the rate of five percent (5%) for the remainder of
26 the month following the month the taxes are due. Interest accrues at
27 the rate of three-fourths percent (3/4%) for each following month
28 until the taxes are paid, unless the notice is prepared after the date the
29 taxes are due. In that circumstance, the interest accrues beginning the
30 second month following the date of the notice until the taxes are
31 paid.

32 (3) A vehicle required to be listed pursuant to this subsection that is not listed by
33 January 31 and is not registered before the end of the fiscal year for which it
34 was required to be listed is subject to discovery pursuant to
35 G.S. 105-312. G.S. 105-312, unless the vehicle has been taxed as a registered
36 vehicle for the current year.

37 (b) Exemption or Exclusion. – The owner of a classified motor vehicle who claims an
38 exemption or exclusion from tax under this Subchapter has the burden of establishing that the
39 vehicle is entitled to the exemption or exclusion. The owner may establish prima facie
40 entitlement to exemption or exclusion of the classified motor vehicle by filing an application
41 for exempt status with the assessor assessor within 30 days of the date taxes on the vehicle are
42 due. When an approved application is on file, the assessor must omit from the tax records the
43 classified motor vehicles described in the application. An application is not required for
44 vehicles qualifying for the exemptions or exclusions listed in G.S. 105 282.1(a)(1). The
45 remaining provisions of G.S. 105 282.1 do not apply to classified motor vehicles.

46"

47 **SECTION 3.4.** G.S. 105-330.4 reads as rewritten:

48 "§ 105-330.4. (Effective July 1, 2013 – See Editor's note) Due date, interest, and
49 enforcement remedies.

50 ...

1 (b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes and registration
2 fees on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of
3 five percent (5%) for the remainder of the month following the ~~date month~~ in which the
4 registration renewal sticker expired pursuant to G.S. 20-66(g). Interest accrues at the rate of
5 three-fourths percent (3/4%) beginning the second month following the due date and for each
6 month thereafter until the taxes and fees are paid, unless the notice required by G.S. 105-330.5
7 is prepared after the date the taxes and fees are due. In that circumstance, the interest accrues
8 beginning the second month following the date of the notice until the taxes and fees are paid.
9 Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor
10 vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and
11 discounts shall be allowed as provided in G.S. 105-360(c).

12 (c) Remedies. – The enforcement remedies in this Subchapter apply to unpaid taxes on
13 an unregistered classified motor vehicle. The enforcement remedies in this Subchapter do not
14 apply to unpaid taxes on a registered classified motor ~~vehicle~~ vehicle for which the tax year
15 begins on or after August 1, 2013.

16 (d) Tax payments submitted by mail are deemed to be received as of the date shown on
17 the postmark affixed by the United States Postal Service. If no date is shown on the postmark
18 or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed
19 to be received when the payment is received ~~in the office of the tax collector.~~ by the collecting
20 authority. In any dispute arising under this subsection, the burden of proof is on the taxpayer to
21 show that the payment was timely made."

22 **SECTION 3.5.** G.S. 105-330.5(e) is repealed.

23 **SECTION 3.6.** Effective July 1, 2011, Section 13 of S.L. 2005-294, as amended by
24 Section 31.5 of S.L. 2006-259, Section 22(b) of S.L. 2007-527, and Section 65 of S.L.
25 2008-134, reads as rewritten:

26 "SECTION 13. Sections 4 and 8 of this act become effective January 1, 2006. Sections 1,
27 2, 3, 5, 6, 7, 10 and 11 of this act become effective July 1, ~~2011, 2013~~, or when the Division of
28 Motor Vehicles of the Department of Transportation and the Department of Revenue certify
29 that the integrated computer system for registration renewal and property tax collection for
30 motor vehicles is in operation, whichever occurs first. Sections 12 and 13 of this act are
31 effective when they become law. Nothing in this act shall require the General Assembly to
32 appropriate funds to implement it for the biennium ending June 30, 2007."
33

34 **PART IV. EFFECTIVE DATE**

35 **SECTION 4.1.** Except as otherwise provided, this act is effective when it becomes
36 law.



SENATE BILL 826: Revenue Laws Tech., Clarifying, & Admin Chngs

2011-2012 General Assembly

Committee: House Finance	Date: June 19, 2012
Introduced by: Sens. Rucho, Hartsell	Prepared by: Trina Griffin
Analysis of: Third Edition	Committee Counsel

SUMMARY: *Senate Bill 826, which is a recommendation of the Revenue Laws Study Committee, makes a number of technical, administrative, and clarifying changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue. The technical changes appear in Part I, the clarifying and administrative changes appear in Part II, and changes related to the combined motor vehicle registration and property tax collection system appear in Part III.*

[As introduced, this bill was identical to H1026, as introduced by Reps. Howard, Starnes, which is currently in House Finance.]

EFFECTIVE DATE: Except as otherwise provided, this bill would become effective when it becomes law.

CURRENT LAW & BILL ANALYSIS:

Section	Explanation
PART I: TECHNICAL CHANGES	
1.1	<p>A taxpayer is allowed a deduction for the amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a <u>tax credit</u> allowed against the corporation's federal taxable income.</p> <p>Section 1603 of ARRTA directs the Treasury to provide cash payments, or grants, to eligible persons who place in service specified energy property and apply for the payments. The purpose of section 1603 is to reimburse eligible applicants for a portion of the expense of such property. A section 1603 grant recipient is required to reduce the basis of the asset. This change would allow a taxpayer to reduce his or her State taxable income if the taxpayer receives a section 1603 <u>grant payment</u> rather than a credit under sections 45 or 48 of the Code.</p>
1.2	<p>Deletes the word "adjusted" as used in the definition of North Carolina taxable income for nonresidents and part-year residents.</p> <p>In 2011, the General Assembly changed the starting point for calculating NC taxable income from federal taxable income to federal adjusted gross income (Section 31A.1 of S.L. 2011-145). This change simplified the calculation of NC taxable income because taxpayers no longer have to make adjustments to reduce the federal standard deduction and exemption amounts to determine the State deduction and exemption amounts. The intent was not to change the end result or impact the amount of NC taxable income.</p> <p>For purposes of prorating NC taxable income for nonresidents and part-year residents, the relevant fraction should only refer to "gross income," which was how the proration was computed prior to the 2011 change. Using "adjusted gross income" could produce a different result, changing the amount of NC taxable income, which was not the intent</p>

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	of the 2011 change.
1.3	Clarifies that the standard deduction amount for individual income tax purposes is the <i>lesser</i> of the amount set out in the statute or the amount allowed under the Code. The current law refers only to the "standard deduction amount listed in the table below." However, there are instances where the North Carolina standard deduction is zero ¹ or less than is shown in the table. This is another technical change identified by the Department as the result of the passage of Section 31A.1 of S.L. 2011-145.
1.4	<p>This section makes changes to the sales and use tax exemption statute with regard to motor fuels and installation and delivery charges.</p> <p>Motor fuels are subject either to the motor fuels tax or to the sales tax, but not both. Dyed diesel and dyed kerosene are examples of motor fuels that are subject to the sales tax, but are nevertheless defined as motor fuels. This change in the sales tax exemption statute makes it clear that, to the extent a motor fuel is taxed under Article 36C (Gasoline, Diesel, and Blends), it is exempt from sales and use tax.</p> <p>This section also amends the sales tax exemptions for delivery and installation charges so that the language is parallel. It adds the phrase "similar billing document," which currently appears in the exemption for delivery charges, to the exemption for installation charges. It adds the phrase "at the time of sale," which currently appears in the exemption for installation charges, to the exemption for delivery charges.</p>
1.5	This is a technical change because the tax on manufacturing fuel was repealed, effective July 1, 2010.
1.6	This is a technical change because the existing statutory catchline refers to an Article that does not exist.
1.7	This section updates from January 1, 2011, to January 1, 2012 the reference to the Internal Revenue Code. This change keeps the statute up to date, but does not result in any substantive changes because there have not been any federal tax law changes since January 1, 2011 that impact the calculation of North Carolina taxable income.
1.8	This section adds an additional Code reference to the statute that governs when a return, report, payment, or any other document that is mailed to the Department is timely filed. Code section 7503 addresses when the due date falls on a Saturday, Sunday, or a holiday.
1.9	This is a technical change to correct a statutory reference.
1.10	This section conforms the statute on the scope of the local use tax so that it is consistent with the parallel statute for the State use tax, which was amended during the 2011 session. The 2011 change ² was a clarifying change.
1.11	S.L. 2011-72 authorized certain cities to establish a municipal service district for the

¹ If a taxpayer is (1) married filing a separate return for federal income tax purposes and the taxpayer's spouse itemizes deductions; (2) a nonresident alien; or (3) filing a short-year return because of a change in the taxpayer's accounting period, the taxpayer is not entitled to the standard deduction.

² S.L. 2011-330, s. 25(a).

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	<p>purpose of converting private residential streets to public streets. The act was designed to address 14 residential developments in the Town of Morrisville that were seeking to convert private streets to public streets. After the bill passed, it was discovered that some of the developments were created under the Condominium Act rather than the Planned Development Act, which the bill amended. This section makes the necessary conforming changes.</p>
1.12	<p>This section corrects several errors in the 2011 special license plate act.³ It adds the "Mountains-to-Sea Trail" plate to the list of plates that may be on a background other than the First in Flight background, which was the original intent. Under current law, the authorization for the plate states that it "shall bear the phrase 'Mountains-to-Sea Trail' with a background designed by the Friends of the Mountains-to-Sea Trail," suggesting that the organization may design its own background. However, in order for an organization to have a background other than First in Flight, it must be authorized in G.S. 20-63.</p> <p>This section also corrects errors with regard to the fees for the Sustainable Fisheries and the Morgan Horse Club plates.</p>
1.13	<p>This section would allow a taxpayer to claim an Article 3J credit that the taxpayer would have been ineligible for prior to 2010 because it failed to meet the environmental impact standard, which was loosened retroactively that year.</p> <p>In 2010, the General Assembly changed the environmental standard for Article 3J retroactively to 2007.⁴ By loosening the standard and making the change retroactive to 2007, the General Assembly intended to allow certain taxpayers to file for an Article 3J credit. However, the 2010 change failed to make a corresponding change to the statute of limitations, which requires claims to be filed within six months of the due date of the return. Therefore, a taxpayer who did not claim the credit when the original standard was in effect would be unable to take advantage of the retroactive change which</p>

³ S.L. 2011-392.

⁴ Sec. 1.3 of S.L. 2010-147 (*Various Economic Incentives*). Prior to the 2010 change, a taxpayer was eligible for certain economic incentives if the taxpayer had no pending administrative, civil, or criminal enforcement actions based on alleged *significant* violations of any DENR-implemented programs and had no final determination of responsibility for any *significant* administrative, civil, or criminal violation of any DENR-implemented program within the prior five years. Article 3J had a definition of what constituted a "significant violation" but there was some confusion as to whether certain violations met the definition. At the time, the Department made no distinction between civil and criminal violations or on the basis of whether the violation was knowing and willful. The 2010 clarification was designed to ensure that minor violations do not disqualify a taxpayer that would otherwise be eligible for a tax incentive. The current definition of an "environmental disqualifying event," as enacted by S.L. 2010-147, is as follows:

(9a) Environmental disqualifying event. – Any of the following occurrences:

- a. During the tax year in which the activity occurred for which a credit is being claimed, a civil penalty was assessed against the taxpayer by the Department of Environment and Natural Resources for failure to comply with an order issued by an agency of the Department to abate or remediate a violation of any program administered by the agency.
- b. During the tax year in which the activity occurred for which a credit is being claimed or in the prior two tax years, any of the following:
 1. A finding was made by the Department of Environment and Natural Resources that the taxpayer knowingly and willfully, as defined in G.S. 143-215.6B, including all limitations thereto, committed a violation of any program implemented by an agency of the Department.
 2. An assessment for damages to fish or wildlife pursuant to G.S. 143-215.3(a)(7) was made against the taxpayer.
 3. A judicial order for injunctive relief was issued against the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environment and Natural Resources.
- c. During the tax year in which the activity occurred for which the credit is being claimed or in the prior four tax years, a criminal penalty was imposed on the taxpayer in connection with a violation of any program implemented by an agency of the Department of Environment and Natural Resources.

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	loosened the standard. This change does not have a fiscal impact.
1.14	Makes changes required by the fact that that G.S. 130.6, which dealt with forced combinations, was repealed last year and replaced with a new statute. The definitions are the same definitions that were in G.S. 130.6, except for "parent," which was not defined.
PART II: CLARIFYING AND ADMINISTRATIVE CHANGES	
2.1	This change would allow a wholesale or retail dealer of other tobacco products to provide security to the Secretary in the form of an irrevocable letter of credit as an alternative to a bond. An irrevocable letter of credit would typically be used by a foreign company that would be unable to obtain a bond because it does not have assets in this country. This form of security is consistent with what is currently allowed under the motor fuels tax statutes.
2.2	S.L. 2011-12 added synthetic cannabinoids to the list of controlled substances. No corresponding changes were made to the unauthorized substance tax laws. Therefore, under current law, they would be grouped with "other controlled substances" and subject to tax at a rate of \$200 per gram. Marijuana is taxed at \$3.50 per gram. This section would tax synthetic cannabinoids at the same rate as marijuana, effective when the S.L. 2011-12 became law.
2.3	<p>Holding companies are subject to an annual franchise tax, which is capped at \$75,000. A holding company is currently defined as one that receives more than 80% of its gross income from corporations in which it owns, directly or indirectly, more than 50% of the outstanding voting stock or capital interests. However, a corporation whose only asset is an investment in subsidiaries and has no income cannot meet the 80% test because the denominator would be zero. This section expands the definition of a holding company to address this situation.</p> <p>The Department has indicated that this is a clarifying change, not a substantive one. A question has arisen about this specific fact pattern where a taxpayer is clearly a holding company in that all of its assets are investments in subsidiaries. For the year in question, the holding company had no income. Therefore, there would be \$0 in income from subsidiaries and \$0 in total income. Under a strict application of G.S. 105-120.2, \$0 divided by \$0 would result in an undefined mathematical value. Because it is undefined, it cannot be determined if it exceeds 80%. Alternatively, if one of the subsidiaries of the holding company had issued a dividend of as little as one cent, then 100% of the income would be coming from investments in subsidiaries. The Department believes that this interpretation is not what the General Assembly intended. The Department's interpretation is that it was a holding company and subject to the cap of \$75,000 on franchise tax.</p>
2.4	Makes the definition in Article 3J consistent with the definition of business property in Article 3B ⁵ and the old provisions for eligible machinery and equipment in Article 3A. ⁶
2.5	Provides that a taxpayer may qualify for innocent spouse relief at the State level if the

⁵ G.S. 105-129.15(1).

⁶ G.S. 105-129.9(a).

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	<p>taxpayer would have qualified for relief at the federal level even if the taxpayer does not have a federal tax liability.</p> <p>North Carolina follows federal law with regard to a taxpayer's eligibility for innocent spouse relief. The way the statute currently reads, a taxpayer would have to have had a federal tax liability that he or she was relieved of in order to qualify for relief at the State level. With this change, if the taxpayer would have qualified for innocent spouse relief had the taxpayer had a federal tax liability, then the taxpayer is eligible for relief at the State level.</p>
2.6	<p>Adds the Education expenses credit to the list of credits that are not allowed to be claimed by an estate or trust. In 2011, the General Assembly enacted the Tax Credit for Children with Disabilities.⁷ This is a conforming change that should have been made at the time and is consistent with the other credits that are not eligible to be claimed by an estate.</p>
2.7	<p>This section makes three changes to sales tax definitions in order to conform to the Streamlined definitions, and it updates the reference to the most current version of the Streamlined Agreement dated December 19, 2011.</p>
2.8	<p>This section clarifies the general sourcing provisions to conform to the Streamlined requirements. It was noted during the 2011 Annual Compliance Review that the existing statute was not consistent with the Streamlined requirements.</p>
2.9	<p>Restores language stating that sales tax must be stated and charged separately that was inadvertently stricken from the statute.</p>
2.10	<p>This section restores language relating to the application of use tax to items given away by merchants, which was inadvertently deleted in a 2009 budget provision. The language was originally added to the definition of "sale or selling" in 1996 as the result of a court case.⁸ The language was intended to restrict the application of that case, a</p>

⁷ S.L. 2011-395. The credit allows an individual income tax credit for up to \$3,000 per semester for tuition and special education and related services expenses for a taxpayer's eligible dependent child with a disability who is enrolled in a nonpublic school or a public school where tuition is charged for the eligible dependent child's enrollment.

⁸The use tax, first enacted in 1939, is the complement to the sales tax and applies to the storage, use, or consumption in this State of tangible personal property. Use tax accounts for approximately 5% of total sales and use tax collections. A merchant is liable for use tax on property it uses in its business, such as furniture, equipment, décor, or promotional giveaways. Items sold by the merchant, however, are not subject to use tax because sales tax will apply when the items are sold at retail. With regard to items given away free of charge, the general rule in this State, and virtually all states, is that a retailer is liable for sales and use tax on those items. Until 1993, the following items were considered used, not sold, and thus subject to use tax: meals provided free to a merchant's employees, food given away to the merchant's patrons, and matches given away to patrons, other than matches given away along with the sale of cigarettes. A group of restaurants appealed the assessment of the tax, claiming that the items should be considered sold. In *Matter of Rock-Ola Café*, 111 N.C.App. 683 (1993), the North Carolina Court of Appeals agreed with the restaurants that these items should be considered sold along with the food the restaurant sold as part of its business. However, the Revenue Laws Study Committee, in its report to the 1996 Regular Session, concluded that the Court's opinion was overly broad in its rationale. The rationale, that the cost of these items is recovered by the sales of other items, taken literally and if applied broadly, could be interpreted to eliminate the use tax altogether in that the cost of all of a merchant's purchases are ultimately covered by the price of sold items. The Committee recommended, and the General Assembly enacted, the language in this section to limit the application of the court's opinion to the facts of that case, which dealt specifically with restaurants. Under this language, property given away by a merchant is exempt from use tax only in the case of restaurants that provide free meals to employees or free bar food to patrons. The bill that was ultimately enacted added language to exempt items of inventory given away to a customer free of charge on the condition that the customer buy similar property ("buy one, get one free").

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	<p>broad application of which could be interpreted in such a way so as to eliminate the use tax. In 1996, the Revenue Laws Study Committee recommended limiting the application of the decision to the facts of that case, which involved food given away by restaurants.</p> <p>In 2009, a number of sales tax statutes were amended to address digital property. While amending those statutes, a number of stylistic and technical changes were also made. The language dealing with items given away by merchants was removed with the intent that it be located elsewhere in the sales and use tax statutes as a technical change. However, it was never relocated. This section restores the language by placing it in a new statutory section, effective the date that the 2009 deletion became effective since there was no intent to remove it.</p>
2.11	<p>This section makes two changes related to sales tax refunds for interstate carriers. First, it modifies the reference to "them" to make it clear that, for purposes of calculating a refund on certain cars, parts, fuel, and repair parts, an interstate carrier must include all motor vehicles, railroad cars, locomotives, and airplanes that the applicant owns or leases and that are operated both inside and outside the State in the denominator. Second, it clarifies that airplane miles are not in this State if the airplane only flies over North Carolina but does not take off or land in the State.</p>
2.12	<p>A direct pay permit authorizes the holder to purchase property that is subject to sales and use tax without paying the tax to the seller. A person who purchases an item under a direct pay permit is liable for use tax, which is payable when the property is placed in use or the service is received. A person can apply for a direct pay permit if the person purchases an item whose tax status cannot be determined at the time of purchase, and either:</p> <ul style="list-style-type: none">• The place of business where the item will be used is not known at the time of purchase and a different tax consequence applies depending on where the item is used, or• The manner in which the item will be used is not known at the time of purchase and one or more of the potential uses is taxable but others are not taxable. <p>Generally speaking, a direct pay permit is not intended to allow purchasers to "shop" for a lower tax rate. It was originally designed to address situations where a purchaser of machinery, for example, did not know at the time of purchase how the machinery was going to be used and, therefore, whether it would be subject to sales tax at the general rate, exempt from tax, or subject to the 1%/\$80 rate. In those cases, however, the property was always going to be used in North Carolina. The Department is aware of a situation where a retailer that has purchased items from NC vendors and has taken delivery of those items in NC wants to use a direct pay permit arguing that the items may be shipped out of state at some later date for use in another state. This section adds the words "for storage, use, or consumption in this State" to make it clear that a direct pay permit may not be used to avoid paying NC sales tax in this way.</p> <p>A person who purchases telecommunications service under a direct pay permit must file a return and pay the tax due monthly to the Secretary. This section adds the word</p>

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	"quarterly" so that the filing frequency is consistent with the filing frequency for general State and local sales tax remitters. ⁹ By providing for quarterly filing, this change would conform the statute to current practice at the Department.
2.13	<p>There is an excise tax imposed on piped natural gas received for consumption in this State, which is in lieu of the sales and use tax. The tax is payable on a monthly basis. Under current law, a taxpayer who is consistently liable for at least \$10,000 of tax a month must make a monthly prepayment of the next month's liability.</p> <p>This section would change from \$10,000 to \$20,000 the prepayment threshold for the tax on piped natural gas, the purpose of which is to be consistent with the prepayment threshold for retailers required to remit sales and use tax.¹⁰ This change does not change the amount of excise tax revenue remitted to the General Fund, but it does change by one month the timing of the payment for the year of the transition to the higher threshold. The Department indicates that it knows of only one company that would be affected by increasing the threshold to \$20,000.</p>
2.14	Generally speaking, the State may not contract with foreign vendors that refuse to collect use tax, where applicable, on sales delivered to North Carolina. G.S. 143-59.1 requires the Department to periodically provide to the Secretary of Administration a list of ineligible vendors based on this requirement. This section provides that the Department of Administration may not enter into a contract with a vendor if the Department of Revenue has determined that the vendor or an affiliate of the vendor refuses to collect use tax. This language has been agreed to by both the Department of Revenue and the Department of Administration.
2.15	This section conforms the statute to current practice at the Department. If a taxpayer files a return electronically, then the taxpayer must pay the tax due before the taxpayer may submit the return.
2.16	This section removes the confusion caused by the new fee applicable to the recording of subsequent instruments by eliminating the fee and imposing a \$10 fee for an instrument that assigns more than one security instrument by reference to a previously recorded instrument. S.L. 2011-296 changed the fees collected by register of deeds for the purpose of simplifying their collection and remittance. As part of the legislation, a new fee became applicable to the indexing and filing of "subsequent instruments." Several registers of deeds have questioned how to apply the new fee applicable to subsequent instruments that contain references to multiple recorded documents, such as cancellations of multiple deeds of trust or substitution of trustee in multiple documents.

⁹A taxpayer who is consistently liable for less than \$100 a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A taxpayer who is consistently liable for at least \$100 a month but less than \$20,000 a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. (G.S. 105-164.16.)

¹⁰For sales and use tax, the threshold limit of \$10,000 was enacted in 2001 as a means to accelerate the payment of sales and use tax dollars into the General Fund for fiscal year 2001-02. Prior to this change, the threshold amount for making bimonthly payments was \$20,000. In the years following 2001, the sales and use tax rate, at its highest, reached 7.75%. The lowering of the threshold amount along with the increase in the tax rate subjected more retailers to the most extensive sales tax remittance requirements. Consequently, many small retailers expressed a cash flow hardship with the pre-payment requirement. In 2010, the General Assembly phased in a restoration of the \$20,000 prepayment threshold. The change decreased the number of retailers required to submit a prepayment of 65% of the amount of sales tax revenue to be remitted for the following month.

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2.17	<p>This section makes conforming changes to the statutes dealing with the State Home Foreclosure Prevention Project (SHFPP). The SHFPP was created by the General Assembly in 2008¹¹ as an emergency program and was expanded and extended in 2010¹² to cover all homeowners. The program is an effort to reduce unnecessary foreclosures providing homeowners with free resources, such as counseling, as they work with servicers to create alternatives to foreclosure.</p> <p>In 2011, the administration and staffing of SHFPP homeowner and counseling activities was transferred to the NC Housing Finance Agency, effective July 1, 2011.¹³ Under that legislation, the Office of the Commissioner of Banks retained administration of the pre-foreclosure filings database, servicing invoicing, and the granting of 30-day extensions.</p> <p>This section would complete the transfer of all program activities to the NC Housing Finance Agency and would remove the program sunset.</p>
2.18	<p>This change has been requested by the Department because TIMS, its new computer system that is not up and running yet, will not be able to compute the minimum penalty well. It will require a work around and likely an addition to the current contract. This has no impact on the General Fund and a negligible impact on the Fines & Forfeiture Fund.</p>
2.19	<p>Provides that the portion of the Register of Deeds fees that are remitted to Cultural Resources for archives and records management shall be placed in a special revenue fund.</p>
PART III: COMBINED MOTOR VEHICLE REGISTRATION/PROPERTY TAX CHANGES	
<p>In 2005, the General Assembly created a framework establishing a combined system for motor vehicle registration renewal and property tax collection. Originally, the act was to become effective the earlier of January 1, 2009, or the date that the Department of Revenue and the Division of Motor Vehicles certified that an integrated computer system is in operation. The effective date has since been extended and is currently set to go into effect July 1, 2013. Under the new system, the taxpayer/motor vehicle owner will receive one bill for property taxes and the DMV license renewal, and DMV will be the collecting authority. Counties will still determine the value and the taxability situs of motor vehicles. A number of conforming changes are needed to fully implement the combined system, which goes into effect July 1, 2013. Part III of this bill consists of those changes.</p>	
3.1	<p>Current law permits the governing body of a taxing unit to pass a resolution directing its tax collector not to collect minimal taxes, defined as up to \$5.00, charged on tax records and receipts. This section would exempt taxes on registered motor vehicles for two reasons: (1) a minimum of \$28 is collected for motor vehicle registration; and (2) DMV, not the counties, will be the collecting authority. Therefore, the minimal tax provision is not applicable with regard to combined motor vehicle and property tax collection.</p>

¹¹ S.L. 2008-226.

¹² S.L. 2010-168.

¹³ S.L. 2011-288.

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3.2	<p>A taxpayer may appeal motor vehicle taxes on a number of grounds: the valuation by the county, the denial of an application for exemption or exclusion, and on the grounds that the county does not have authority to tax the vehicle because the situs of the vehicle is in another taxing district. The term "taxability" in the appeal statutes has been used to refer to both exemption status and situs, but because there are different time periods that apply depending on the basis of a taxpayer's appeal, the Department recommends separating the statutory provisions.¹⁴</p> <p>Therefore, this section strikes the term "taxability" from G.S. 105-330.2(b1) so that, as amended, this subsection would apply only to appeals based on valuation. It also creates a new subsection (b2) to address appeals based on an application for exemption or exclusion. Appeals based on a county's authority to tax are covered under current law in G.S. 105-381.</p>
3.3	<p>This section establishes a process for the collection of property tax on an unregistered vehicle. The objective of the process is to ensure that the taxpayer is not double-taxed and that property taxes are paid on motor vehicles that a person owns even if it is not registered. If a person does not register or renew registration, then the person would be required to list the vehicle with the county assessor. The listing will generate a tax bill. However, if the person subsequently registers or renews the tag for the vehicle, then DMV will charge the person for the registration plus the property tax. This provision allows a county to ignore the listing to the extent the person registered or renewed within the same year.</p>
3.4	<p>This section clarifies that counties would have authority to use collection remedies for unpaid motor vehicle taxes that were billed prior to the effective date of the combined motor vehicle/property tax system. The August 1 date is used because the tax year for July renewals begins August 1.</p> <p>It allows 45 days before the second month's interest begins. This is needed due to DMV's business process which DOR thinks may cause some taxpayers who pay by mail to get caught in a loop of sending in the payment after the due date, and the payment would be rejected. Without this change, the next month's interest would start before they got the correct amount mailed back in to DMV.</p> <p>This section also changes the term "tax collector" to "collecting authority" because under the new system, DMV and not the county tax assessor or tax collector will be the collecting authority.</p>
3.5	<p>This section repeals an unnecessary statute that relates to small underpayments and overpayments of motor vehicle taxes. Specifically, if a taxpayer fails to remit the additional \$1.00 charged for payments that are mailed rather than paid in-person, the collecting authority is not permitted to bill or attempt to collect the additional \$1.00. However, there is no longer a \$1.00 charge for mailed in payments so the provision is unnecessary.</p>

¹⁴ A taxpayer has 30 days to appeal a determination of value or eligibility for an exemption or exclusion. However, there is a five-year period to appeal an "illegal" tax under G.S. 105-381.

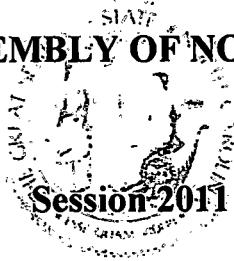
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3.6	This section is a conforming change to the effective date. When the effective date for the implementation of the combined system was changed, this particular session law was missed.
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S826-SMSV-119(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: June 19, 2012

TO: Senator Hartsell

FROM: Sandra Johnson
Fiscal Research Division

RE: Senate Bill 826 (Unknown Edition)

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
Section 2.16: Register of Deeds (State)		\$0	\$0	\$0	\$0
Section 2.16: Register of Deeds (Local)		No Estimate Available			
EXPENDITURES:					
POSITIONS					
(cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Register of Deeds Offices					
EFFECTIVE DATE: Except as otherwise provided, effective when the bill becomes law.					

BILL SUMMARY:

Section 2.16 of the bill amends S.L. 2011-296, legislation enacted to simplify the fees charged for registering instruments with register of deeds offices. This bill modifies \$25.00 fee created during the 2011 session in S.L. 2011-296 for registering subsequent instruments. Prior to the enactment of S.L. 2011-296, a \$10.00 fee applied to the registration of subsequent/multiple instruments. The language and fee schedule for registering subsequent instruments in this proposal reduces the \$25.00 fee to \$10.00 making it consistent with the fee schedule used in previous years.

The bill also modifies the definition of subsequent instruments referencing G.S. 45-36.4(18). This change clarifies that subsequent instruments are documents intended to modify, amend, supplement or replace any previously registered instrument.

ASSUMPTIONS AND METHODOLOGY:

No State Impact

Changes included in the Revenue Laws Technical Corrections proposal modify the register of deeds fee schedule created during the 2011 Session with S.L. 2011-296. S.L. 2011-296 revised the fee schedule used at register of deeds offices and the amount of revenue that the registrars remit to the State. Though the technical corrections bill slightly reduces the amount of revenue collected through the registrar's offices, the amendment does not impact State funds. Register of deeds, under this proposal must still remit to the State \$6.20 per registered document as set forth in S.L. 2011-296.

Local Impact

The local fiscal impact of the technical corrections bill remains unknown due to a lack of data. Conversations with the North Carolina Association Register of Deeds representatives suggest that the impact will be minimal. This proposal changes the register of deeds fee schedule reducing the fees for registering subsequent instruments from \$25.00 per instrument to \$10.00 per instrument. Should the proposal become law, the fees for registering subsequent instruments would be congruent with the fee schedule utilized in prior years.

SOURCES OF DATA: North Carolina Association Register of Deeds

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1051

Short Title: Elizabethtown Hayfields Deannexation. (Local)

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

Referred to: Government, if favorable, Finance.

May 23, 2012

A BILL TO BE ENTITLED

1 AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER
2 SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX
3 THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT
4 DEEMS ADVISABLE BY REPEALING SPECIFIED INVOLUNTARY ANNEXATION
5 ORDINANCES OF THE TOWN OF ELIZABETHTOWN RELATING TO THE
6 HAYFIELDS AREA, AND BY PROHIBITING MUNICIPAL INITIATION OF ANY
7 PROCEDURE TO INVOLUNTARILY ANNEX THOSE AREAS FOR TWELVE
8 YEARS.
9

10 The General Assembly of North Carolina enacts:

11 SECTION 1. Repeal annexation ordinances. – All annexation ordinances described
12 in Section 3 of this act are repealed as of the effective date of this act.

13 SECTION 2. Twelve-year prohibition on involuntary annexation. – All areas
14 affected by the annexation ordinances described in Section 3 of this act shall not be subject to
15 any annexation proceeding, other than a voluntary annexation under Part 1 or Part 4 of Article
16 4A of Chapter 160A of the General Statutes, or local act of the General Assembly, for a period
17 of 12 years from and after the effective date of this act. After the 12-year period, the area may
18 be subject to annexation in accordance with State law effective at that time.

19 SECTION 3. Repealed involuntary annexation ordinances. –

20 (1) Elizabethtown Annexation Ordinance 2011-09 (Area J) adopted June 6,
21 2011.

22 (2) Elizabethtown Annexation Ordinance 2011-10 (Area N) adopted June 6,
23 2011.

24 (3) Elizabethtown Annexation Ordinance 2011-11 (Area Q) adopted June 6,
25 2011.

26 SECTION 4. Severability. – If any provision of this act or its application is held
27 invalid, the invalidity does not affect other provisions or applications of this act that can be
28 given effect without the invalid provisions or application, and to this end the provisions of this
29 act are severable.

30 SECTION 5. This act is effective from and after June 29, 2012.



* H 1 0 5 1 - V - 1 *



HOUSE BILL 1051: Elizabethtown Hayfields Deannexation

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Brisson
Analysis of: First Edition

Date: June 19, 2012
Prepared by: Greg Roney
Committee Counsel

SUMMARY: *House Bill 1051 would deannex 3 tracts of land that were involuntarily annexed by the Town of Elizabethtown in the Hayfields residential area and would prohibit involuntary annexation of those tracts for 12 years.*

CURRENT LAW: Under Section 1 of Article VII of the NC Constitution, the General Assembly is empowered to "provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable." The General Assembly has not enacted any method for municipalities to deannex property – that power remains with the General Assembly.

BILL ANALYSIS:

Section 1 repeals the local involuntary annexation ordinances listed in Section 3 of the bill.

Section 2 provides that the 3 tracts covered by the bill shall not be subject to any involuntary annexation for 12 years after the effective date.

Section 3 lists the 3 tracts covered by the bill.

Section 4 is a severability clause, providing that if any provision of the bill is held invalid then the remainder of the bill can be enforced.

EFFECTIVE DATE: This act is effective from and after June 29, 2012.

Kelly Quick with the Research Division substantially contributed to this summary.

H1051-SMTM-80(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 988

Short Title: Averagesboro Township TDA Changes. (Local)
Sponsors: Representative Lewis (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.
Referred to: Government, if favorable, Finance.

May 21, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE AVERASBORO TOWNSHIP TOURISM
3 DEVELOPMENT AUTHORITY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 142 of the 1987 Session Laws, as amended by Part XII of
6 S.L. 2001-439, reads as rewritten:

7 "Section 1. Occupancy Tax. - (a) Authorization and Scope. - The Harnett County Board
8 of Commissioners may levy a room occupancy tax in an amount not to exceed three percent
9 (3%) of the gross receipts derived from the rental of any room, lodging, or similar
10 accommodation furnished by a hotel, motel, inn, or similar place within Averagesboro Township
11 that is subject to sales tax imposed by the State under G.S.105-164.4(a)(3). This tax is in
12 addition to any State or local sales tax. This tax does not apply to accommodations furnished by
13 nonprofit charitable, educational, or religious institutions or organizations.

14 (a1) Additional Occupancy Tax. - In addition to the tax authorized by subsection (a) of
15 this section, the Harnett County Board of Commissioners may levy a room occupancy tax of
16 three percent (3%) of the gross receipts derived from the rental of accommodations taxable
17 under that subsection. The county may not levy a tax under this section unless it also levies the
18 tax under subsection (a) of this section. A tax levied under this section may not become
19 effective before the first day of the second month after the resolution levying the tax is adopted.
20 The levy, collection, administration, and repeal of the tax authorized by this subsection shall be
21 in accordance with this section.

22 (b) Repealed.

23 (c) Administration. - For the purpose of levying and administering the tax authorized
24 by this act, Averagesboro Township shall be a body politic and corporate and shall have the
25 power to carry out the provisions of this act. The Harnett County Board of Commissioners shall
26 serve, ex officio, as the governing body of the Township, and the officers of the board of
27 commissioners shall serve as the officers of the governing body of the township. A simple
28 majority of the governing body constitutes a quorum, and approval by a majority of those
29 present is sufficient to determine any matter before the governing body, if a quorum is present.

30 The Harnett County Board of Commissioners, as the governing body of Averagesboro
31 Township, shall administer a tax levied under this act. A tax levied under this act shall be
32 levied, administered, collected, and repealed as provided in G.S. 153A-155 as if Averagesboro
33 Township were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under
34 this act.

35 (d) Repealed.



1 (e) Distribution and Use of Tax Revenue. – The township shall, on a ~~quarterly~~ monthly
 2 basis, remit the net proceeds of the occupancy tax to the Averagesboro Township Tourism
 3 Development Authority. The Authority shall use at least two-thirds of the funds remitted to it
 4 under this subsection to promote travel and tourism in Averagesboro Township and shall use the
 5 remainder for tourism-related expenditures.

6 The following definitions apply in this subsection:

- 7 (1) Net proceeds. – Gross proceeds less the cost to the township of
 8 administering and collecting the tax, as determined by the finance officer,
 9 not to exceed three percent (3%) of the first five hundred thousand dollars
 10 (\$500,000) of gross proceeds collected each year and one percent (1%) of
 11 the remaining gross receipts collected each year.
 12 (2) Promote travel and tourism. – To advertise or market an area or activity,
 13 publish and distribute pamphlets and other materials, conduct market
 14 research, or engage in similar promotional activities that attract tourists or
 15 business travelers to the area. The term includes administrative expenses
 16 incurred in engaging in the listed activities.
 17 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
 18 Tourism Development Authority, are designed to increase the use of lodging
 19 facilities, meeting facilities, or convention facilities in a township or to
 20 attract tourists or business travelers to the township. The term includes
 21 tourism-related capital expenditures.

22 (f) Repealed.

23 (g) Repealed.

24 "Sec. 2. Tourism Development Authority. – (a) – Appointment and membership. When the
 25 board of commissioners adopts a resolution levying a room occupancy tax under this act, it
 26 shall also adopt a resolution creating an Averagesboro Township Tourism Development
 27 Authority, which shall be a public authority under the Local Government Budget and Fiscal
 28 Control Act. There shall be ~~seven~~ nine members of the Authority as follows:

- 29 (1) Three members, appointed by the Authority from applications submitted to
 30 the Authority, who are a hotel, motel, or bed and breakfast operator from
 31 Averagesboro Township.
 32 (2) One individual currently active in tourism promotion and who does not own
 33 or operate a hotel, motel, or other taxable tourist accommodation, to be
 34 appointed by the Authority from applications submitted to the Authority.
 35 (3) One individual currently active in tourism promotion and who does not own
 36 or operate a hotel, motel, or other taxable tourist accommodation. This
 37 individual will be the President of the Dunn Area Chamber of Commerce or
 38 a designee to be appointed by the Board of Directors of the Dunn Area
 39 Chamber of Commerce. ~~Two members appointed by the board of~~
 40 ~~commissioners from nominations submitted by the Dunn Area Chamber of~~
 41 ~~Commerce, one who is a hotel or motel operator from Averagesboro Township~~
 42 ~~and one who is a representative of the travel industry;~~
 43 (2)(4) The Harnett County Manager, to serve ~~ex officio;~~ officio.
 44 (3)(5) ~~The A~~ Harnett County Commissioner representing Averagesboro Township, to
 45 serve ~~ex officio;~~ officio.
 46 (4) ~~The President of the Dunn Area Chamber of Commerce, to serve ex officio;~~
 47 (5) ~~The Vice President of Economic and Industrial Development of the Dunn~~
 48 ~~Area Chamber of Commerce, to serve ex officio; and~~
 49 (6) The City Manager of the Town of Dunn, to serve ex officio.
 50 (7) A city council member of Dunn appointed by the Dunn City Council, to
 51 serve ex officio.

1 ~~The members appointed by the board of commissioners shall serve for a term of one year;~~
2 ~~vacancies~~ Vacancies shall be filled in the same manner as the initial appointments. All of the
3 members, including those who serve ex officio, shall be voting members of the Authority. A
4 majority of the members shall constitute a quorum for the transaction of business and an
5 affirmative vote of the majority of the members present at a meeting of the Authority shall be
6 required to constitute action of the Authority. ~~The board of commissioners~~ Authority shall
7 designate one member of the Authority as chair and one member of the Authority to serve as
8 vice-chair, and shall determine the compensation, if any, to be paid to members of the
9 Authority.

10 The Authority shall meet monthly or at the call of the chair and shall adopt rules of
11 procedure to govern its meetings. The Finance Officer for ~~Harnett County~~ the City of Dunn
12 shall be the ex officio finance officer of the Authority.

13 (b) Duties. — The authority shall develop, promote, and advertise travel and tourism in
14 Averasboro Township, sponsor tourist-oriented events and activities for Averasboro Township,
15 operate and maintain museums and historic sites throughout Averasboro Township, and
16 purchase, operate, ~~and~~ maintain a convention facility for Averasboro ~~Township~~ Township, and
17 finance tourist-related capital projects in the Averasboro Township.

18 (c) Reports. — The Authority shall report quarterly and at the close of the fiscal year to
19 the board of county commissioners on its receipts and expenditures for the preceding quarter
20 and for the year in such detail as the board may require.

21 ~~"Sec. 3. This act is effective upon ratification."~~

22 **SECTION 2.** This act is effective when it becomes law and applies to the
23 distribution of the net proceeds of the occupancy tax on or after the earlier of October 1, 2012,
24 or the date specified in a resolution adopted in accordance with this act.



HOUSE BILL 988: Averasboro Township TDA Changes

2011-2012 General Assembly

Committee: House Finance
Introduced by: Rep. Lewis
Analysis of: First Edition

Date: June 14, 2012
Prepared by: Trina Griffin
Committee Counsel

SUMMARY: *House Bill 988 makes changes to the Averasboro Township Tourism Development Authority.*

CURRENT LAW: S.L. 1987-142 established the Averasboro Tourism Development Authority. There are currently seven members of the Authority:

- Two members appointed by the board of commissioners, one who is a hotel or motel operator from Averasboro Township and one who is a representative of the travel industry
- The Harnett County Manager (ex-officio member)
- The Harnett County Commissioner representing Averasboro Township (ex-officio member)
- The President of the Dunn Area Chamber of Commerce (ex-officio member)
- The Vice President of Economic and Industrial Development of the Dunn Area Chamber of Commerce (ex-officio member)
- The City Manager of the Town of Dunn (ex-officio member)

BILL ANALYSIS: House Bill 988 revises the town membership in the following ways:

- Increases the number of members on the Authority from seven to nine.
- Increases the number of hotel, motel, or bed and breakfast operators from one member to three members.
- Removes the requirement that one member must be a representative of the travel industry and instead requires that the member be currently active in tourism promotion, to be appointed by the Authority. The new language would make the provision consistent with the occupancy tax guidelines adopted by the House Finance Committee.
- Removes the ex-officio membership of the Vice President of Economic and Industrial Development of the Dunn Area Chamber of Commerce.
- Adds a city council member of Dunn appointed by the Dunn City Council as an ex-officio member.

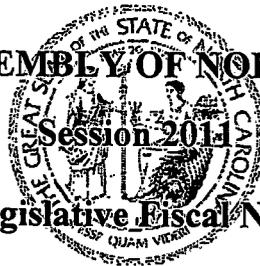
The bill also adds to the duties of the TDA, the ability to finance tourist-related capital projects. The Averasboro TDA is seeking this language because it would like to give funds to the Town for the purpose of enhancing and upgrading certain parks and recreation facilities that enhance tourism in the area. This language is consistent with language found in most other occupancy tax acts.

EFFECTIVE DATE: This act is effective when it becomes law and applies to the distribution of the net proceeds of the occupancy tax on or after the earlier of October 1, 2012, or the date specified in a resolution adopted in accordance with this act.

BACKGROUND: To meet the occupancy tax guidelines, a Tourism Development Authority Board must meet 2 thresholds: (1) 1/3 of the members must be collectors of the tax, and (2) 1/2 of the members must be currently active in the promotion of travel and tourism in the taxing district.

H988-SMSV-113(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 988 (First Edition)

SHORT TITLE: Averasboro Township TDA Changes.

SPONSOR(S): Representative Lewis

FISCAL IMPACT					
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
REVENUES	**No Fiscal Impact**				
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Averasboro Township				
EFFECTIVE DATE:	This act is effective when it becomes law and applies to the distribution of the net proceeds of the occupancy tax on or after the earlier of October 1, 2012, or the date specified in a resolution adopted in accordance with this act.				

BILL SUMMARY:

House Bill 988 amends SL 1987-142, as amended, to require Averasboro Township (Harnett County) to remit occupancy tax proceeds to the Averasboro Township Tourism Development Authority (Authority) on a monthly (was, quarterly) basis. It expands Authority membership from seven to nine members and removes the one-year term limitation. Amends chair and co-chair designations, meeting times, and naming of the ex officio finance officer. The bill expands on the Authority's duties.

ASSUMPTIONS AND METHODOLOGY:

House Bill 988 would change how frequently occupancy tax proceeds are remitted to the Averasboro Township Tourism Development Authority. There would also be changes impacting the membership of the Authority, meeting times, and term limitations. None of the changes put forward in House Bill 988 would have a fiscal impact.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Slivka

APPROVED BY: Mark Trogdon, Acting Director
Fiscal Research Division

DATE: June 13, 2012



Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1084

DATE 6/19/12

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE CSMCx-23

Rep.) Justice
Sen.)

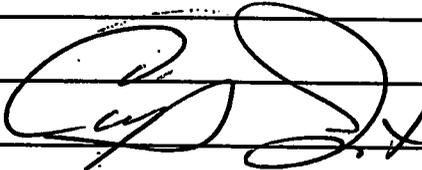
1 moves to amend the bill on page 1, line 10

2 (L) WHICH CHANGES THE TITLE

3 by inserting between "BALLOTS;" and "(5) ALLOW"
4 the word "AND"; and

6 on page 1, lines 12-14, by rewriting the lines to
7 read "PLANNED COMMUNITY ACT OR CONDOMINIUM
8 ACT.;" ; and

10 on page 1, lines 10-47, by deleting those lines; and
12 by renumbering the remaining sections and part accordingly.

SIGNED 

ADOPTED FAILED _____ TABLED _____

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1051 A BILL TO BE ENTITLED AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY REPEALING SPECIFIED INVOLUNTARY ANNEXATION ORDINANCES OF THE TOWN OF ELIZABETHTOWN RELATING TO THE HAYFIELDS AREA, AND BY PROHIBITING MUNICIPAL INITIATION OF ANY PROCEDURE TO INVOLUNTARILY ANNEX THOSE AREAS FOR TWELVE YEARS.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1050 A BILL TO BE ENTITLED AN ACT TO EXERCISE THE POWER OF THE GENERAL ASSEMBLY UNDER SECTION 1 OF ARTICLE VII OF THE NORTH CAROLINA CONSTITUTION TO FIX THE BOUNDARIES OF CITIES AND GIVE SUCH POWERS TO CITIES AS IT DEEMS ADVISABLE BY REPEALING SPECIFIED INVOLUNTARY ANNEXATION ORDINANCES OF THE TOWN OF ELIZABETHTOWN RELATING TO THE INDUSTRIAL PARK AREA, AND BY PROHIBITING MUNICIPAL INITIATION OF ANY PROCEDURE TO INVOLUNTARILY ANNEX THOSE AREAS FOR TWELVE YEARS.

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 _____.

**2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on
FINANCE.

Committee Substitute # 2 for

HB 1084 A BILL TO BE ENTITLED AN ACT TO (1) REQUIRE ASSOCIATIONS TO RELEASE LIENS UPON PAYMENT IN FULL; (2) REQUIRE ALL ASSOCIATIONS TO CONDUCT FINANCIAL REVIEWS OR FINANCIAL AUDITS; (3) REQUIRE THAT NOTICE OF ASSOCIATION MEETINGS DESCRIBE THE GENERAL NATURE OF ANY MATERIAL MATTER FOR WHICH A VOTE IS TO BE TAKEN, AND VOID ACTIONS TAKEN AT MEETINGS HELD IN VIOLATION OF REQUIREMENTS OF THE PLANNED COMMUNITY ACT OR THE CONDOMINIUM ACT, AS APPLICABLE, OR AN ASSOCIATIONS DECLARATION OR BYLAWS; (4) AMEND VOTING PROVISIONS AS THEY APPLY TO USE OF PROXIES AND BALLOTS; (5) ALLOW USE OF ALTERNATIVE DISPUTE RESOLUTION FOR CONFLICTS ARISING UNDER THE PLANNED COMMUNITY ACT OR CONDOMINIUM ACT; AND (6) SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS.

With a favorable report as to Committee substitute bill 2, which changes the title, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

**2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on
FINANCE.

Senate Committee Substitute for

HB 391 A BILL TO BE ENTITLED AN ACT TO REVISE THE LAWS RELATING TO COUNTY RESEARCH AND PRODUCTION SERVICE DISTRICTS TO REFLECT CHANGED CIRCUMSTANCES, TO ALLOW FLEXIBILITY IN PROVISION OF SERVICES IN URBAN AREAS OF SUCH DISTRICTS, AND TO AMEND THE COUNTY SERVICE DISTRICT ACT OF 1973 RELATING TO APPROVAL OF PROPERTY TAXES IN MULTIJURISDICTIONAL INDUSTRIAL PARK DISTRICTS.

With recommendation that the House concur.

(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 _____.

_____ 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.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 572 A BILL TO BE ENTITLED AN ACT TO ENACT THE OMNIBUS COUNTY BILL OF 2011.

With a favorable report as to the House committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1106 A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED
TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF APEX.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1216 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN
RESTRICTIONS ON SATELLITE ANNEXATIONS FOR THE TOWN OF WALLACE.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 426 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFICATIONS AND MODIFICATIONS TO THE PUBLIC FINANCE STATUTES OF NORTH CAROLINA FOR THE IMPROVEMENT OF VARIOUS FINANCING STRUCTURES AND THE TERMS AND PROVISIONS OF THE FINANCING STRUCTURES AND TO REMOVE THE SUNSET ON SPECIAL ASSESSMENTS FOR CRITICAL INFRASTRUCTURE NEEDS.

With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill 2.

(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.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1105 A BILL TO BE ENTITLED AN ACT AMENDING THE ELECTROLYSIS PRACTICE ACT TO AUTHORIZE THE BOARD OF ELECTROLYSIS EXAMINERS TO HOLD AND USE FUNDS, TO CLARIFY CONTINUING EDUCATION REQUIREMENTS, AND TO AFFECT CERTAIN FEES.

With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 988 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE AVERASBORO TOWNSHIP TOURISM DEVELOPMENT AUTHORITY.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 841 A BILL TO BE ENTITLED AN ACT TO ENSURE THAT THE RESOURCES OF THE PROGRAM EVALUATION DIVISION ARE UTILIZED EFFECTIVELY BY THE GENERAL ASSEMBLY, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 826 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

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 _____.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 813 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE DEPARTMENT OF CULTURAL RESOURCES AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY VARIOUS REVENUE ENHANCEMENTS AND POTENTIAL SAVINGS AT STATE HISTORIC SITES AND MUSEUMS, THE STATE ZOO, STATE PARKS, AND STATE AQUARIUMS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

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
House Committee on Finance

Minutes

~

June 20, 2012

The House Committee on Finance met on Wednesday, June 20, 2012, at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Folwell, Setzer, and Starnes; Vice-Chairs McComas and Lewis; and Representatives K. Alexander, Brawley, Carney, Cotham, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, T. Moore, Ross, Saine, Samuelson, Stam, Stone, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, Young Bae and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Starnes called the meeting to order and recognized Representative Howard to present **HB 989, AN ACT TO LIMIT ELIGIBILITY FOR PERMANENT REGISTRATION PLATES TO GOVERNMENTAL ENTITIES, AND TO REFORM THE PROCESS BY WHICH ELIGIBLE ENTITIES APPLY FOR AND ARE ISSUED PERMANENT REGISTRATION PLATES, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE BASED ON RECOMMENDATIONS FROM THE PROGRAM EVALUATION DIVISION, BUT TO CONTINUE TO ALLOW CIVIL AIR PATROLS, INCORPORATED EMERGENCY RESCUE SQUADS, RURAL FIRE DEPARTMENTS, AND LOCAL CHAPTERS OF THE AMERICAN NATIONAL RED CROSS TO BE ELIGIBLE FOR PERMANENT REGISTRATION PLATES.** Representative Howard moved for a favorable report to the, unfavorable to the original bill. Motion passed.

The next matter of business was **SB 647, AN ACT TO PROVIDE FOR THE CREATION OF MUTUAL INSURANCE HOLDING COMPANIES AND TO CHANGE THE TIME PERIOD FOR FIRE CODE INSPECTIONS OF PUBLIC BUILDINGS.** Representative Samuelson moved for a favorable report. Motion passed.

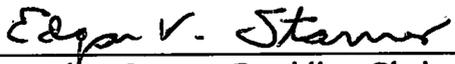
The next matter of business was **HB 1052, AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS LIEN AND PAYMENT BOND LAWS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S MECHANICS LIENS ON REAL PROPERTY COMMITTEE.** Representative McGee moved to have the PCS before the committee for discussion. Representative Stam moved for a favorable report to the PCS, unfavorable to the original bill. Motion passed.

The next matter of business was SB 444, AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS.

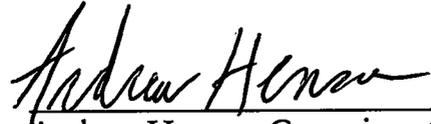
Representative Folwell moves to amend the bill, to be rolled into a PCS. Motion carried.

Representative Howard moved for a favorable report to the PCS, unfavorable to the original bill. Motion passed.

There being no further business presently before the Committee, the meeting adjourned at 9:50 am.



Rep. Edgar Starnes, Presiding Chair



Andrew Henson, Committee Clerk

AGENDA
House Finance Committee

Wednesday, June 20, 2012
Room 544 LOB
8:30 a.m.

Chaired by: Representative Edgar Starnes

Call to Order

Introduction of Pages

Bills:

~~HB 989 Permanent License Plates~~ ✓

~~Representative Howard~~

SB 647 Mutual Insurance Holding Companies

Representative Murry

Heather

HB 1052 Mechanics Liens/Payment Bond Reforms > PCS ✓

Representative Stevens

~~SB 682 Tax Deduction for Sharing Health Care Costs~~

~~Senator Hunt~~

Pulled

~~SB 444 Nonappropriated Capital Projects~~ ✓

~~Senator Hartsell~~

~~HB 958 NC Zoo Public-Private Partnership~~

~~Representative Moffit~~

Geog

HB 1179 Indian Cultural Center/Terminate Lease

Representatives Graham, Pierce, Pridgen, Moore

Trina

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE _____

DATE: _____

Room: _____

*Name: Hattie Neumann Felix Allen

County: Mechlenburg Wake

Sponsor: Joe Hachney Rep. Carney

*Name: Graham Blossom

County: New Hanover

Sponsor: Danny McLomas

*Name: Sarah Ford

County: Wake

Sponsor: Rosa Gill

*Name: William Cheung

County: Alexander

Sponsor: Mark Hollo

*Name: Elizabeth Robins

County: Forsyth

Sponsor: Dale Folwell

House Sgt-At Arms:

1. Name: John Brandon

4. Name: Carl Morrello

2. Name: Doug Harris

5. Name: _____

Name: Young Bae

6. Name: _____

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Finance

DATE: 6/20/12 Room: 643

*Name: <u>Mimi McCarthy</u>	<u>Odum Williford</u>
County: <u>Pitt</u>	<u>Orange</u>
Sponsor: <u>Warren, E.</u>	<u>Hackney</u>
*Name: <u>Edward Landi</u>	<u>Erin Brooks</u>
County: <u>wake</u>	<u>Wake</u>
Sponsor: <u>Parfitt, D.</u>	<u>Sager</u>
*Name: <u>Jackson Kaplan</u>	<u>Sam Devine</u>
County: <u>Wake</u>	<u>Gaston</u>
Sponsor: <u>Tillis</u>	<u>Hastings</u>
*Name: <u>Diamond Black</u>	
County: <u>Guilford</u>	
Sponsor: <u>Alma Adams</u>	
*Name: <u>Jaclyn Kempf</u>	
County: <u>Mecklenburg</u>	
Sponsor: <u>Hastings</u>	

House Sgt-At Arms:

1. Name: Fred Hines

4. Name: Carmello. Morello.

2. Name: John Brandon

5. Name: _____

3. Name: Young Bae

6. Name: _____

VISITOR REGISTRATION SHEET

Finance

6/20/12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>David Jones</i>	<i>NC Zoo DENR</i>
<i>Cameron Erin</i>	<i>Gov. Office</i>
<i>Susanna Hailey</i>	<i>KAL Gates</i>
<i>CHRIS DICCON</i>	<i>NCWRI</i>
<i>Stuart Booth's</i>	<i>Wood and Smith</i>
<i>Matthe Hill'Connell</i>	<i>Carolina's Healthcare System</i>
<i>Allison Waller</i>	<i>NEISON MULLINS</i>
<i>Joy Hicks</i>	<i>NCDAACS</i>
<i>Kent Pelerton</i>	<i>NCDAACS</i>
<i>Cheryl Turner</i>	<i>NC Zoo Society</i>
<i>Ed Johnson Jr.</i>	<i>NC Zoo Society</i>

VISITOR REGISTRATION SHEET

Finance
Name of Committee

6/20/12
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Henry Jones	Jordan Price
David Knight	NC DENR
Rose Williams	NCDOI
Debbie Walker	" "
Weldon Jones	Jordan, Price
DAVID BARNES	PS
Jack Cooke	NCDOI
Kara Weishaar	SA
Michelle Frazier	MF+S
Joanne Stevens	NCNA
Jack Cogswort	Zoo Society

VISITOR REGISTRATION SHEET

Finance

6/20/12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

K. Bestman	TSS
Dave Smith	CAAC
George Smith	Wm
	ca
Doug Lester	NCSTA
Jerry Pearce	NCSTA
Regie Holby	THE Longmire Group
Kathryn Westcott	AZEC/NC
Courtney Westcott	Visitor
Barbara Conlan	B&B
Sarah Sands	Wm

VISITOR REGISTRATION SHEET

Finance

6/20/12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Amy Whited	NCMS
Chp Byg	ncms
Ken Melton	K. M. A.
John Bode	BCS
J. Haul	H+A
David Forre	NETA
GORTON MYERS	NCWRC
Sam Hansen	NCNA
Whitney Christensen	NCRLA

VISITOR REGISTRATION SHEET

Finance
Name of Committee

6/20/12
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

David Hedman	NC Center for Nonprofits
JERRANCO	BERAVICH UINC
Mark Teague	NCDDJ
Chris Agner	DVA
Johanna Reese	DMU
Evin Schudtpoly	UNC-Chapel Hill
MIKE Tarrott	UNCO
Charles Perusse	UNK General Adm.
Mitch Leonard	SE4NC
Steven Sawyer	Medical Mutual Raleigh, NC
Tom West	Federal Raleigh NC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 989*
PROPOSED COMMITTEE SUBSTITUTE H989-PCS70311-RV-55

Short Title: Permanent License Plates.

(Public)

Sponsors:

Referred to:

May 21, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT ELIGIBILITY FOR PERMANENT REGISTRATION PLATES TO
3 GOVERNMENTAL ENTITIES, AND TO REFORM THE PROCESS BY WHICH
4 ELIGIBLE ENTITIES APPLY FOR AND ARE ISSUED PERMANENT
5 REGISTRATION PLATES, AS RECOMMENDED BY THE JOINT LEGISLATIVE
6 PROGRAM EVALUATION OVERSIGHT COMMITTEE BASED ON
7 RECOMMENDATIONS FROM THE PROGRAM EVALUATION DIVISION, BUT TO
8 CONTINUE TO ALLOW CIVIL AIR PATROLS, INCORPORATED EMERGENCY
9 RESCUE SQUADS, RURAL FIRE DEPARTMENTS, AND LOCAL CHAPTERS OF
10 THE AMERICAN NATIONAL RED CROSS TO BE ELIGIBLE FOR PERMANENT
11 REGISTRATION PLATES.

12 The General Assembly of North Carolina enacts:

13 SECTION 1. G.S. 20-84 reads as rewritten:

14 "§ 20-84. Permanent registration plates; State Highway Patrol.

15 (a) General. – The Division may issue a permanent registration plate for a motor
16 vehicle owned by one of the ~~persons~~entities authorized to have a permanent registration plate
17 in this section. To obtain a permanent registration plate, ~~a person~~an authorized representative
18 of the entity must provide proof of ownership, provide proof of financial responsibility as
19 required by G.S. 20-309, and pay a fee of six dollars (\$6.00). A permanent plate issued under
20 this section may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same
21 classification. A permanent registration plate issued under this section must be a distinctive
22 color and bear the word "permanent". In addition, a permanent registration plate issued under
23 subdivision (b)(1) of this section must have distinctive color and design that is readily
24 distinguishable from all other permanent registration plates issued under this section. Every
25 eligible entity that receives a permanent registration plate under this section shall ensure that
26 the permanent registration plate is registered under a single name. That single name shall be the
27 full legal name of the eligible entity.

28 (b) Permanent Registration Plates. – The Division may issue permanent plates for the
29 following motor vehicles:

- 30 (1) A motor vehicle owned by the State or one of its agencies.
31 (2) A motor vehicle owned by a county, city or town.
32 (3) A motor vehicle owned by a board of education.
33 (4) ~~A motor vehicle owned by an orphanage.~~
34 (5) A motor vehicle owned by the civil air patrol.



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- 1 (6) A motor vehicle owned by an incorporated emergency rescue squad.
2 ~~(7) A motor vehicle owned by an incorporated REACT ("Radio Emergency~~
3 ~~Association of Citizen Teams") Team.~~
4 ~~(8) A motor vehicle owned by a person and used exclusively in the support of a~~
5 ~~disaster relief effort.~~
6 ~~(9) A bus owned by a church and used exclusively for transporting individuals~~
7 ~~to Sunday school, to church services, and to other church related activities.~~
8 (10) A motor vehicle owned by a rural fire department, agency, or association.
9 ~~(11) A motor vehicle in the form of a mobile X-ray unit operated exclusively in~~
10 ~~this State for the purpose of diagnosis, treatment, and discovery of~~
11 ~~tuberculosis, and owned by the North Carolina Tuberculosis Association,~~
12 ~~Incorporated, or by a local chapter or association of the North Carolina~~
13 ~~Tuberculosis Association, Incorporated.~~
14 (12) A motor vehicle owned by a local chapter of the American National Red
15 Cross and used for emergency or disaster work.
16 ~~(13) A motor vehicle owned by a sheltered workshop recognized or approved by~~
17 ~~the Division of Vocational Rehabilitation Services.~~
18 ~~(14) A motor vehicle owned by a nonprofit agency or organization that provides~~
19 ~~transportation for or operates programs subject to and approved in~~
20 ~~accordance with standards adopted by the Commission for Mental Health~~
21 ~~and Human Services.~~
22 ~~(15) A bus or trackless trolley owned by a city and operated under a franchise~~
23 ~~authorizing the use of city streets. This subdivision does not apply to a bus~~
24 ~~or trackless trolley operated under a franchise authorizing an intercity~~
25 ~~operation.~~
26 ~~(16) A trailer owned by a nationally chartered charitable organization and used~~
27 ~~exclusively for parade floats and for transporting vehicles and structures~~
28 ~~used only in parades.~~
29 (17) A motor vehicle owned by a community college. A community college
30 vehicle purchased with State equipment funds shall be issued a permanent
31 registration plate with the same distinctive color and design as a permanent
32 registration plate issued under subdivision (1) of this subsection.

33 (c) State Highway Patrol. – In lieu of all other registration requirements, the
34 Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars
35 (\$6.00) per registration plate, a sufficient number of regular registration plates of the same
36 letter prefix and in numerical sequence beginning with number 100 to meet the requirements of
37 the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol.
38 The commander of the Patrol shall, when such plates are assigned, issue to each member of the
39 State Highway Patrol a registration plate for use upon the Division vehicle assigned to the
40 member pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle
41 operated by the Patrol. An index of such assignments of registration plates shall be kept at each
42 State Highway Patrol radio station and a copy of it shall be furnished to the registration division
43 of the Division. Information as to the individual assignments of the registration plates shall be
44 made available to the public upon request to the same extent and in the same manner as regular
45 registration information. The commander, when necessary, may reassign registration plates
46 provided that the reassignment shall appear upon the index required under this subsection
47 within 20 days after the reassignment.

48 (d) Revocation. – The Division may revoke all permanent registration plates issued to
49 eligible entities for vehicles that are 90 days or more past due for a vehicle inspection, as
50 required by G.S. 20-183.4C. This subsection does not limit or restrict the authority of the
51 Division to revoke permanent registration plates pursuant to other applicable law."

1 **SECTION 2.** G.S. 117-33 reads as rewritten:

2 "**§ 117-33. Declared public agency of State; taxes and assessments.**

3 A telephone membership corporation heretofore or hereafter organized under this Article
4 shall be, and is hereby declared to be a public agency, and shall have within its limits for which
5 it was formed the same rights as any other political subdivision of the State, and all property
6 owned by said telephone membership corporation and used exclusively for the purpose of said
7 corporation shall be held in the same manner and subject to the same taxes and assessments as
8 property owned by any county or municipality of the State so long as said property is owned by
9 said telephone membership corporation and is used for the purposes for which the corporation
10 was formed. Notwithstanding the foregoing, a telephone membership corporation shall not be
11 eligible to receive a permanent registration plate issued under G.S. 20-84."

12 **SECTION 3.** Except for State entities issued permanent registration plates under
13 G.S. 20-84(b)(1), the Division of Motor Vehicles shall cancel all permanent registration plates
14 issued to non-State entities and reissue permanent registration plates with a new design to
15 eligible non-State entities by January 15, 2013. The Division shall determine the new design of
16 the permanent registration plates reissued to eligible non-State entities.

17 **SECTION 4.** This act becomes effective July 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 647
Insurance Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S647-PCS15240-RG-26

Short Title: Mutual Insurance Holding Companies.

(Public)

Sponsors:

Referred to:

April 19, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE CREATION OF MUTUAL INSURANCE HOLDING
3 COMPANIES AND TO CHANGE THE TIME PERIOD FOR FIRE CODE
4 INSPECTIONS OF PUBLIC BUILDINGS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 10 of Chapter 58 of the General Statutes is amended by
7 adding a new Part to read:

8 "Part 8. Mutual Insurance Holding Companies.

9 "§ 58-10-275. Definitions.

10 The following definitions apply in this Part:

- 11 (1) Affiliated. – Defined in G.S. 58-19-5.
12 (2) Control. – Defined in G.S. 58-19-5.
13 (3) Domestic mutual insurance company. – An insurance company organized on
14 a mutual plan and incorporated under the laws of North Carolina.
15 (4) Interested person. – With respect to another person, includes any of the
16 following:
17 a. Any affiliated person.
18 b. Any member of the immediate family of any natural person who is
19 an affiliated person of such company.
20 c. Any person or partner or employee of any person who at any time
21 since the beginning of the last two completed fiscal years of such
22 company has acted as legal counsel for such company.
23 d. Any natural person whom the Commissioner by order shall have
24 determined to be an interested person by reason of having had, at any
25 time since the beginning of the last two completed fiscal years of
26 such company, a material business or professional relationship with
27 such company or with the principal executive officer of such
28 company.
29 (5) Intermediate holding company. – A holding company that is a subsidiary of
30 a mutual insurance holding company or part of a holding company system
31 controlled by a mutual insurance holding company subject to the terms and
32 conditions of Article 19 of this Chapter and that either directly or through a
33 subsidiary intermediate holding company has one or more subsidiary



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- 1 reorganized insurance companies of which a majority of the voting shares of
2 the capital stock would otherwise have been required by this section to be at
3 all times owned by the mutual insurance holding company.
- 4 (6) Limited application. – An application by a domestic mutual insurance
5 company for reorganization to a mutual insurance holding company which
6 will hold, at all times, one hundred percent (100%) of the stock of its
7 insurance subsidiaries.
- 8 (7) Majority of the voting shares of the capital stock of the reorganized
9 insurance company. – Shares of the capital stock of a reorganized insurance
10 company which carry the right to cast a majority of the votes entitled to be
11 cast by all of the outstanding shares of the capital stock of the reorganized
12 insurance company for the election of directors and on all other matters
13 submitted to a vote of the shareholders of the reorganized insurance
14 company.
- 15 (8) Member of the immediate family. – Any parent, spouse of a parent, child,
16 spouse of a child, spouse, brother, or sister, including step and adoptive
17 relationships.
- 18 (9) Mutual insurance holding company. – A holding company organized on a
19 mutual plan and incorporated under the laws of North Carolina, resulting
20 from the reorganization of a domestic mutual insurance company pursuant to
21 this Part, with one or more stock insurance holding company subsidiaries or
22 stock insurance company subsidiaries.
- 23 (10) Plan of reorganization. – A plan to reorganize a domestic mutual insurance
24 company by forming a mutual insurance holding company.
- 25 (11) Standard application. – An application by a domestic mutual insurance
26 company for reorganization to a mutual insurance holding company which
27 may sell interests in its subsidiaries to third parties.
- 28 (12) Stock. – Any security evidencing an equity interest in the issuing entity.
- 29 (13) Stock offering. – Any proposed sale, exchange, transfer, or other change of
30 ownership of stock or of securities convertible into or exchangeable or
31 exercisable for stock. For the purposes of this Article, "stock offering" shall
32 not include any of the following:
- 33 a. An offering of preferred stock which is not convertible or
34 exchangeable into common stock and which has no ordinary voting
35 rights.
- 36 b. A transfer of stock among any of the following:
- 37 1. A mutual insurance holding company.
- 38 2. An insurance company subsidiary of a mutual insurance
39 holding company.
- 40 3. An intermediate holding company subsidiary of a mutual
41 insurance holding company.
- 42 4. An insurance company subsidiary of an intermediate holding
43 company subsidiary to a mutual insurance holding company.
- 44 (14) Subsidiary. – Defined in G.S. 58-19-5.

45 **"§ 58-10-280. General provisions.**

- 46 (a) A domestic mutual insurance company, upon approval of the Commissioner, may
47 reorganize by forming an insurance holding company based upon a mutual plan and by
48 continuing the corporate existence of the reorganizing insurance company as a stock insurance
49 company. If the Commissioner, after a public comment period as provided in G.S. 58-10-285,
50 or, if applicable, a public hearing, is satisfied that the interests of the policyholders are properly
51 protected and that the plan of reorganization is fair and equitable to the policyholders, the

1 Commissioner may approve the proposed plan of reorganization and may require as a condition
2 of approval such modifications of the proposed plan of reorganization as the Commissioner
3 finds necessary for the protection of the policyholders' interests. The Commissioner may retain
4 consultants as provided in G.S. 58-10-285 to assist in the review of the proposed plan. The
5 Commissioner shall retain jurisdiction over a mutual insurance holding company organized
6 under this Part to assure that policyholder interests are protected. All of the initial shares of the
7 capital stock of the reorganized insurance company shall be issued to the mutual insurance
8 holding company. The membership interests of the policyholders of the reorganized insurance
9 company shall become membership interests in the mutual insurance holding company,
10 pursuant to the terms and conditions of the plan of reorganization approved by the
11 Commissioner. Policyholders of the reorganized insurance company shall be members of the
12 mutual insurance holding company in accordance with the articles of incorporation and bylaws
13 of the mutual insurance holding company. The mutual insurance holding company shall at all
14 times own a majority of the voting shares of the capital stock of the reorganized insurance
15 company.

16 (b) A domestic mutual insurance company, after approval by the Commissioner, may
17 reorganize by merging its policyholders' membership interests into a mutual insurance holding
18 company formed under subsection (a) of this section and continuing the corporate existence of
19 the reorganizing insurance company as a stock insurance company subsidiary of the mutual
20 insurance holding company. If the Commissioner is satisfied that the interests of the
21 policyholders are properly protected and that the merger of interests is fair and equitable to the
22 policyholders, the Commissioner may approve the proposed merger of interests and may
23 require as a condition of approval such modifications of the proposed merger of interests as the
24 Commissioner finds necessary for the protection of the policyholders' interests. The
25 Commissioner may retain consultants as provided in G.S. 58-10-285. The Commissioner has
26 jurisdiction over the mutual insurance holding company organized under this Part to assure that
27 policyholder interests are protected. All of the initial shares of the capital stock of the
28 reorganized insurance company shall be issued to the mutual insurance holding company. The
29 membership interests of the policyholders of the reorganized insurance company shall, pursuant
30 to the terms and conditions of the plan of reorganization approved by the Commissioner,
31 become membership interests in the mutual insurance holding company. Policyholders of the
32 reorganized insurance company shall be members of the mutual insurance holding company in
33 accordance with subsection (a) of this section and the articles of incorporation and bylaws of
34 the mutual insurance holding company. The mutual insurance holding company shall at all
35 times own a majority of the voting shares of the capital stock of the reorganized insurance
36 company.

37 (c) A mutual insurance holding company resulting from the reorganization of a
38 domestic mutual insurance company that was organized under Articles 7 and 8 and other
39 applicable provisions of this Chapter shall be incorporated under this Chapter. The articles of
40 incorporation and any amendments to such articles of the mutual insurance holding company
41 shall be subject to approval of the Commissioner in the same manner as those of a mutual
42 insurance company.

43 (d) A mutual insurance holding company is an insurer subject to Article 30 of this
44 Chapter and shall automatically be a party to any proceeding under Article 30 of this Chapter
45 involving an insurance company which, as a result of a reorganization under subsection (a) or
46 (b) of this section, is a subsidiary of the mutual insurance holding company. In any proceeding
47 under Article 30 of this Chapter involving the reorganized insurance company, the assets of the
48 mutual insurance holding company are deemed to be assets of the estate of the reorganized
49 insurance company for purposes of satisfying the claims of the reorganized insurance
50 company's policyholders. A mutual insurance holding company shall not dissolve or liquidate

1 without the approval of the Commissioner or as ordered by the court pursuant to Article 30 of
2 this Chapter.

3 (e) G.S. 58-10-10 and G.S. 58-10-12 are not applicable to a reorganization or merger of
4 interests under this Part. G.S. 58-10-10 and G.S. 58-10-12 are applicable to demutualization of
5 a mutual insurance holding company that resulted from the reorganization of a domestic mutual
6 insurance company organized under this Chapter as if the mutual insurance holding company
7 was a mutual insurance company.

8 (f) A membership interest in a domestic mutual insurance holding company shall not
9 constitute a security as defined in Chapter 78A of the General Statutes.

10 (g) The majority of the voting shares of the capital stock of the reorganized insurance
11 company, which is required by this section to be at all times owned by a mutual insurance
12 holding company, shall not be conveyed, transferred, assigned, pledged, subjected to a security
13 interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance
14 holding company or intermediate holding company. Any conveyance, transfer, assignment,
15 pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in, or on the
16 majority of the voting shares of the reorganized insurance company is a violation of this section
17 and shall be void in inverse chronological order of the date of such conveyance, transfer,
18 assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation, as to
19 the shares necessary to constitute a majority of such voting shares. The majority of the voting
20 shares of the capital stock of the reorganized insurance company shall not be subject to
21 execution and levy as provided in Chapter 1 of the General Statutes. The shares of the capital
22 stock of the surviving or new company resulting from a merger or consolidation of two or more
23 reorganized insurance companies or two or more intermediate holding companies that were
24 subsidiaries of the same mutual insurance holding company are subject to the same
25 requirements, restrictions, and limitations to which the shares of the merging or consolidating
26 reorganized insurance companies or intermediate holding companies were subject by this
27 section prior to the merger or consolidation. The ownership of a majority of the voting shares
28 of the capital stock of the reorganized insurance company that are required by this section to be
29 at all times owned by a parent mutual insurance holding company includes indirect ownership
30 through one or more intermediate holding companies in a corporate structure approved by the
31 Commissioner. However, indirect ownership through one or more intermediate holding
32 companies shall not result in the mutual insurance holding company owning less than the
33 equivalent of a majority of the voting shares of the capital stock of the reorganized insurance
34 company. The Commissioner shall have jurisdiction over an intermediate holding company as
35 if it were a mutual insurance holding company.

36 (h) The applicant's articles of incorporation or bylaws, as appropriate, shall require a
37 policyholder vote of approval of the reorganization by a two-thirds majority of the domestic
38 mutual insurance company's policyholders voting on it in person, by proxy, or by mail at a
39 meeting called for the purpose of voting on the reorganization.

40 **"§ 58-10-285. Application; contents; process.**

41 (a) An application shall be designated as either a limited application or a standard
42 application. The filing of a limited application shall not preclude the subsequent filing of an
43 application for approval of an initial sale of stock as provided in G.S. 58-10-315.

44 (b) The application shall be filed in triplicate with the Commissioner and shall include
45 the following items:

46 (1) Designation as a limited or standard application.

47 (2) A plan of reorganization as set forth in G.S. 58-10-290.

48 (3) A plan to obtain the approval of the policyholders in accordance with this
49 Part and the applicant's articles of incorporation and bylaws.

50 (4) A copy of the mutual insurance holding company's proposed articles of
51 incorporation and bylaws specifying all membership rights.

- 1 (5) The names, addresses, and occupational information of all corporate officers
2 and members of the initial mutual insurance holding company board of
3 directors.
- 4 (6) Information sufficient to demonstrate that the financial condition of the
5 applicant will not be diminished upon reorganization.
- 6 (7) A copy of the proposed articles of incorporation and bylaws for any
7 insurance company subsidiary or intermediate holding company subsidiary.
- 8 (8) A "Form A" filing as described in Chapter 11 of Title 11 of the North
9 Carolina Administrative Code.
- 10 (9) A statement that the application is in compliance with all pertinent North
11 Carolina General Statutes and Administrative Rules and that the
12 requirements for a plan of reorganization have been fulfilled.
- 13 (10) An index demonstrating wherein the application information supplied in
14 compliance with this subsection is found.
- 15 (11) The applicable fee required by subsection (f) of this section.
- 16 (12) Any other information requested by the Commissioner at any time during
17 the course of proceedings.

18 (c) Upon receipt and review by the Commissioner of all information provided pursuant
19 to subsection (b) of this section, the Commissioner may establish a period during which the
20 Department will receive and consider public comments on the proposed reorganization. The
21 Commissioner may inform the public of the limited or standard application in a manner deemed
22 appropriate by the Commissioner and may hold a public hearing concerning the application.

23 (d) The Commissioner may contract, at the expense of the person filing the application,
24 with any attorneys, actuaries, economists, accountants, consultants, or other professional
25 advisors not otherwise a part of the Commissioner's staff to assist the Commissioner in
26 reviewing the application. These contracts are personal professional service contracts exempt
27 from Articles 3 and 3C of Chapter 143 of the General Statutes.

28 (e) The expenses of mailing any notices and other materials required by this section
29 shall be borne by the person filing the application.

30 (f) An applicant filing a limited application under this section shall submit with the
31 application under subsection (b) of this section an application fee of two hundred fifty dollars
32 (\$250.00). An applicant filing a standard application under this section shall submit with the
33 application under subsection (b) of this section an application fee of five hundred dollars
34 (\$500.00).

35 **§ 58-10-290. Plan of reorganization.**

- 36 (a) A limited application plan of reorganization shall include the following provisions:
- 37 (1) Establishing a mutual insurance holding company with at least one stock
38 insurance company subsidiary or one intermediary stock holding company
39 with a stock insurance company subsidiary, the shares of which shall be held
40 exclusively by the mutual insurance holding company.
- 41 (2) Protecting the interests of existing policyholders.
- 42 (3) Ensuring immediate membership in the mutual insurance holding company
43 of all existing policyholders of the reorganizing domestic mutual insurance
44 company.
- 45 (4) Describing a plan providing for membership interests of future
46 policyholders.
- 47 (5) Describing the number of members of the board of directors of the mutual
48 insurance holding company required to be policyholders.
- 49 (6) Demonstrating that, in the event of proceedings under Article 30 of this
50 Chapter involving a stock insurance company subsidiary of the mutual
51 insurance holding company which resulted from the reorganization of a

- 1 domestic mutual insurance company, the assets of the mutual insurance
2 holding company will be available to satisfy the policyholder obligations of
3 the stock insurance company.
- 4 (7) Describing how any accumulation or prospective accumulation of earnings
5 by the mutual insurance holding company in excess of that determined by
6 the board of directors of the mutual insurance holding company to be
7 necessary shall inure to the exclusive benefit of the policyholders of its
8 insurance company subsidiaries who are members.
- 9 (8) Describing the nature and content of the annual report and financial
10 statement to be sent to each member.
- 11 (9) Describing any other relevant matters the applicant deems appropriate.
- 12 (b) A standard application plan of reorganization shall include the following provisions:
- 13 (1) Establishing a mutual insurance holding company with at least one stock
14 insurance company subsidiary or one wholly owned intermediate stock
15 holding company with a stock insurance company subsidiary, the shares of
16 which shall be held exclusively by the wholly owned intermediate holding
17 company.
- 18 (2) Protecting the interests of existing policyholders.
- 19 (3) Ensuring immediate membership in the mutual insurance holding company
20 of all existing policyholders of the reorganizing domestic mutual insurance
21 company.
- 22 (4) Providing for membership interests of future policyholders.
- 23 (5) Describing the number of members of the board of directors of the mutual
24 insurance holding company required to be policyholders.
- 25 (6) Demonstrating that, in the event of proceedings under Article 30 of this
26 Chapter involving a stock insurance company subsidiary of the mutual
27 insurance holding company which resulted from the reorganization of a
28 domestic mutual insurance company, the assets of the mutual insurance
29 holding company will be available to satisfy the policyholder obligations of
30 the stock insurance company.
- 31 (7) Describing how any accumulation or prospective accumulation of earnings
32 by the mutual insurance holding company in excess of that determined by
33 the board of directors of the mutual insurance holding company to be
34 necessary shall inure to the exclusive benefit of the policyholders of its
35 insurance company subsidiaries who are members.
- 36 (8) Describing the nature and content of the annual report and financial
37 statement to be sent to each member.
- 38 (9) Describing the applicant's plan for a stock offering in accordance with the
39 provisions of G.S. 58-10-315.
- 40 (10) Describing any other relevant matters the applicant deems appropriate.
- 41 (c) With regard to either a limited or standard application, the plan of reorganization
42 submitted to the Commissioner shall demonstrate the following:
- 43 (1) Policyholder interests are properly preserved and protected.
- 44 (2) The plan is fair and equitable to policyholders.
- 45 (3) The financial condition of the applicant will not be diminished.
- 46 **§ 58-10-295. Powers of the Commissioner.**
- 47 (a) The Commissioner shall at all times retain jurisdiction over the mutual insurance
48 holding company, its intermediate holding company subsidiaries with stock insurance company
49 subsidiaries, and its stock insurance company subsidiaries.
- 50 (b) Following any public comment period or hearing pursuant to G.S. 58-10-285, the
51 Commissioner by order shall approve, conditionally approve, or deny an application. The

1 Commissioner may require, as a condition of approval of the proposed reorganization,
2 modifications of the proposed plan of reorganization that the Commissioner finds necessary.
3 The applicant shall accept the required modifications by filing appropriate amendments to the
4 proposed plan of reorganization with the Commissioner within 30 days of the date of the
5 Commissioner's order requiring the modifications. If the applicant does not accept the required
6 modifications by failing to file the required amendments to the proposed plan of reorganization
7 within 30 days, the proposed reorganization shall be deemed denied.

8 (c) An approval or conditional approval of a plan of reorganization shall expire if the
9 reorganization is not completed within 210 days after the approval or conditional approval
10 unless the time period is extended by the Commissioner upon a showing of good cause.

11 (d) The Commissioner may revoke approval or conditional approval of an applicant's
12 plan of reorganization in the event the Commissioner finds the applicant has failed to comply
13 with the plan of reorganization. The Commissioner may compel completion of a plan of
14 reorganization unless the plan is abandoned in its entirety, in accordance with the applicant's
15 provisions for governance.

16 (e) Upon completion of all elements of a plan of reorganization, the applicant shall
17 provide a notice of completion to the Commissioner.

18 **"§ 58-10-300. Special financial requirements.**

19 (a) Mutual insurance holding companies and their insurance company subsidiaries and
20 affiliates shall comply with the provisions of Article 19 of this Chapter except as expressly
21 provided in this Part.

22 (b) When a mutual insurance holding company acquires or plans to acquire more than
23 fifty percent (50%) of a stock insurance company, the mutual insurance holding company shall
24 submit to the Commissioner a plan describing any membership interests of policyholders.

25 (c) Each mutual insurance holding company shall supply to the Commissioner, by April
26 1 of each year, an annual statement consisting of the following:

27 (1) An income statement.

28 (2) A balance sheet.

29 (3) A cash flow statement.

30 (4) Complete information on the status of any closed block formed as a part of a
31 plan of reorganization.

32 (5) An investment plan covering all assets.

33 (6) A statement disclosing any intention to pledge, borrow against, alienate,
34 hypothecate, or in any way encumber the assets of the mutual insurance
35 holding company.

36 (d) At least fifty percent (50%) of the net worth of the mutual insurance holding
37 company, based upon generally accepted accounting practices, shall be invested in insurance
38 company subsidiaries. The Commissioner may waive the fifty percent (50%) limitation upon a
39 showing of good cause.

40 (e) No policyholder who is a member of a mutual insurance holding company shall
41 receive on account of such membership interest any payment of a policy credit, dividend, or
42 other distribution unless the payment has been approved by the Commissioner. The
43 Commissioner, if satisfied the proposed payment is fair and equitable to policyholders who are
44 members, may approve the proposed payment and may require as a condition of the approval
45 modification of the proposed payment that the Commissioner finds necessary for the protection
46 of the policyholders.

47 (f) Mutual insurance holding companies shall comply with Part 3 of this Article and
48 shall be considered a domestic insurer for the purposes of compliance with Part 3 of this
49 Article.

50 **"§ 58-10-305. Reorganization of domestic mutual insurer with mutual insurance holding**
51 **company.**

1 A domestic mutual insurance company may apply to reorganize by merging its
2 policyholders' membership interests into a mutual insurance holding company by filing with the
3 Commissioner a joint application with the mutual insurance holding company complying with
4 the provisions of G.S. 58-10-285.

5 **"§ 58-10-310. Mergers of mutual insurance holding companies.**

6 A mutual insurance holding company may apply to merge with another mutual insurance
7 holding company by filing with the Commissioner a plan of merger and complying with the
8 provisions of Article 19 of this Chapter.

9 **"§ 58-10-315. Stock offerings.**

10 (a) No stock offering by a mutual insurance holding company, an insurance company
11 subsidiary of a mutual insurance holding company, an intermediate holding company
12 subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an
13 intermediate holding company subsidiary to a mutual insurance holding company shall occur
14 without the prior approval of the Commissioner.

15 (b) Every application for approval of a stock offering shall contain the following
16 information:

- 17 (1) A description of the stock intended to be offered by the applicant, including
18 a description of all shareholder rights.
- 19 (2) The total number of shares authorized to be issued, the estimated number the
20 applicant requests permission to offer, and the intended date or range of
21 dates for the offer.
- 22 (3) A justification for a uniform planned offering price or a justification of the
23 method by which the offering price will be determined.
- 24 (4) The name or names of any underwriter, syndicate member, or placement
25 agent involved and, if known, the name or names of each entity, person, or
26 group of persons to whom the stock offering is to be made who will control
27 five percent (5%) of the total outstanding class of shares, and the manner in
28 which the offer is to be tendered. If any such entity or person is a corporation
29 or business organization, the name of each member of its board of directors
30 or equivalent management team shall be provided along with the name of
31 each member of the board of directors of the offeror. Copies of any filings
32 with the United States Securities and Exchange Commission disclosing
33 intended acquisitions of the stock shall be included in the application.
- 34 (5) A description of stock subscription rights to be afforded members of the
35 mutual insurance holding company in conjunction with the stock offering.
- 36 (6) A detailed description of all expenses to be incurred in conjunction with the
37 stock offering.
- 38 (7) An explanation of how funds raised by the stock offering are to be used.
- 39 (8) Any other information requested by the Commissioner.

40 (c) No application regarding a planned stock offering shall be approved unless the plan
41 contains the following provisions:

- 42 (1) Prohibiting officers, directors, and insiders of the mutual insurance holding
43 company and its subsidiaries and affiliates from purchase or ownership of
44 shares of the stock offering, or issuance of stock options to or for the benefit
45 of such officers, directors, and insiders, in excess of five percent (5%) of the
46 stock offering. The Commissioner may waive this requirement upon a
47 showing of good cause. This subdivision does not limit the rights of officers,
48 directors, and insiders from exercising subscription rights that are generally
49 accorded members of the mutual insurance holding company. However,
50 pursuant to those subscription rights, the officers, directors, and insiders of
51 the mutual insurance holding company and its subsidiaries and affiliates may

- 1 not purchase or own, in the aggregate, more than five percent (5%) of the
2 stock offering.
- 3 (2) Requiring that, after the initial stock offering, a majority of the board of
4 directors of the mutual insurance holding company be persons who are not
5 interested persons of the mutual insurance holding company or of an
6 affiliated person of the company. For purposes of this subdivision, a member
7 of the mutual insurance holding company or a policyholder of any of its
8 insurance company subsidiaries shall not be considered an "interested
9 person" or an "affiliated person." The Commissioner may waive this
10 requirement upon a showing of good cause.
- 11 (3) For the mutual insurance holding company to adopt articles of incorporation
12 prohibiting any waiver of dividends from stock subsidiaries except under
13 conditions specified in its articles of incorporation and after approval of the
14 waiver by the board of directors of the mutual insurance holding company
15 and the Commissioner.
- 16 (4) Requiring that, after the initial stock offering by an insurance company
17 subsidiary of a mutual insurance holding company, an intermediate holding
18 company subsidiary of a mutual insurance holding company, or an insurance
19 company subsidiary of an intermediate holding company subsidiary of a
20 mutual insurance holding company, the boards of directors of each insurance
21 company or intermediate holding company include at least three directors
22 who are not interested persons of the mutual insurance holding company.
23 The Commissioner may waive this requirement upon a showing of good
24 cause.
- 25 (5) Establishing, within the board of directors of the corporation offering stock,
26 a pricing committee consisting exclusively of directors who are not members
27 of management of the insurance company subsidiary whose responsibility is
28 to evaluate and approve the price of any stock offering.
- 29 (d) An insurance company subsidiary of a mutual insurance holding company, an
30 intermediate holding company subsidiary of a mutual insurance holding company, or an
31 insurance company subsidiary of an intermediate holding company subsidiary to a mutual
32 insurance holding company may issue more than one class of stock, provided, however, that the
33 issuer complies with all of the following requirements:
- 34 (1) At all times a majority of the voting stock is held by the mutual insurance
35 holding company or its subsidiary.
- 36 (2) No class of common stock may possess greater dividend or other rights than
37 the class held by the mutual insurance holding company or its subsidiary.
- 38 (e) The Commissioner may retain, at the expense of the person filing the application,
39 any attorneys, actuaries, economists, accountants, consultants, or other professional advisors
40 not otherwise a part of the Commissioner's staff to assist the Commissioner in reviewing the
41 application. These contracts are personal professional service contracts exempt from Articles 3
42 and 3C of Chapter 143 of the General Statutes.
- 43 (f) The expenses of mailing any notices and other materials required by this section
44 shall be borne by the person filing the application.
- 45 (g) Upon receipt and review by the Commissioner of all information provided under
46 this section, the Commissioner may establish a period during which the Department will
47 receive and consider public comments about the proposed offering. The Commissioner shall
48 inform the public of the offering by posting information about the application in a manner
49 deemed appropriate by the Commissioner. The Commissioner may hold a public hearing
50 concerning the application or the proposed offering. Following any public comment period or

1 hearing, if applicable, the Commissioner may approve, conditionally approve, or deny the
2 application. The Commissioner may approve the application if the following apply:

- 3 (1) The offering complies with this Part and other provisions of law.
- 4 (2) The method for establishing the price of a stock offering is consistent with
5 generally accepted market or industry practices for establishing stock
6 offering prices in similar transactions.
- 7 (3) The plan and offering will not unfairly impact the interests of members of
8 the mutual insurance holding company.

9 Nothing in this subsection shall be deemed to prohibit the filing of a registration statement
10 with the United States Securities and Exchange Commission before or concurrently with the
11 giving of notice to members.

12 (h) Notwithstanding the provisions of subsections (a) through (g) of this section, stock
13 offerings which are not an initial stock offering, and which are proposed by entities with a class
14 of securities regularly traded on the New York Stock Exchange, the American Stock Exchange,
15 or another exchange approved by the Commissioner, or designated on the National Association
16 of Securities Dealers Automated Quotations national market system (NASDAQ), may be sold
17 in accordance with the following procedure: if a mutual insurance holding company, an
18 insurance company subsidiary of a mutual insurance holding company, an intermediate holding
19 company, or an insurance company subsidiary of an intermediate holding company intends to
20 make a stock offering which would be governed by the provisions of this subsection, that entity
21 shall deliver to the Commissioner, not less than 60 days prior to the offering, a notice of the
22 planned stock offering and all of the following information:

- 23 (1) The total number of shares intended to be offered.
- 24 (2) The intended date of sale.
- 25 (3) Evidence the stock is regularly traded on one of the public exchanges
26 specified in this subsection.
- 27 (4) A record of the trading price and trading volume of the stock during the prior
28 52 weeks.

29 The Commissioner shall be deemed to have approved the sale unless, within 60 days
30 following receipt of such notice, the Commissioner issues an objection to the sale. If the
31 Commissioner issues an objection to the sale, the application process set forth in subsections
32 (a) through (g) of this section shall be followed to determine whether the Commissioner
33 approves of the proposed sale.

34 (i) Approval of a stock offering obtained under either subsection (g) or (h) of this
35 section shall expire 120 days following the date of the approval or deemed approval, except as
36 otherwise provided by order of the Commissioner.

37 (j) No prospectus, information, sales material, or sales presentation by the applicant, or
38 by any representative, agent, or affiliate of the applicant, shall contain a representation that the
39 Commissioner has endorsed the price, price range, or any other information relating to the
40 stock.

41 (k) No company making a stock offering under this section shall engage in any of the
42 following practices:

- 43 (1) Borrow funds from the mutual insurance holding company, or its
44 subsidiaries and affiliates, to finance the purchase of any portion of a stock
45 offering.
- 46 (2) Pay any commissions, "special fees," or any other special payments or
47 extraordinary compensation to officers, directors, interested persons, and
48 affiliates for arranging, promoting, aiding, or assisting in reorganization to a
49 mutual insurance holding company or for arranging, promoting, aiding,
50 assisting, or participating in the structuring and placement of a stock
51 offering.

1 (3) Enter into an understanding or agreement transferring legal or beneficial
2 ownership of stock to another person to avoid the requirements of this Part.

3 **"§ 58-10-320. Regulation of holding company system.**

4 (a) All material transactions, as that term is defined under Part 3 of this Article,
5 between or among subsidiaries and affiliates of the mutual insurance holding company, must,
6 after review and exercise of director duties by the directors of the mutual insurance holding
7 company, be approved by a majority of the directors of the mutual insurance holding company
8 as being fair and reasonable.

9 (b) If the Commissioner determines that activities within a mutual insurance holding
10 company system have violated provisions of the General Statutes of North Carolina or the
11 North Carolina Administrative Code or acted to circumvent requirements or prohibitions
12 contained in the General Statutes or Administrative Code, the Commissioner may prohibit or
13 order rescission of any transaction relating to those activities.

14 **"§ 58-10-325. Reporting of stock ownership and transactions.**

15 (a) Any director or officer of a mutual insurance holding company, its subsidiary, or
16 affiliate, who acquires directly or indirectly the beneficial ownership of any security issued by
17 any intermediate holding company or any insurance company subsidiary of an intermediate
18 holding company or mutual insurance holding company shall, within 15 days following the
19 transaction, file with the Commissioner a statement of the transaction on the form prescribed by
20 the Commissioner.

21 (b) A mutual insurance holding company, and its subsidiaries and affiliates, shall file
22 with the Commissioner, within 15 days of receipt, copies of Form 3, Form 4, and Schedule
23 13D, or any equivalent filings, such filings made under the federal Securities Exchange Act of
24 1934, as amended."

25 **SECTION 2.** G.S. 58-31-40 reads as rewritten:

26 **"§ 58-31-40. Commissioner to inspect State property.**

27 (a) The Commissioner shall, ~~at least once every year~~ shall, as often as is required in the
28 fire code adopted by the North Carolina Building Code Council or more often if the
29 Commissioner considers it necessary, visit, inspect, and thoroughly examine every State
30 property to analyze and determine its protection from fire, including the property's occupants or
31 contents. The Commissioner shall notify in writing the agency or official in charge of the
32 property of any defect noted by the Commissioner or any improvement considered by the
33 Commissioner to be necessary, and a copy of that notice shall be forwarded by the
34 Commissioner to the Department of Administration.

35 (b) No agency or person authorized or directed by law to select a plan or erect a
36 building comprising 20,000 square feet or more for the use of any county, city, or school
37 district shall receive and approve of the plan until it is submitted to and approved by the
38 Commissioner as to the safety of the proposed building from fire, including the property's
39 occupants or contents.

40 (c) Repealed by Session Laws 2009-474, s. 1, effective October 1, 2009."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1052*
Committee Substitute Favorable 6/13/12
PROPOSED COMMITTEE SUBSTITUTE H1052-PCS11383-TG-49

Short Title: Mechanics Liens/Payment Bond Reforms.

(Public)

Sponsors:

Referred to:

May 23, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S MECHANICS
3 LIEN, TAX LIEN, AND PAYMENT BOND LAWS, AS RECOMMENDED BY THE
4 LEGISLATIVE RESEARCH COMMISSION'S MECHANICS LIENS ON REAL
5 PROPERTY COMMITTEE.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 44A-7 reads as rewritten:

8 "§ 44A-7. Definitions.

9 Unless the context otherwise ~~requires in this Article:~~requires, the following definitions
10 apply in this Article:

11 (1) Contractor. – A person who contracts with an owner to improve real
12 property.

13 (2) First tier subcontractor. – A person who contracts with a contractor to
14 improve real property.

15 ~~(1)(3)~~ "Improve" means to Improve. – To build, effect, alter, repair, or demolish
16 any improvement upon, connected with, or on or beneath the surface of any
17 real property, or to excavate, clear, grade, fill or landscape any real property,
18 or to construct driveways and private roadways, or to furnish materials,
19 including trees and shrubbery, for any of such purposes, or to perform any
20 labor upon such improvements, and shall also mean and include any design
21 or other professional or skilled services furnished by architects, engineers,
22 land surveyors and landscape architects registered under Chapter 83A, 89A
23 or 89C of the General Statutes, and rental of equipment directly utilized on
24 the real property in making the improvement.

25 ~~(2)(4)~~ "Improvement" means all Improvement. – All or any part of any building,
26 structure, erection, alteration, demolition, excavation, clearing, grading,
27 filling, or landscaping, including trees and shrubbery, driveways, and private
28 roadways, on real property.

29 (5) Obligor. – An owner, contractor, or subcontractor in any tier who owes
30 money to another as a result of the other's partial or total performance of a
31 contract to improve real property.

32 ~~(3)(6)~~ An "owner" is a Owner. – A person who has an interest in the real property
33 improved and for whom an improvement is made and who ordered the



1 improvement to be made. "Owner" includes successors in interest of the
2 owner and agents of the owner acting within their authority.

3 ~~(4)(7) "Real property" means the Real property. – The real estate that is improved,~~
4 including lands, leaseholds, tenements and hereditaments, and improvements
5 placed thereon.

6 (8) Second tier subcontractor. – A person who contracts with a first tier
7 subcontractor to improve real property.

8 (9) Third tier subcontractor. – A person who contracts with a second tier
9 subcontractor to improve real property."

10 SECTION 2. G.S. 44A-11 reads as rewritten:

11 **"§ 44A-11. Perfecting claim of lien on real property.**

12 (a) Perfection. – A claim of lien on real property granted by this Article shall be
13 perfected as of the time provided in G.S. 44A-10 upon the filing of the claim of lien on real
14 property under G.S. 44A-12 and may be enforced pursuant to G.S. 44A-13 occurrence of all of
15 the following:

16 (1) Service of a copy of the claim of lien on real property upon the record owner
17 of the real property claimed to be subject to the claim of lien, and if the
18 claim of lien on real property is being asserted pursuant to G.S. 44A-23, also
19 upon the contractor through which subrogation is being asserted.

20 (2) Filing of the claim of lien on real property under G.S. 44A-12.

21 (b) Method of Service. – Service of the claim of lien on real property pursuant to
22 subsection (a) of this section shall not require proof of actual receipt by the listed recipient and
23 shall be complete upon the occurrence of any of the following:

24 (1) Personal delivery of a copy of the claim of lien on real property upon the
25 recipient.

26 (2) Deposit of a copy of the claim of lien on real property in a postpaid, properly
27 addressed wrapper in either of the following:

28 a. A post office or official depository under the exclusive care and
29 custody of the United States Postal Service.

30 b. An authorized depository under the exclusive care and custody of a
31 designated delivery service authorized pursuant to 26 U.S.C. §
32 7502(f)(2).

33 (c) Service Address. – For purposes of this section, a wrapper addressed to a party
34 required to be served under subdivision (1) of subsection (a) of this section shall be
35 conclusively deemed properly addressed if it uses any of the following addresses:

36 (1) The address for the party to be served listed on the permit issued for the
37 improvement.

38 (2) The address for the party to be served listed with the tax rolls for any county
39 in North Carolina.

40 (3) The address of the registered agent for the party to be served listed with the
41 North Carolina Secretary of State's office."

42 SECTION 3. G.S. 44A-12 reads as rewritten:

43 **"§ 44A-12. Filing claim of lien on real property.**

44 (a) Place of Filing. – All claims of lien on real property must be filed in the office of the
45 clerk of superior court in each county where the real property subject to the claim of lien on
46 real property is located. The clerk of superior court shall note the claim of lien on real property
47 on the judgment docket and index the same under the name of the record owner of the real
48 property at the time the claim of lien on real property is filed. An additional copy of the claim
49 of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee
50 for benefit of creditors who obtains legal authority over the real property.

1 (b) Time of Filing. – Claims of lien on real property may be filed at any time after the
2 maturity of the obligation secured thereby but not later than 120 days after the last furnishing of
3 labor or materials at the site of the improvement by the person claiming the lien.

4 (c) Contents of Claim of Lien on Real Property to Be Filed. – All claims of lien on real
5 property must be filed using a form substantially as follows:
6

7 CLAIM OF LIEN ON REAL PROPERTY
8

- 9 (1) Name and address of the person claiming the claim of lien on real property:
- 10 (2) Name and address of the record owner of the real property claimed to be
11 subject to the claim of lien on real property at the time the claim of lien on
12 real property is ~~filed~~ filed, and, if the claim of lien on real property is being
13 asserted pursuant to G.S. 44A-23, the name of the contractor through which
14 subrogation is being asserted:
- 15 (3) Description of the real property upon which the claim of lien on real
16 property is claimed: (Street address, tax lot and block number, reference to
17 recorded instrument, or any other description of real property is sufficient,
18 whether or not it is specific, if it reasonably identifies what is described.)
- 19 (4) Name and address of the person with whom the claimant contracted for the
20 furnishing of labor or materials:
- 21 (5) Date upon which labor or materials were first furnished upon said property
22 by the claimant:
- 23 (5a) Date upon which labor or materials were last furnished upon said property
24 by the claimant:
- 25 (6) General description of the labor performed or materials furnished and the
26 amount claimed therefor:
- 27 (7) I hereby certify that I have served the parties listed in paragraph two above
28 in accordance with the requirements of G.S. 44A-11.

29 _____
30 Lien Claimant

31 Filed this ____ day of ____, ____

32 _____
33 Clerk of Superior Court

34 A general description of the labor performed or materials furnished is sufficient. It is not
35 necessary for lien claimant to file an itemized list of materials or a detailed statement of labor
36 performed.

37 (d) No Amendment of Claim of Lien on Real Property. – A claim of lien on real
38 property may not be amended. A claim of lien on real property may be cancelled by a claimant
39 or the claimant's authorized agent or attorney and a new claim of lien on real property
40 substituted therefor within the time herein provided for original filing.

41 (e) Notice of Assignment of Claim of Lien on Real Property. – When a claim of lien on
42 real property has been filed, it may be assigned of record by the lien claimant in a writing filed
43 with the clerk of superior court who shall note the assignment in the margin of the judgment
44 docket containing the claim of lien on real property. Thereafter the assignee becomes the lien
45 claimant of record.

46 (f) Waiver of Right to File, Serve, or Claim ~~Liens as Consideration for Contract~~
47 ~~Against Public Policy. Liens. –~~

- 48 (1) An agreement to waive the right to file a claim of lien on real property
49 granted under this Part, or an agreement to waive the right to serve a notice
50 of claim of lien upon funds granted under Part 2 of this Article, which
51 agreement is in anticipation of and in consideration for the awarding of any

contract, either expressed or implied, for the making of an improvement upon real property under this Article is against public policy and is unenforceable. This section does not prohibit subordination or release of a lien granted under this Part or Part 2 of this Article.

(2) Lien waivers denoted as "partial" lien waivers shall not alter or waive the lien claimant's effective date for any lien claim created by this Article. The sole manner of altering or waiving the effective date is by the lien claimant's executing a document expressly denoted as a "final" lien waiver.

(3) Unless expressly stated on the lien waiver form, the lien waiver shall be construed to be conditional upon the lien claimant's actual receipt of the specified funds.

(4) Lien waivers shall be substantially in the forms set forth below. Other forms may be used, but any substantive provisions that represent variations to the statutory forms affecting the lien rights created by this Article shall be unenforceable.

(5) The provisions of this section regarding lien waivers do not apply to lien waivers or subordinations obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, as a part of any real estate or financing transactions. Nothing herein shall prevent partial or final lien waivers obtained by closing attorneys, lenders, title insurance companies, or those acting on their behalf, from containing subordination and/or release of lien agreements or from otherwise altering or modifying lien rights if agreed to by the signing parties.

(g) Partial lien waivers shall be in substantially the following form:

PARTIAL LIEN WAIVER

The undersigned lien claimant, in consideration of the sum of \$ (insert amount of payment), hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(insert description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date specified above, nor does it release claims for retention to become due at a later date, nor does it release any other claims expressly identified below:

Claims not released by this waiver:

THIS WAIVER IS/IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: _____

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(Lien Claimant)

By: _____

(h) Final lien waivers shall be in substantially the following form:

FINAL LIEN WAIVER

The undersigned lien claimant, in consideration of the final payment in the amount of \$ _____ hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to _____ (insert the name of your customer) on the job of _____ (insert the name of the owner) to the following described property:

(description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date of this lien waiver. Lien claimant, however, does hereby release any and all claims of lien for labor, materials, or services provided on or before the date of this waiver, including, but not exclusively, any amounts that may be deemed retainage. This lien waiver further waives the effective date of any lien claim created by this Article. The only claims of lien for previously provided labor, services, or materials which are not hereby released are those claims expressly identified below:

Claims not released by this waiver:

THIS WAIVER IS/IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: _____

(Lien Claimant)

By: _____

**SECTION 4. G.S. 44A-13 is amended by adding new subsections to read:
"§ 44A-13. Action to enforce claim of lien on real property.**

(d) Former Owner Not a Necessary Party to Action. – In an action brought under this section, a former owner of the improved property at the time the lien arose, who holds no ownership interest in the property at the time the action is commenced, and against whom the plaintiff seeks no relief, is not a necessary party to the action.

(e) Subsequent Purchaser and Lender Not Necessary or Proper Parties to Action Filed After Claim of Lien is Discharged. – If a claim of lien on real property filed under this Article is discharged pursuant to G.S. 44A-16(5) or G.S. 44A-16(6) prior to the filing of an action to enforce the claim of lien under G.S. 44A-13, then neither a subsequent purchaser of the real property upon which the lien is claimed nor the subsequent purchaser's lender shall be a

1 necessary or proper party to the action. However, nothing herein precludes the lien claimant
2 from asserting any claims against any party that are separate and distinct from enforcement of
3 the lien.

4 (f) Subsequent Purchaser and Lender No Longer Necessary or Proper Parties Upon
5 Discharge of Claim of Lien After Action Is Filed. – If an action to enforce a lien under
6 G.S. 44A-13 is commenced before the claim of lien is discharged pursuant to G.S. 44A-16(5)
7 or G.S. 44A-16(6), a subsequent purchaser of the real property upon which the lien is claimed
8 and the subsequent purchaser's lender shall cease to be a necessary or proper party to the action,
9 and any claim for lien enforcement asserted against the subsequent purchaser of the real
10 property upon which the lien is claimed or the subsequent purchaser's lender shall be dismissed
11 upon motion of any party upon a showing that the claim of lien was discharged pursuant to
12 G.S. 44A-16. However, nothing herein precludes the lien claimant from continuing to pursue
13 any claims against any party that are separate and distinct from enforcement of the lien.

14 (g) Bonds Prohibited From Requiring Subsequent Purchaser or Lender to Remain
15 Parties to Action After Discharge of Claim of Lien. – The fact that a subsequent purchaser of
16 the real property upon which the lien is claimed or the subsequent purchaser's lender is not a
17 party to an action to enforce a claim of lien on real property subsequent to discharge of that
18 claim of lien by the contractor under G.S. 44A-16 shall not invalidate the claim of lien under
19 this Chapter nor shall it invalidate any bond filed under G.S. 44A-16 to discharge the claim of
20 lien. Further, a bond filed under G.S. 44A-16(a)(6) shall not require that a subsequent purchaser
21 of the real property upon which the lien is claimed or the subsequent purchaser's lender remain
22 a party to an action to enforce a claim of lien after the claim of lien has been discharged
23 pursuant to G.S. 44A-16.

24 (h) Definition of "Subsequent Purchaser." – For purposes of this section, a "subsequent
25 purchaser" means a party whose record interest is protected under G.S. 47-18, including any
26 beneficiary of a deed of trust or mortgagee of that party, the priority of whose interest is
27 protected under the provisions of G.S. 47-20, and who was not the owner of the real property at
28 the time of the improvements giving rise to the lien claim as defined in G.S. 44A-7(3)."

29 **SECTION 5.** G.S. 44A-17 is repealed.

30 **SECTION 6.** G.S. 44A-18 reads as rewritten:

31 **"§ 44A-18. Grant of lien upon funds; subrogation; perfection.**

32 ~~Upon compliance with this Article:~~

33 ~~(1)(a)~~ A first tier subcontractor who furnished labor, materials, or rental equipment at the
34 site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the
35 contractor with whom the first tier subcontractor dealt and that arise out of the improvement on
36 which the first tier subcontractor worked or furnished materials.

37 ~~(2)(b)~~ A second tier subcontractor who furnished labor, materials, or rental equipment at
38 the site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the first
39 tier subcontractor with whom the second tier subcontractor dealt and that arise out of the
40 improvement on which the second tier subcontractor worked or furnished materials. A second
41 tier subcontractor, to the extent of the second tier subcontractor's lien provided in this
42 subdivision, shall also be ~~entitled to be~~ subrogated to the lien upon funds of the first tier
43 subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this
44 section and shall ~~be entitled to perfect~~ it by service of the notice of claim of lien upon funds to
45 the extent of the claim.

46 ~~(3)(c)~~ A third tier subcontractor who furnished labor, materials, or rental equipment at the
47 site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the second
48 tier subcontractor with whom the third tier subcontractor dealt and that arise out of the
49 improvement on which the third tier subcontractor worked or furnished materials. A third tier
50 subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this
51 subdivision, shall also ~~be entitled to be~~ subrogated to the lien upon funds of the second tier

1 subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first
 2 tier subcontractor with whom the second tier subcontractor dealt to the extent that the second
 3 tier subcontractor is ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to~~
 4 perfect ~~the same~~ it by service of the notice of claim of lien upon funds to the extent of the claim.

5 ~~(4)~~(d) Subcontractors more remote than the third tier who furnished labor, materials, or
 6 rental equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that
 7 are owed to the person with whom they dealt and that arise out of the improvement on which
 8 they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not
 9 be entitled to subrogation to the rights of other persons.

10 ~~(5)~~(e) The liens upon funds granted under this section shall secure amounts earned by the
 11 lien claimant as a result of having furnished labor, materials, or rental equipment at the site of
 12 the improvement under the contract to improve real property, including interest at the legal rate
 13 provided in G.S. 24-5, whether or not such amounts are due and whether or not performance or
 14 delivery is complete. In the event insufficient funds are retained to satisfy all lien claimants,
 15 subcontractor lien claimants may recover the interest due under this subdivision on a pro rata
 16 basis, but in no event shall interest due under this subdivision increase the liability of the
 17 obligor under G.S. 44A-20.

18 ~~(6)~~(f) A lien upon funds granted under this section arises, attaches, and is
 19 perfected effective immediately upon the first furnishing of labor, materials, or rental equipment
 20 at the site of the improvement by a subcontractor. Any lien upon funds granted under this
 21 section is perfected upon the giving of notice of claim of lien upon funds in writing to the
 22 obligor as provided in G.S. 44A-19 and shall be effective upon the obligor's receipt of the
 23 notice. The subrogation rights of a first, second, or third tier subcontractor to the claim of lien
 24 on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as
 25 provided in G.S. 44A-23. G.S. 44A-19.

26 (g) Until a lien claimant gives notice of a claim of lien upon funds in writing to the
 27 obligor as provided in G.S. 44A-19, any owner, contractor, or subcontractor against whose
 28 interest the lien upon funds is claimed may make, receive, use, or collect payments thereon and
 29 may use such proceeds in the ordinary course of its business."

30 SECTION 7. G.S. 44A-19 reads as rewritten:

31 "§ 44A-19. Notice of claim of lien upon funds.

32 (a) Notice of a claim of lien upon funds shall set forth all of the following information:

- 33 (1) The name and address of the person claiming the lien upon funds.
- 34 (2) A general description of the real property improved.
- 35 (3) The name and address of the person with whom the lien claimant contracted
 36 to improve real property.
- 37 (4) The name and address of each person against or through whom subrogation
 38 rights are claimed.
- 39 (5) A general description of the contract and the person against whose interest
 40 the lien upon funds is claimed.
- 41 (6) The amount of the lien upon funds claimed by the lien claimant under the
 42 contract.

43 (b) All notices of claims of liens upon funds by first, second, or third tier subcontractors
 44 must be given using a form substantially as follows:

45 NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER
 46 SUBCONTRACTOR

47 To:

48 1. _____, owner of property involved.

49 (Name and address)

50 2. _____, general contractor.

51 (Name and address)

3. _____, first tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.

4. _____, second tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.

General description of real property whereon which labor performed or material furnished:

General description of undersigned lien claimant's contract including the names of the parties thereto:

The amount of lien upon funds claimed pursuant to the above described contract:

\$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated _____

_____, Lien Claimant

(Address)

(c) All notices of claims of liens upon funds by subcontractors more remote than the third tier must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE THAN THE THIRD TIER

To:

_____, person holding funds against which lien upon funds is claimed.

(Name and Address)

General description of real property whereon which labor performed or material furnished: _____

General description of undersigned lien claimant's contract including the names of the parties thereto:

The amount of lien upon funds claimed pursuant to the above described contract:

\$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights to which he or she is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated: _____

_____, Lien Claimant

(Address)

(d) Notices of claims of lien upon funds under this section shall be served upon the obligor by personal delivery or in any manner authorized by Rule 4 of the North Carolina Rules of Civil Procedure. A copy of the notice of claim of lien upon funds shall be attached to any claim of lien on real property filed pursuant to ~~G.S. 44A-20(d)~~ or ~~G.S. 44A-23~~. G.S. 44A-20(d).

(e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real

1 property, except a notice of a claim of lien upon funds may be filed with the clerk of superior
2 court under either of the following circumstances:

3 (1) When the notice of claim of lien upon funds is attached to a claim of lien on
4 real property filed pursuant to ~~G.S. 44A-20(d)~~ or
5 ~~G.S. 44A-23~~-G.S. 44A-20(d).

6 (2) When the notice of claim of lien upon funds is filed by the obligor for the
7 purpose of discharging the claim of lien upon funds in accordance with
8 G.S. 44A-20(e).

9 (f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section
10 is not a violation of G.S. 44A-12.1."

11 **SECTION 8.** G.S. 44A-20 reads as rewritten:

12 **"§ 44A-20. Duties and liability of obligor.**

13 (a) Upon receipt of the notice of claim of lien upon funds provided for in this Article,
14 the obligor shall be under a duty to retain any funds subject to the lien or liens upon funds
15 under this Article up to the total amount of such liens upon funds as to which notices of claims
16 of lien upon funds have been received.

17 (b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the
18 obligor makes further payments to a contractor or subcontractor against whose interest the lien
19 or liens upon funds are claimed, the lien upon funds shall continue upon the funds in the hands
20 of the contractor or subcontractor who received the payment, and in addition the obligor shall
21 be personally liable to the person or persons entitled to liens upon funds up to the amount of
22 such wrongful payments, not exceeding the total claims with respect to which the notice of
23 claim of lien upon funds was received prior to payment.

24 (c) If an obligor makes a payment after receipt of notice of claim of lien on funds and
25 incurs personal liability under subsection (b) of this section, the obligor shall be entitled to
26 reimbursement and indemnification from the party receiving such payment.

27 (d) If the obligor is an owner of the property being improved, the lien claimant shall be
28 entitled to a claim of lien upon real property upon the interest of the obligor in the real property
29 to the extent of the owner's personal liability under subsection (b) of this section, which claim
30 of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through
31 G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and
32 subject to the same filing requirements and periods of limitation applicable to the contractor.
33 The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the
34 filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the
35 contractor prior to filing of the claim of lien on real property waives the subcontractor's right to
36 a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien
37 on funds under this Article. The claim of lien on real property as provided under this subsection
38 shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice
39 of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of
40 service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the
41 obligor is personally liable for the debt under subsection (b) of this section.

42 (e) A notice of claim of lien upon funds under G.S. 44A-19 may be filed by the obligor
43 with the clerk of superior court in each county where the real property upon which the filed
44 notice of claim of lien upon funds is located for the purpose of discharging the notice of claim
45 of lien upon funds by any of the methods described in G.S. 44A-16.

46 (f) A bond deposited under this section to discharge a filed notice of claim of lien upon
47 funds shall be effective to discharge any claim of lien on real property filed by the same lien
48 claimant pursuant to subsection (d) of this section or G.S. 44A-23 and shall further be effective
49 to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any
50 claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of

1 this section or G.S. 44A-23 claiming through or against the contractor or higher tier
2 subcontractors up to the amount of the bond."

3 SECTION 9. G.S. 44A-23 reads as rewritten:

4 "§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of
5 subcontractor.

6 (a) First tier subcontractor. – A first tier subcontractor, ~~who gives notice of claim of lien~~
7 ~~upon funds as provided in this Article,~~ subcontractor may, to the extent of ~~this~~ its claim, enforce
8 the claim of lien on real property of the contractor created by Part 1 of this Article. The manner
9 of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on
10 real property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien
11 on real property pursuant to G.S. 44A-12. When completing the claim of lien on real property
12 form, the subcontractor may use as the date upon which labor or materials were first or last
13 furnished on the real property either the date of the first or last furnishing of labor or materials
14 on the real property by the subcontractor making the claim or the date of the first or last
15 furnishing of labor or materials on the real property by the contractor through which the claim
16 of lien on real property is being asserted. Upon the filing of the claim of lien on real property,
17 with the notice of claim of lien upon funds attached, property and the commencement of the
18 action, no action of the contractor shall be effective to prejudice the rights of the subcontractor
19 without his written consent. A lien waiver signed by the contractor prior to commencement of
20 the action waives the subcontractor's right to a claim of lien on real property but does not affect
21 the subcontractor's rights to a claim of lien on funds under this Article.

22 (b) Second or third subcontractor. –

23 (1) A second or third tier ~~subcontractor, who gives notice of claim of lien upon~~
24 ~~funds as provided in this Article,~~ subcontractor may, to the extent of his
25 claim, enforce the claim of lien on real property of the contractor created by
26 Part 1 of Article 2 of the Chapter except when:

27 a. The owner or contractor, within 30 days following the date the
28 building permit is issued for the improvement of the real property
29 involved, involved or within 30 days following the date the
30 contractor is awarded the contract for the improvement of the real
31 property involved, whichever is later, posts on the property in a
32 visible location adjacent to the posted building permit permit, if a
33 permit is required, and files in the office of the clerk of superior court
34 in each county wherein the real property to be improved is located, a
35 completed and signed notice of contract form and the second or third
36 tier subcontractor fails to serve upon the contractor a completed and
37 signed notice of subcontract form by the same means of service as
38 described in G.S. 44A-19(d); or

39 b. After the posting and filing of a signed notice of contract and the
40 service upon the contractor of a signed notice of subcontract, the
41 contractor serves upon the second or third tier subcontractor, within
42 five days following each subsequent payment, by the same means of
43 service as described in G.S. 44A-19(d), the written notice of payment
44 setting forth the date of payment and the period for which payment is
45 made as requested in the notice of subcontract form set forth herein.

46 (2) The form of the notice of contract to be so utilized under this section shall be
47 substantially as follows and the fee for filing the same with the clerk of
48 superior court shall be the same as charged for filing a claim of lien on real
49 property:

"NOTICE OF CONTRACT

50 "(1) Name and address of the Contractor:

"(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

"(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):

"(4) Name and address of the person, firm or corporation filing this Notice of Contract:

"Dated: _____

"Contractor

"Filed this the ____ day of _____, ____.

Clerk of Superior Court"

(3) The form of the notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

"(1) Name and address of the subcontractor:

"(2) General description of the real property where-on which the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

"(3)

"(i) General description of the subcontractor's contract, including the names of the parties thereto:

"(ii) General description of the labor and material performed and furnished thereunder:

"(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

"Dated: _____

Subcontractor"

(4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real property, ~~with the notice of claim of lien upon funds attached, property~~ and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent."

SECTION 10. G.S. 44A-24 reads as rewritten:

"§ 44A-24. False statement a ~~misdemeanor~~ ~~misdemeanor~~, an unfair and deceptive trade practice, and grounds for disciplinary action against a licensed contractor or qualifying party.

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements subject to this Article or to Article 3 of this Chapter shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, then such contractor, subcontractor or other person shall be guilty of a Class 1 ~~misdemeanor~~ ~~misdemeanor~~ and shall be subject to a claim for violation of G.S. 75-1.1 by any

1 obligor, purchaser, lender who obtains a security interest in such property, title insurance
2 company insuring title to such property, or any person who otherwise would be entitled to a
3 claim of lien on real property under this Article and who suffers actual harm as a result of the
4 misrepresentation. In addition, any person who knowingly signs or directs another person to
5 sign such a written statement shall be guilty of a Class 1 misdemeanor and subject to a claim
6 for violation of G.S. 75-1.1. Upon conviction and in the event the court shall grant any
7 defendant a suspended sentence, the court may in its discretion include as a condition of such
8 suspension a provision that the defendant shall reimburse the party who suffered loss on such
9 conditions as the court shall determine are proper.

10 The elements of the offense herein stated are the furnishing of the false written statement
11 with knowledge that it is false and the subsequent or simultaneous receipt of payment from an
12 obligor or ~~purchaser, and in any purchaser by the person signing the document, a person~~
13 directing another to sign the document, or any person or entity for whom the document was
14 signed. In any criminal prosecution hereunder it shall not be necessary for the State to prove
15 that the obligor, purchaser, lender or title insurance company relied upon the false statement or
16 that any person was injured thereby.

17 In addition to the criminal sanctions and civil liabilities created by this section, conduct
18 constituting the offense herein stated and causing actual harm to any person by any licensed
19 contractor or qualifying party, as that term is used in Chapter 87 of the General Statutes, shall
20 constitute deceit and misconduct subject to disciplinary action under Chapter 87 of the General
21 Statutes, including revocation, suspension, or restriction of a license or the ability to act as a
22 qualifying party for a license."

23 SECTION 11. G.S. 44A-27 reads as rewritten:

24 "§ 44A-27. Actions on payment bonds; service of notice.

25 (a) Subject to the provision of subsection (b) hereof, any claimant who has performed
26 labor or furnished materials in the prosecution of the work required by any contract for which a
27 payment bond has been given pursuant to the provisions of this Article, and who has not been
28 paid in full therefor before the expiration of 90 days after the day on which the claimant
29 performed the last such labor or furnished the last such materials for which he claims payment,
30 may bring an action on such payment bond in his own name, to recover any amount due him
31 for such labor or materials and may prosecute such action to final judgment and have execution
32 on the judgment.

33 (b) Any claimant who has a direct contractual relationship with any subcontractor but
34 has no contractual relationship, express or implied, with the contractor may bring an action on
35 the payment bond only if he has given written notice of claim on payment bond to the
36 contractor within 120 days from the date on which the claimant performed the last of the labor
37 or furnished the last of the materials for which he claims payment, stating with substantial
38 accuracy the amount claimed and the name of the person for whom the work was performed or
39 to whom the material was furnished. The contractor shall furnish a copy of the payment bond
40 required by this Article within seven calendar days in response to a written request served by
41 any claimant in accordance with the provisions of G.S. 44A-27(c). Subject to the exception set
42 forth in subsection (e) of this section, unless the contractor has failed to satisfy its obligation to
43 timely furnish a copy of the payment bond to a claimant upon proper request by the claimant,
44 the claim of such a claimant shall not include labor or materials provided more than 75 days
45 prior to the claimant's service, in accordance with subsections (c) and (d) of this section, of its
46 written notice of public subcontract to the contractor.

47 (c) ~~The notices~~ required by and any requests for copy of payment bond
48 referenced by subsection (b), (b) of this section, above, shall be served by registered or certified
49 mail, or by signature confirmation as provided by the United States Postal Service, postage
50 prepaid, in an envelope addressed to such contractor at any place where his office is regularly
51 maintained for the transaction of business or to such agent identified in the contractor's project

1 statement referenced in subdivision (1) of subsection (f) of this section or served in any manner
2 provided by law for the service of summons.

3 (d) The form of the notice of public subcontract to be served pursuant to subsection (b)
4 of this section shall be substantially as follows:

5 "NOTICE OF PUBLIC SUBCONTRACT

- 6
- 7 (1) Name and address of the subcontractor giving notice of public subcontract:
- 8 (2) General description of the real property on which the labor was or is to be
9 performed or the material was or is to be furnished (street address, tax map
10 lot and block number, reference to recorded instrument, or any description
11 that reasonably identifies the real property):
- 12 (3) General description of the subcontractor's contract, including the names and
13 addresses of the parties thereto:
- 14 (4) General description of the labor and material performed and furnished
15 thereunder:

16
17 Dated: _____

18
19 Subcontractor"

20 (e) Notwithstanding subsections (b), (c), and (d) of this section, the obligation to
21 provide a notice of public subcontract shall not apply to claims of twenty thousand dollars
22 (\$20,000) or less and, for any claim exceeding twenty thousand dollars (\$20,000), shall apply
23 only to that portion of the claim in excess of twenty thousand dollars (\$20,000).

24 (f) In connection with any construction contract for which a bond is required by
25 G.S. 44A-26(a):

- 26 (1) The contractor shall provide to each subcontractor that it engages to perform
27 labor or furnish materials in the performance of the construction contract a
28 contractor's project statement containing all of the following information:
 - 29 a. The name of the project.
 - 30 b. The physical address of the project.
 - 31 c. The name of the contracting body.
 - 32 d. The name of the contractor.
 - 33 e. The name, phone number, and mailing address of an agent authorized
34 by the contractor to accept service of the requests for payment bond,
35 the notice of public subcontract, and the notice of claim on payment
36 bond referenced in subsection (b) of this section.
 - 37 f. The name and address of the principal place of business of the surety
38 issuing the payment bond required by G.S. 44A-26(a) for the
39 construction contract.
- 40 (2) Each subcontractor shall provide each subcontractor that it engages to
41 perform labor or furnish materials in the performance of the construction
42 contract a copy of the contractor's project statement.
- 43 (3) No agreement entered into between a contractor and a subcontractor or
44 between a subcontractor and its subcontractor shall be enforceable against
45 the lower tier party until the contractor's project statement has been provided
46 to the lower tier party."

47 SECTION 12.(a) G.S. 44A-4(b) reads as rewritten:

48 "§ 44A-4. Enforcement of lien by sale.

49 ...
50 (b) Notice and Hearings. -

1 (1) If the property upon which the lien is claimed is a motor vehicle that is
2 required to be registered, the lienor following the expiration of the relevant
3 time period provided by subsection (a) shall give notice to the Division of
4 Motor Vehicles that a lien is asserted and sale is proposed and shall remit to
5 the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles
6 shall issue notice by ~~registered or certified~~ mail, return receipt requested, to
7 the person having legal title to the property, if reasonably ascertainable, to
8 the person with whom the lienor dealt if different, and to each secured party
9 and other person claiming an interest in the property who is actually known
10 to the Division or who can be reasonably ascertained. The notice shall state
11 that a lien has been asserted against specific property and shall identify the
12 lienor, the date that the lien arose, the general nature of the services
13 performed and materials used or sold for which the lien is asserted, the
14 amount of the lien, and that the lienor intends to sell the property in
15 satisfaction of the lien. The notice shall inform the recipient that the
16 recipient has the right to a judicial hearing at which time a determination
17 will be made as to the validity of the lien prior to a sale taking place. The
18 notice shall further state that the recipient has a period of 10 days from the
19 date of receipt in which to notify the Division by ~~registered or certified~~ mail,
20 return receipt requested, that a hearing is desired and that if the recipient
21 wishes to contest the sale of his property pursuant to such lien, the recipient
22 should notify the Division that a hearing is desired. The notice shall state the
23 required information in simplified terms and shall contain a form whereby
24 the recipient may notify the Division that a hearing is desired by the return
25 of such form to the Division. The Division shall notify the lienor whether
26 such notice is timely received by the Division. In lieu of the notice by the
27 lienor to the Division and the notices issued by the Division described
28 above, the lienor may issue notice on a form approved by the Division
29 pursuant to the notice requirements above. If notice is issued by the lienor,
30 the recipient shall return the form requesting a hearing to the lienor, and not
31 the Division, within 10 days from the date the recipient receives the notice if
32 a judicial hearing is requested. If the ~~registered or certified~~ mail notice has
33 been returned as undeliverable and the notice of a right to a judicial hearing
34 has been given to the owner of the motor vehicle in accordance with
35 G.S. 20-28.4, no further notice is required. Failure of the recipient to notify
36 the Division or lienor, as specified in the notice, within 10 days of the receipt
37 of such notice that a hearing is desired shall be deemed a waiver of the right
38 to a hearing prior to the sale of the property against which the lien is
39 asserted, and the lienor may proceed to enforce the lien by public or private
40 sale as provided in this section and the Division shall transfer title to the
41 property pursuant to such sale. If the Division or lienor, as specified in the
42 notice, is notified within the 10-day period provided above that a hearing is
43 desired prior to sale, the lien may be enforced by sale as provided in this
44 section and the Division will transfer title only pursuant to the order of a
45 court of competent jurisdiction.

46 If the ~~registered or certified~~ mail notice has been returned as
47 undeliverable, or if the name of the person having legal title to the vehicle
48 cannot reasonably be ascertained and the fair market value of the vehicle is
49 less than eight hundred dollars (\$800.00), the lienor may institute a special
50 proceeding in the county where the vehicle is being held, for authorization to

1 sell that vehicle. Market value shall be determined by the schedule of values
2 adopted by the Commissioner under G.S. 105-187.3.

3 In such a proceeding a lienor may include more than one vehicle, but the
4 proceeds of the sale of each shall be subject only to valid claims against that
5 vehicle, and any excess proceeds of the sale shall be paid immediately to the
6 Treasurer for disposition pursuant to Chapter 116B of the General Statutes.

7 The application to the clerk in such a special proceeding shall contain the
8 notice of sale information set out in subsection (f) hereof. If the application
9 is in proper form the clerk shall enter an order authorizing the sale on a date
10 not less than 14 days therefrom, and the lienor shall cause the application
11 and order to be sent immediately by first-class mail pursuant to G.S. 1A-1,
12 Rule 5, to each person to whom notice was mailed pursuant to this
13 subsection. Following the authorized sale the lienor shall file with the clerk a
14 report in the form of an affidavit, stating that the lienor has complied with
15 the public or private sale provisions of G.S. 44A-4, the name, address, and
16 bid of the high bidder or person buying at a private sale, and a statement of
17 the disposition of the sale proceeds. The clerk then shall enter an order
18 directing the Division to transfer title accordingly.

19 If prior to the sale the owner or legal possessor contests the sale or lien in
20 a writing filed with the clerk, the proceeding shall be handled in accordance
21 with G.S. 1-301.2.

22 (2) If the property upon which the lien is claimed is other than a motor vehicle
23 required to be registered, the lienor following the expiration of the 30-day
24 period provided by subsection (a) shall issue notice to the person having
25 legal title to the property, if reasonably ascertainable, and to the person with
26 whom the lienor dealt if different by ~~registered or~~ certified mail, return
27 receipt requested. Such notice shall state that a lien has been asserted against
28 specific property and shall identify the lienor, the date that the lien arose, the
29 general nature of the services performed and materials used or sold for
30 which the lien is asserted, the amount of the lien, and that the lienor intends
31 to sell the property in satisfaction of the lien. The notice shall inform the
32 recipient that the recipient has the right to a judicial hearing at which time a
33 determination will be made as to the validity of the lien prior to a sale taking
34 place. The notice shall further state that the recipient has a period of 10 days
35 from the date of receipt in which to notify the lienor by ~~registered or~~
36 certified mail, return receipt requested, that a hearing is desired and that if
37 the recipient wishes to contest the sale of his property pursuant to such lien,
38 the recipient should notify the lienor that a hearing is desired. The notice
39 shall state the required information in simplified terms and shall contain a
40 form whereby the recipient may notify the lienor that a hearing is desired by
41 the return of such form to the lienor. Failure of the recipient to notify the
42 lienor within 10 days of the receipt of such notice that a hearing is desired
43 shall be deemed a waiver of the right to a hearing prior to sale of the
44 property against which the lien is asserted and the lienor may proceed to
45 enforce the lien by public or private sale as provided in this section. If the
46 lienor is notified within the 10-day period provided above that a hearing is
47 desired prior to sale, the lien may be enforced by sale as provided in this
48 section only pursuant to the order of a court of competent jurisdiction."

49 SECTION 12.(b) G.S. 44A-24.10 reads as rewritten:

50 "§ 44A-24.10. Lien extinguished for lien claimant failing to file suit or answer in pending
51 suit within 30 days after service on owner.

1 If a lien claimant fails to file a suit to enforce the lien or fails to file an answer in a pending
 2 suit to enforce a lien within 30 days after a properly served written demand of the owner,
 3 lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be
 4 by ~~registered or certified~~ mail, return receipt requested, or by personal service. The claimant
 5 shall file proof of properly served written demand with the clerk of the superior court. The
 6 provisions of this section shall not extend to any other deadline provided by law for the filing
 7 of any pleadings or for the foreclosure of any lien governed by this Part."

8 **SECTION 12.(c) G.S. 44A-43 reads as rewritten:**

9 **"§ 44A-43. Enforcement of self-service storage facility lien.**

10 ...
 11 (b) Notice and Hearing:

12 (1) If the property upon which the lien is claimed is a motor vehicle, the lienor,
 13 following the expiration of the 15-day period provided by subsection (a),
 14 shall give notice to the Division of Motor Vehicles that a lien is asserted and
 15 that a sale is proposed. The lienor shall remit to the Division a fee of two
 16 dollars (\$2.00); and shall also furnish the Division with the last known
 17 address of the occupant. The Division of Motor Vehicles shall issue notice
 18 by ~~registered or certified~~ mail, return receipt requested to the person having
 19 legal title to the vehicle, if reasonably ascertainable, and to the occupant, if
 20 different, at his last known address. The notice shall:

21 ...
 22 c. State that the legal title holder and the occupant have a period of 10
 23 days from the date of receipt of the notice in which to notify the
 24 Division of Motor Vehicles by ~~registered or certified~~ mail, return
 25 receipt requested, that a hearing is desired to contest the sale of the
 26 vehicle pursuant to the lien.

27 The person with legal title or the occupant must, within 10 days of receipt of the notice
 28 from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the
 29 vehicle pursuant to the lien, and that the Division should so notify lienor.

30 Failure of the person with legal title or the occupant to notify the Division that a hearing is
 31 desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against
 32 which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor
 33 may proceed to enforce the lien by a public sale as provided by this section; and the Division
 34 shall transfer title to the property pursuant to such sale.

35 If the Division is notified within the 10-day period provided in this section that a hearing is
 36 desired prior to the sale, the lien may be enforced by a public sale as provided in this section
 37 and the Division will transfer title only pursuant to the order of a court of competent
 38 jurisdiction.

39 ...
 40 (c) Public Sale. –

41 (1) Not less than 20 days prior to sale by public sale the lienor:

42 a. Shall cause notice to be delivered by ~~registered or certified~~ mail to
 43 the person having a security interest in the property if reasonably
 44 ascertainable, and to the occupant at the occupant's last known
 45 address. Notice given pursuant to this subdivision shall be presumed
 46 delivered when it is properly addressed, first-class postage prepaid,
 47 and deposited with the United States Postal Service.

48"

49 **SECTION 13.** Sections 1 through 3 and Sections 5 through 11 of this act become
 50 effective January 1, 2013, and apply to improvements to real property for which the first permit
 51 required to be obtained is obtained on or after that date or, with respect to projects for which no

- 1 permit is required, apply to improvement to real property commenced on or after that date.
- 2 Sections 4, 12, and 13 of this act are effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 444
Finance Committee Substitute Adopted 6/6/12
Third Edition Engrossed 6/14/12
PROPOSED HOUSE COMMITTEE SUBSTITUTE S444-PCS95242-RB-86

Short Title: Nonappropriated Capital Projects.

(Public)

Sponsors:

Referred to:

March 29, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT
3 APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL
4 IMPROVEMENTS PROJECTS.

5 The General Assembly of North Carolina enacts:

6
7 **STATEMENT OF PURPOSE**

8 **SECTION 1.** The purpose of this act is to authorize (i) the planning or construction
9 by certain constituent institutions of The University of North Carolina of the capital
10 improvements projects listed in this act for the respective institutions, (ii) the financing of these
11 projects with funds available to the institutions from gifts, grants, receipts, self-liquidating
12 indebtedness, Medicare reimbursements for education costs, hospital receipts from patient care,
13 or other funds, or any combination of these funds, but not including funds received for tuition
14 or appropriated from the General Fund of the State unless previously authorized by General
15 Statute, and (iii) other expenditures for improvements.

16
17 **UNC CAPITAL IMPROVEMENT PROJECTS**

18 **SECTION 2.** The capital improvements projects, and their respective costs,
19 authorized by this act to be constructed and financed as provided in Section 1 of this act,
20 including by revenue bonds, by special obligation bonds as authorized in Section 5 of this act,
21 or by both, are as follows:

22
23 **Appalachian State University**
24 Winkler Residence Hall – Supplement \$ 3,000,000
25 Belk Residence Hall 9,765,000
26
27 **East Carolina University**
28 Belk Residence Hall Demolition and Reconstruction 40,000,000
29
30 **North Carolina State University**
31 Phytotron Energy Savings Performance Contract 6,200,000
32



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1	The University of North Carolina at Asheville	
2	Mountain Area Health Education Center (MAHEC) Facility Acquisition	4,750,000
3		
4	The University of North Carolina at Chapel Hill	
5	Chilled Water Infrastructure Improvements	11,700,000
6	Steam and Hot Water Infrastructure Improvements	12,000,000
7	Craige Parking Deck – Supplement	8,000,000
8		
9	The University of North Carolina at Charlotte	
10	Campus Infrastructure Development	49,500,000
11	Residence Hall Phase XII	38,407,410
12	Cedar/Hickory/Sycamore (Phase IV-A) Renovation	10,000,000
13		
14	The University of North Carolina at Greensboro	
15	1600 W. Lee Street Parking Lot Improvements	3,432,000
16	Reynolds and Grogan Residence Hall Renovation	16,640,000
17		
18	Winston-Salem State University	
19	Restore the Core – Phase I (Hill Hall)	13,500,000
20	New Student Housing Building 1 Acquisition	14,500,000
21	North Campus Acquisitions and Improvements	7,000,000

22

23 **SECTION 3.** The capital improvements projects, and their respective costs,
 24 authorized by this act to be planned and financed as provided in Section 1 of this act, including
 25 by revenue bonds, by special obligation bonds as authorized in Section 5 of this act, or by both,
 26 are as follows:

27		
28	North Carolina A&T State University	
29	New Student Center	\$ 5,000,000
30	Williams Dining Hall Kitchen Replacement	500,000
31		
32	North Carolina Central University	
33	New – Student Health Services Center – Phase 1	700,000
34		
35	The University of North Carolina at Chapel Hill	
36	Athletic Facilities Master Plan and Phase 1 Improvements	5,000,000
37	Odum Village Replacement	5,000,000
38		
39	Winston-Salem State University	
40	Restore the Core – Phase II (Hauser, Pegram, Physical Plant)	1,500,000

41

42 **SECTION 4.** At the request of the Board of Governors of The University of North
 43 Carolina and upon determining that it is in the best interest of the State to do so, the Director of
 44 the Budget may authorize an increase or decrease in the cost of, or a change in the method of,
 45 funding the projects authorized by this act. In determining whether to authorize a change in cost
 46 or funding, the Director of the Budget may consult with the Joint Legislative Commission on
 47 Governmental Operations.

48 **SECTION 5.** Pursuant to G.S. 116D-26, the Board of Governors may issue, subject
 49 to the approval of the Director of the Budget, at one time or from time to time, special
 50 obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost
 51 of acquiring, constructing, or providing for the projects authorized by Section 2 and Section 3

1 of this act. The maximum principal amount of bonds to be issued shall not exceed the specified
 2 project costs in Section 2 and Section 3 of this act plus five percent (5%) of such amount to pay
 3 issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional
 4 costs, plus any increase in the specific project costs authorized by the Director of the Budget
 5 pursuant to Section 4 of this act.

6 **SECTION 6.** With respect to UNC-Chapel Hill's Chilled Water Infrastructure
 7 Improvements capital project, the institution may accomplish construction and financing
 8 notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution and may
 9 accomplish the project either through (i) direct ownership of the project or (ii) an arrangement
 10 with Orange Water and Sewer Authority.

11 **SECTION 7.** With respect to Winston-Salem State University's New Student
 12 Housing Building 1 Acquisition project, the institution may accomplish construction,
 13 acquisition, and financing through arrangements to, from, and with Winston-Salem State
 14 University Foundation, Inc., and Winston-Salem State University Housing Foundation, LLC.

15 **NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS**

16 **SECTION 8.** The General Assembly authorizes the following capital projects to be
 17 funded with receipts or from other non-General Fund sources available to the appropriate
 18 department:
 19

20	Amount of Non-General Fund
21 Name of Project	Funding Authorized for FY 2012-2013
22 Department of Public Safety	
23 Training Site Improvements	\$ 620,000
24 Aviation Facilities Improvements	600,000
25 Logistics Facilities Improvements	310,000
26 Career Tech. Ed. Ctr. – Stonewall Jackson Y.D.C.	163,332
27 Storage Sheds – Statewide	51,765
28 Readiness Centers Improvements	40,000
29 Track and Field Facility – Stonewall Jackson Y.D.C.	161,046
30	
31 Department of Agriculture	
32 Parking Improvement/Expansion. – Raleigh Farmers Market	200,000
33 Wholesale Dock Enclosure – Raleigh Farmers Market	750,000
34 Phase II Greenhouse Exp. – Additional Funding – Tidewater RS	200,000
35 Phase II – Calf Barn Construction – Piedmont RS	150,000
36 Forest Road Construction	150,000
37 HVAC Campus Improvements – State Fairgrounds	2,500,000
38 Campus Infrastructure – State Fairgrounds	3,000,000
39 Renovations to Existing Buildings – State Fairgrounds	3,000,000
40 Hunt Horse Complex Site Rep & Improvements – State Fairgrounds	3,000,000
41 Temperature Monitoring System – Constable Laboratory	100,000
42 Cooler – Food Distribution Salisbury Warehouse	200,000
43 Market Renovations – Raleigh Farmers Market	1,000,000
44 Improvements/Renovations – Southeastern NC Agriculture Center	1,000,000
45 Wholesale Dock Improvements – Western NC Farmers Market	300,000
46	
47 Department of Cultural Resources	
48 NC Maritime Museum Gallants Channel Multi-Use Facility	1,115,000
49 N.C. Museum of Art Trail Improvement Project	370,000
50 Duke Homestead Picnic Shelter	175,000
51	

1	Department of Environment and Natural Resources	
2	Sound Side Dock & Education Gazebo at Roanoke Is. Aquarium	350,000
3	NC Zoo – Solar Pointe Restrooms	400,000
4		
5	Wildlife Resources Commission	
6	Agency Land Purchase	3,750,000
7	Table Rock Hatchery Building Replacement	75,000
8	Watha Hatchery Building Replacement	300,000
9	New Construction of Fishing Access Areas	240,000
10	New Construction of Boating Access Areas	800,000
11	Renovations of Existing Boating Access Areas	800,000
12	ADA Initiative of Existing Boating Access Areas	280,000
13	Infrastructure Repair and Renovation	1,500,000
14		
15	Department of Administration	
16	Sandhills Cemetery – Committal Structure	200,000
17		
18	TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL	
19	PROJECTS AUTHORIZED	\$27,851,143
20		

21 **SECTION 9.** The Division of Veterans Affairs of the Department of
22 Administration shall report on or before January 1, 2013, to the Joint Legislative Commission
23 on Governmental Affairs on the status of the Committal Structure project located at the
24 Sandhills Cemetery.

25 **SECTION 10.** This act is effective when it becomes law.

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

SB 444 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS.

With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

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

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

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 444

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

S444-ARB-93 [v.1]

Page 1 of 1

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

Date _____, 2012

Representative

1 moves to amend the bill on page 3, lines 12 through 34, by deleting those lines.
2
3

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____



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North Carolina General Assembly
House Committee on Finance

Minutes

June 21, 2012

The House Committee on Finance met on Thursday, June 21, 2012, at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Folwell, Setzer and Lewis; Vice-Chairs McComas and Wainwright; and Representatives K. Alexander, Brawley, Carney, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, T. Moore, Ross, Saine, Samuelson, H. Warren, and Weiss. House Sergeants at Arms present were John Brandon, Jesse Hayes and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Setzer called the meeting to order and recognized Representative McGee to present a subcommittee report on **HB 1215, AN ACT TO AUTHORIZE THE HENDERSON COUNTY BOARD OF COMMISSIONERS TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.**

The next matter of business was **HB 958, AN ACT TO CREATE A PUBLIC-PRIVATE PARTNERSHIP FOR THE NORTH CAROLINA ZOOLOGICAL PARK, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON PUBLIC-PRIVATE PARTNERSHIPS.** By motion of Representative Howard, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Moffitt explained the bill. The committee received answers from Dr. David Jones of the North Carolina Zoological Society Inc. on various questions regarding the bill. Representative McCormick moved for a favorable report, unfavorable as to the original bill. Motion passed.

The next matter of business was **HB 1215, AN ACT TO AUTHORIZE THE HENDERSON COUNTY BOARD OF COMMISSIONERS TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.** By motion of Representative Collins, a proposed committee substitute was placed before the committee and adopted for discussion. Representative McGrady explained the bill. Representative Ross moved for a favorable report on the PCS, unfavorable as to the original bill. Motion passed.

The next matter of business was **HB 1180, AN ACT TO IMPOSE A STATE TAX ON THE PRIVILEGE OF OPERATING A VIDEO SWEEPSTAKES ESTABLISHMENT IN THIS STATE AND USE THE PROCEEDS FROM THE STATE TAX FOR LOCAL LAW ENFORCEMENT AND PUBLIC EDUCATION AND TO AUTHORIZE COUNTIES AND CITIES TO IMPOSE A TAX ON THE PRIVILEGE OF OPERATING A VIDEO SWEEPSTAKES ESTABLISHMENT.** By motion of Rep. McGuirt, a proposed committee substitute was placed before the committee for discussion. Rep. Owens explained the bill.

There being no further business presently before the Committee, the meeting adjourned at 9:50 am.


Rep. Mitchell Setzer, Presiding Chair


Neal Inman, Committee Clerk

AGENDA
House Finance Committee

Thursday, June 21, 2012
Room 544 LOB
8:30 a.m.

Chaired by: Representative Julia Howard

Call to Order

Introduction of Pages

Bills:

~~HB 1179 Indian Cultural Center/Terminate Lease~~
~~Representatives Graham, Pierce, Pridgen, Moore~~

~~HB 958 NC Zoo Public-Private Partnership~~
~~Representative Moffit~~

~~SB 42 Lay Testimony/Child Witness Remote Testimony~~
~~Representative Stevens~~

~~HB 1215 Henderson County Occupancy Tax Changes~~
~~Representative McGrady~~

HB 1180 Video Sweepstakes Entertainment Tax
Representative Owens

SB 399 Minority Appeal from County Bd. Elections
Senator Clary

Adjournment

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE House Finance

DATE: 6-21-12 Room: 544

*Name: Mimi McCarthy | Parks Tripp
County: Pitt | Chowan

Sponsor: Waffen, F

*Name: Erin Brooks | Amaris Roberts
County: Wake | Columbus

Sponsor: Sager | Hill

*Name: Kendra Bowen | Diamond Black
County: Columbus | Guilford

Sponsor: Hill | Adams

*Name: Megan Rader
County: Alexander

Sponsor: Hollo

*Name: Jackson Kaplan
County: Wake

Sponsor: Thom Tiltis

House Sgt-At Arms:

1. Name: Fred Hives

4. Name: Carl Morello

2. Name: John Brandon

5. Name: _____

3. Name: Young Bae

6. Name: _____

VISITOR REGISTRATION SHEET

House Finance

Name of Committee

6-21-12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Cameron Erin	Gov. office
Mitney Christensen	NCRLA
Leanne Wier	NCSBA
Smith Woeck	DHHS, ^{NC} Problem Gambling
McC Rocky	NCAA
Jay Stem	NCAA
K. Bestman	TSS
Bill Brooks	NCFPC
Beth Gummells	NC Bev
Eddie Caldwell	NC Sheriffs' Assn.
Andrew Cagle	NC Sheriffs' Assn.

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

6-21-12
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	METS
Weldon Jones	Jordan Price
David Hoken	NC Center for Nonprofits
Katherine Joyce	NCA SA
Kara Weishaar	JA
Katherine Ross	PPAB
Matt Wolfe	PIAB
DAVID BARNES	PV
Matt Meinig	NCLM
Earl Johnson Jr	NC Zoo Society
Cheryl Turner	NC Zoo Society
Sally Smith	www

VISITOR REGISTRATION SHEET

House Finance
Name of Committee

6-21-12
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jim Plenge	DDA
Christy Agren	DDA
J M Stegwe	DOJ
Andy Wells	Armed
William Creer	NCDAA
Suzanna Hawley	K&L Gates
Danielle Muscelokite	Jason Deans + Assoc.

VISITOR REGISTRATION SHEET

HOUSE FINANCE

6-21-12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rev. Mark CREECH

CAU

Sharon Greer

CAJ

Michael Houser

NE DOR

AL MILAK

NCPOR

Fred Buggott

Police Chiefs Assn

JACK COZORT

NSS

Charlie Perwe

UNE GA

Shari

NCFE

DS

Mitch Leonard

SEANC

Bill Moss

Hendersonville Lightning

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1215*
PROPOSED COMMITTEE SUBSTITUTE H1215-PCS80402-SVx-60

Short Title: Henderson County Occupancy Tax Changes.

(Local)

Sponsors:

Referred to:

May 31, 2012

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE HENDERSON COUNTY BOARD OF COMMISSIONERS
TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM
DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 5 and 6 of Chapter 172 of the 1987 Session Laws, as amended by Chapter 55 of the 1991 Session Laws and by Section 21(p) of S.L. 2007-527, read as rewritten:

"Sec. 5. Occupancy Tax. (a) Authorization and Scope. – The Board of Commissioners of Henderson County may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax of no less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~ G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of Henderson County may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Henderson County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) ~~Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~



1 (c) Administration. – A tax levied under this section shall be levied, administered,
2 collected, and repealed as provided in G.S. 153A-155. The penalties provided in
3 G.S. 153A-155 apply to a tax levied under this section. The county shall administer a tax levied
4 under this act. A tax levied under this act is due and payable to the county finance officer in
5 monthly installments on or before the 20th day of the month following the month in which the
6 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before
7 the 20th day of each month, prepare and render a return on a form prescribed by the county.
8 The return shall state the total gross receipts derived in the preceding month from rentals upon
9 which the tax is levied.

10 A return filed with the county finance officer under this act is not a public record as defined
11 by G.S. 132-1 and may not be disclosed except as required by law.

12 (d) Penalties. A person, firm, corporation, or association who fails or refuses to file the
13 return required by this act shall pay an additional tax, as a penalty, of one percent (1%) of the
14 tax due for each day's omission up to 30 days, with a minimum penalty of twenty five dollars
15 (\$25.00). In case of failure or refusal to file the return or pay the tax for a period of 30 days
16 after the time required for filing the return or for paying the tax, there shall be an additional tax,
17 as a penalty, of ten percent (10%) of the tax and penalty due in addition to any other penalty,
18 with an additional tax of ten percent (10%) for each additional month or fraction thereof until
19 the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive
20 the tax penalties imposed by this subsection.

21 Any person who willfully attempts in any manner to evade a tax or penalty imposed under
22 this act or who willfully fails to pay the tax or penalty or make and file a return shall, in
23 addition to all other penalties provided by law, be guilty of a misdemeanor and shall be
24 punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed
25 six months, or both.

26 (e) Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds
27 of the room occupancy and tourism development tax levied under this act to the Henderson
28 County Tourism Development Authority. The Authority shall use at least two-thirds of the
29 funds remitted to it under this subsection to promote travel and tourism in Henderson County
30 and shall use the remainder for tourism-related expenditures.

31 (e1) Definitions. – The following definitions apply in this section:

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

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

42 (3) Tourism-related expenditures. – Expenditures that, in the judgment of the
43 entity responsible for expending the net proceeds of the tax, are designed to
44 increase the use of lodging facilities, meeting facilities, or convention
45 facilities in a county or to attract tourists or business travelers to the county.
46 The term includes tourism-related capital expenditures.

47 ~~shall place the net proceeds collected from a tax levied under this act in a special Travel and~~
48 ~~Tourism Fund. Revenue in this fund may be used only to promote travel and tourism in the~~
49 ~~county. This fund will be administered by the Henderson Travel and Tourism Committee. As~~
50 ~~used in this subsection, "net proceeds" means gross proceeds less five percent (5%) of the gross~~
51 ~~proceeds which the county may retain to defray the cost of administering and collecting the tax.~~

1 The scope of promotion of travel and tourism in the county may include the following:

2 (1) ~~Contracting with any person, firm, or agency to advise and assist in travel~~
3 ~~and tourism promotion.~~

4 (2) ~~Advertising via appropriate media.~~

5 (3) ~~Assisting in the initial funding and possible annual subsidy of a fine arts~~
6 ~~center or other similar facility which could logically be expected to promote~~
7 ~~tourism in the county.~~

8 (4) ~~Promoting special events which would bring tourists to the county.~~

9 (f) ~~Effective Date of Levy. A tax levied under this act shall become effective on the~~
10 ~~date specified in the resolution levying the tax. That date must be the first day of a calendar~~
11 ~~month, however, and may not be earlier than the first day of the second month after the date the~~
12 ~~resolution is adopted.~~

13 (g) ~~Repeal. A tax levied under this act may be repealed by a resolution adopted by the~~
14 ~~board of commissioners of the county. Repeal of a tax levied under this act does not affect a~~
15 ~~liability for a tax that attached before the effective date of the repeal, nor does it affect a right to~~
16 ~~a refund of a tax that accrued before the effective date of the repeal.~~

17 "Sec. 6. Henderson Travel and Tourism Committee. Tourism Development Authority. (a)
18 Appointment and Membership. – When the board of commissioners adopts a resolution levying
19 a room occupancy tax under subsection (a1) of this Section 5 of this act, it shall also adopt a
20 resolution creating the Henderson Travel and Tourism Committee, Tourism Development
21 Authority, which shall be a public authority under the Local Government Budget and Fiscal
22 Control Act. The resolution adopted by the Board of Commissioners shall provide for the
23 membership of the Authority, including the members' terms of office, and for the filling of
24 vacancies on the Authority. The Committee shall consist of nine voting members as follows:

25 (1) ~~Four~~ Three members who are registered to vote in Henderson County,
26 appointed by the Henderson County Board of
27 ~~Commissioners; Commissioners.~~

28 (2) ~~Four~~ Three members who are registered to vote in Henderson County,
29 appointed by the Hendersonville City Council; ~~and Council.~~

30 (3) ~~The President of the Greater Hendersonville Chamber of Commerce, or his~~
31 ~~designee, to serve ex officio. One member who is registered to vote in~~
32 Henderson County, appointed by the Fletcher Town Council.

33 (4) One member who is registered to vote in Henderson County, appointed by
34 the Flat Rock Village Council.

35 (5) One member appointed by the Henderson County Board of Commissioners
36 upon a recommendation of the Greater Hendersonville Chamber of
37 Commerce.

38 Of these members, at least one-third of the members shall be individuals who are affiliated
39 with businesses that collect the tax in the county, and at least one-half of the members shall be
40 individuals who are currently active in the promotion of travel and tourism in the county.

41 The board of commissioners shall designate one member of the ~~Committee~~ Authority as
42 chair and shall determine the compensation, if any, to be paid to members of the
43 ~~Committee~~ Authority. The ~~Committee~~ Authority shall meet at the call of the chair and shall
44 adopt rules of procedure to govern its meetings. The finance officer for Henderson County shall
45 be the ex officio finance officer of the ~~Committee~~ Authority. ~~The Committee shall administer~~
46 ~~the Travel and Tourism Fund as provided in Section 1(e) of this act.~~

47 (b) Duties. – The Authority shall expend the net proceeds of the tax levied under
48 subsections (a) and (a1) of Section 5 of this act for the purposes provided in Section 5 of this
49 act. The Authority shall promote travel, tourism, and conventions in the county, sponsor
50 tourist-related events and activities in the county, and finance tourist-related capital projects in
51 the county.

1 (c) Reports. – The ~~Committee~~ Authority shall report quarterly and at the close of the
2 fiscal year to the board of commissioners on its receipts and expenditures for the preceding
3 quarter and for the year in such detail as the board may require."

4 **SECTION 2.** G.S. 153A-155(g) reads as rewritten:

5 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
6 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
7 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
8 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
9 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
10 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Henderson, Jackson, Madison,
11 Martin, McDowell, Montgomery, Moore, Nash, New Hanover, New Hanover County District
12 U, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham,
13 Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance,
14 Washington, and Wilson Counties, to Surry County District S, to Watauga County District U,
15 to Wilkes County District K, to Yadkin County District Y, and to the Township of Averagesboro
16 in Harnett County and the Ocracoke Township Taxing District."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 958
PROPOSED COMMITTEE SUBSTITUTE H958-PCS30650-TM-31

Short Title: NC Zoo Public-Private Ptshp.

(Public)

Sponsors:

Referred to:

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO CREATE A PUBLIC-PRIVATE PARTNERSHIP FOR THE NORTH CAROLINA ZOOLOGICAL PARK, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON PUBLIC-PRIVATE PARTNERSHIPS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 22 of Article 7 of Chapter 143B of the General Statutes (North Carolina Zoological Park Council) is repealed.

SECTION 1.(b) Any assets of the Zoo Fund established under Part 22 of Article 7 of Chapter 143B of the General Statutes at the time of its repeal shall be administered by the Department of Environment and Natural Resources to improve State property at the North Carolina Zoological Park.

SECTION 2. Article 14 of Chapter 143 of the General Statutes reads as rewritten:

"Article 14.

~~"North Carolina Zoological Authority Park.~~

"§ 143-177. Operation and transfer of Zoo; Right-right to receive gifts.

(a) Purpose; Management Agreement; Transfer of Zoo. – The North Carolina Zoological Park (Zoo) maintains a diverse collection of plant and wildlife specimens in order to study, conserve, and introduce to people the species of the world. The North Carolina Department of Environment and Natural Resources is directed to enter into a management agreement with the North Carolina Zoological Society, Inc., (Society) for a term not to exceed 25 years with options to renew at the end of each term, for the Society to operate the Zoo. The management agreement shall require that the Zoo provide free admission to North Carolina school students visiting the Zoo as part of an in-school tour group. The Society shall carry out the following minimum duties with respect to the Zoo:

- (1) Providing park and outreach operation.
- (2) Planning for and implementation of maintenance and expansion.
- (3) Providing construction, furnishings, and equipment.
- (4) Maintaining high standards of animal welfare and husbandry.
- (5) Carrying out research and practical conservation programs.
- (6) Establishing and setting admission fees.
- (7) Promoting public appreciation of animals and plants.
- (8) Disseminating information about the Zoo and its programs.
- (9) Developing effective public support.



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1 (10) Soliciting financial and material support from various private sources within
2 and without the State of North Carolina.

3 (11) Maintaining the highest possible standards in the Zoo's exhibits,
4 landscaping, and overall appearance.

5 (12) Maintaining Association of Zoos and Aquariums (AZA) accreditation.

6 (b) State Representation on Society Board. – As a condition of entering into the
7 agreement, the Society shall amend its articles of incorporation, bylaws, or other appropriate
8 corporate document to provide that the maximum size of the Society's board shall be 25
9 members and to provide that the following people shall be voting members of the Society's
10 board:

11 (1) The Secretary of the Department of Environment and Natural Resources or
12 that Secretary's designee serving ex officio.

13 (2) The Secretary of the Department of Administration or that Secretary's
14 designee serving ex officio.

15 (3) Two people appointed by the General Assembly, one upon recommendation
16 of the President Pro Tempore of the Senate and one upon recommendation
17 of the Speaker of the House of Representatives.

18 (c) General Transfer Language. – As of January 1, 2013, all of the rights, privileges,
19 liabilities, and obligations of the North Carolina Zoological Park Council not inconsistent with
20 the provisions of this section shall, under the terms of the management agreement, be
21 transferred to and assumed by the board of directors of the Society.

22 (d) Governance of Zoo. – As of January 1, 2013, the Zoo and the zoological programs
23 established or maintained by the Zoo shall be governed by the Society under the general
24 direction of its board of directors.

25 (e) Personal Property Transfer. – To effect an orderly transition, the management
26 agreement shall detail the specific personal property of the State, both tangible and intangible,
27 that shall be transferred to the Society. The management agreement must also provide for
28 reversion of such personal property to the State or redirection by the State if the Society ceases
29 to exist, enters bankruptcy, terminates its management agreement with the State, or in any other
30 way is incapable of maintaining the Zoo. The Department of Environment and Natural
31 Resources shall transfer to the Society any personal property listed in the State asset inventory
32 that is necessary for the operation of the Zoo, including any relevant permits, registrations, and
33 licenses necessary, appropriate, or convenient to ownership. If any fee or other payment is
34 required to effectuate the transfer, the Society shall pay the fee or other payment or reimburse
35 the Department of Environment and Natural Resources for any expenditure in relation to the
36 transfer.

37 (f) Real Property Transfer. – All real property currently owned by the State and
38 allocated to the Zoo shall remain in title to the State. The State shall retain property control
39 over all State real property at the Zoo, except that the Society shall be afforded naming rights
40 on land or fixtures owned by the State.

41 (g) Annual Appropriations by the State. – As a management fee to support operation of
42 the Zoo, the sum of ten million dollars (\$10,000,000) shall be appropriated annually by the
43 State to the Society under the terms of the management agreement until the end of its term,
44 except for the 2012-2013 fiscal year. For the 2012-2013 fiscal year, the sum of five million
45 dollars (\$5,000,000) shall be appropriated to annualize it to the January 1, 2013, effective date
46 of the transfer.

47 (h) Annual Expenditure by the Society. – The management agreement shall require that
48 the Society spend the sum of four million dollars (\$4,000,000) annually on the operation and
49 capital improvements at the Zoo from the Society's funds, excluding all funds received from the
50 State and excluding admission fees.

1 (i) Annual Reports Required. – The Society shall make the following annual reports to
2 the Office of State Budget and Management and to the Joint Legislative Commission on
3 Governmental Operations:

4 (1) Actual and proposed budget.

5 (2) Report on operations.

6 (3) Financial statements.

7 (j) Reserve for Repair and Renovation. – The Society shall be eligible for allocations
8 from the Reserve for Repair and Renovation to cover current deferred maintenance on State
9 property at the Zoo that as of January 1, 2012, totaled thirty million dollars (\$30,000,000). It is
10 the intent of the General Assembly that five million dollars (\$5,000,000) annually shall be
11 provided to the Society from the Reserve until a total of thirty million dollars (\$30,000,000) has
12 been satisfied. The allocation shall be administered by the Department of Environment and
13 Natural Resources. As initial implementation of this subsection, for the 2012-2013 fiscal year,
14 the sum of five million dollars (\$5,000,000) is allocated from the Reserve for Repair and
15 Renovation to the Department of Environment and Natural Resources and provided to the
16 Society to cover deferred maintenance on State property at the Zoo.

17 (k) Transition Costs. – The sum of three million two hundred thousand dollars
18 (\$3,200,000) for the 2012-2013 fiscal year is appropriated from the General Fund to the
19 Department of Environment and Natural Resources for transition expenses necessary to
20 implement this section.

21 (l) Audit. – The Society shall be subject to audit by the State Auditor and the Program
22 Evaluation Division of the General Assembly.

23 (m) Management Agreement Subject to Prior Approval of State Treasurer. – The
24 management agreement is subject to the prior approval of the State Treasurer with regard to
25 issues that might impact the tax-exempt status of outstanding debt issued by the State for Zoo
26 facilities, including the tax-exempt status of the Society. The Society shall provide evidence
27 satisfactory to the Secretary of the Department of Environment and Natural Resources and the
28 State Treasurer that the Society is recognized as exempt under section 501(c)(3) of the Internal
29 Revenue Code prior to the effective date of the management agreement and upon request at
30 other times.

31 (n) Further Conditions on Management Agreement. – The management agreement must
32 contain the following terms:

33 (1) An acknowledgement that a portion of the facilities at the Zoo were financed
34 by the State through the issuance of bonds the interest on which is exempt
35 from income taxation under the Internal Revenue Code as a result of the
36 characterization of such bonds as "governmental bonds" and not "private
37 activity bonds" and such characterization depends in part on the management
38 agreement being treated as a qualified management agreement under
39 applicable requirements (Qualified Management Agreement).

40 (2) A covenant by the Society not to take any action that will cause the
41 management agreement to cease to be treated as a Qualified Management
42 Agreement.

43 (3) A covenant by the Society that as of each January 1 and upon request at
44 other times to provide the State Treasurer a report on the current status of
45 financial matters under the management agreement and any related
46 agreements which might impact the tax-exempt status of outstanding debt
47 issued by the State for Zoo facilities.

48 (o) Certain Arrangements Subject to Prior Approval of State Treasurer. – If any entity
49 other than the Society will have any property rights or contractual rights to the use of property
50 at the Zoo, including naming rights, the right to operate concessions or rights under similar
51 arrangements, whether through the management agreement or otherwise, then the proposed

1 agreement or arrangement providing for such rights is subject to the prior approval of the State
2 Treasurer with regard to issues that might impact the tax-exempt status of outstanding debt
3 issued by the State for Zoo facilities.

4 (p) In order to carry out the purposes of this Article, the ~~Board is authorized Society~~
5 ~~may to~~ acquire by gift or will, absolutely or in trust, from individuals, corporations, or any
6 other source money or other property, or any interests in property, which may be retained, sold
7 or otherwise used to promote the purposes of this Article. The use of gifts shall be subject to
8 such limitations as may be imposed thereon by donors, notwithstanding any other provisions of
9 this Article.

10 **"§ 143-177.1. North Carolina Zoological Park Fund.**

11 ~~All gifts made to the North Carolina Zoological Park for the purposes of this Article shall~~
12 ~~be exempt from every form of taxation including, but not by the way of limitation, ad valorem,~~
13 ~~intangible, gift, inheritance and income taxation. Proceeds from the sale of any property~~
14 ~~acquired under the provisions of this Article shall be deposited in the North Carolina State~~
15 ~~treasury and shall be credited to the North Carolina Zoological Park.~~

16 **"§ 143-177.2. Cities and counties.**

17 Cities and counties are hereby authorized to expend funds derived from nontax sources and
18 to make gifts of surplus property, to assist in carrying out the purposes of this Article.

19 **"§ 143-177.3. Sources of funds.**

20 (a) It is the intent of this Article that the funds for the creation, establishment,
21 construction, operation and maintenance of the ~~North Carolina Zoological Park Zoo~~ shall be
22 obtained primarily from private sources; however, the ~~Council Society~~, under the supervision
23 and approval and with the assistance of the Secretary of Environment and Natural ~~Resources~~
24 ~~Resources~~, is hereby authorized to receive and expend such funds as may from time to time
25 become available by appropriation or otherwise from the State of North Carolina; provided,
26 that the ~~North Carolina Zoological Park Council Society~~ shall not in any manner pledge the
27 faith and credit of the State of North Carolina for any of its purposes. Real property of the State
28 may not be pledged as collateral by the Society in any financing, nor may the annual
29 appropriation for operating expenses be pledged as security in any financing.

30 (b) ~~The Council with the approval of the Secretary of Environment and Natural~~
31 ~~Resources is authorized to establish and set admission fees which are reasonable and consistent~~
32 ~~with the purpose and function of the North Carolina Zoological Park.~~

33 **"§ 143-177.4. Maintenance and capital improvement projects.**

34 (a) Department of Administration Authority Over Building Maintenance and
35 Construction. – Notwithstanding any other provision of law, the Department of Administration
36 is authorized, without approval of the Council of State, to grant rights of entry, ground leases,
37 and easements, as appropriate, for the Society to conduct construction, renovation, and repair
38 projects on State land at the Zoo. Such projects shall have plan review, inspection, and
39 acceptance on behalf of the State by the State Construction Office. The Department of
40 Administration may enter into separate project review and construction management
41 agreements with the Society governing the detailed processes and procedures relating to each
42 project undertaken by the Society on State land at the Zoo. All construction, renovation, and
43 repair projects shall become the sole property of the State upon final completion and
44 acceptance.

45 (b) Approval of Facility Master Plan. – The Department of Environment and Natural
46 Resources and the Department of Administration shall approve a facility master plan before the
47 Society begins any capital improvement projects on State lands or uses any State funds for
48 capital improvement projects. The Department of Environment and Natural Resources may
49 authorize the Society to conduct some projects by type, such as small repairs approved by the
50 Department of Administration, in the management agreement. The Department of

1 Administration may also authorize the Society to conduct some projects by type, such as
2 emergency repairs, under the building maintenance and construction agreement.

3 (c) The Society or Department of Environment and Natural Resources may request
4 State funding for capital improvement projects through the State's capital planning and
5 budgeting process."

6 **SECTION 3.** This act becomes effective January 1, 2013, except that the
7 Department of Environment and Natural Resources and the North Carolina Zoological Society,
8 Inc., may enter into the management agreement provided by G.S. 143-177, as amended by this
9 act, at any time prior to that date; the Department of Environment and Natural Resources may
10 also act on any transitional requirements prior to that date; the Department of Administration
11 and the North Carolina Zoological Society, Inc., may enter into the building maintenance and
12 construction agreement provided by G.S. 143-177.4 at any time prior to that date; and the
13 Department of Administration may also act on any transitional requirements prior to that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1180
PROPOSED COMMITTEE SUBSTITUTE H1180-CSRbx-93 [v.1]

Short Title: Video Sweepstakes to Support Education.

(Public)

Sponsors:

Referred to:

May 30, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE AND IMPOSE AN EXCISE TAX ON VIDEO SWEEPSTAKES,
3 TO USE THE PROCEEDS FOR LAW ENFORCEMENT AND PUBLIC EDUCATION,
4 AND TO PROVIDE FOR A DETERMINATION BY THE 2013 GENERAL ASSEMBLY
5 ON WHETHER THE EXPIRATION DATE OF THE REGULATORY REQUIREMENTS
6 IN THE ACT SHOULD BE EXTENDED.

7 Whereas, the General Assembly of North Carolina, in order to insure that the
8 gambling laws were not circumvented and to protect consumers from negative collateral
9 consequences of "sweepstakes" machines, enacted G.S. 14-306.4 in 2010; and

10 Whereas, the Superior Court for Guilford County, in Hest Technologies v. State,
11 found that, except for a single subdivision in the statute, the act making certain video
12 sweepstakes unlawful was constitutional; and

13 Whereas, the North Carolina Court of Appeals, upon appellate review and in a split
14 decision, found that the statute was unconstitutional; and

15 Whereas, the State has appealed the ruling of the North Carolina Court of Appeals
16 to the North Carolina Supreme Court, and filed its brief to the Court on June 15, 2012, and

17 Whereas, it cannot be determined when the North Carolina Supreme Court may
18 issue its decision whether the statute is or is not enforceable; and

19 Whereas, what had been an illegal activity is now being pursued across the State
20 without any regulation as to the integrity of software being utilized; the number of entries that
21 may be allowed per sweepstakes; an accounting as to how many winning entries and the
22 amounts being distributed as prizes; the age of persons who are allowed into "sweepstakes
23 parlors;" the presence of alcohol on the premises; and other matters which are legitimate
24 subjects of government regulation to insure against corrupt practices and to prevent consumers
25 of the State from being victimized; and

26 Whereas, it is the General Assembly's intent to enact regulations so long as video
27 sweepstakes are deemed lawful; Now, therefore,
28 The General Assembly of North Carolina enacts:

29 SECTION 1.(a) Chapter 105 of the General Statutes is amended by adding a new
30 article to read:

31 "Article 2E.

32 "Video Sweepstakes Revenue for Education and Law Enforcement.

33 "§ 105-113.120. Purpose; administration.



1 (a) Purpose. – The taxes imposed in this Article provide revenue for the State's
2 education needs and for law enforcement.

3 (b) Administration. – Article 9 of this Chapter applies to this Article.

4 **"§ 105-113.121. Definitions.**

5 The following definitions apply in this Article:

- 6 (1) Enter or entry. – The act or process by which a person becomes eligible to
7 receive any prize offered in a sweepstakes.
- 8 (2) Entertaining display. – Visual information, capable of being seen by a
9 sweepstakes entrant, that takes the form of actual game play, or simulated
10 game play. A sweepstakes utilizing a point-of-sale system, capable of
11 calculating applicable taxes pursuant to Article 5 of Chapter 105 of the
12 General Statutes, and which does not have an entertaining display, to include
13 those systems that operate solely by allowing an employee or a customer to
14 swipe a card containing a bar code or a visual representation of a bar code,
15 are not subject to the provisions of this Article.
- 16 (3) Prize. – Any gift, award, gratuity, good, service, credit, or anything else of
17 value that may be transferred to a person, whether possession of the prize is
18 actually transferred, or placed on an account or other record as evidence of
19 the intent to transfer the prize.
- 20 (4) Sweepstakes. – Any game, advertising scheme or plan, or other promotion
21 that, with or without payment of any consideration, a person may enter to
22 win or become eligible to receive any prize, the determination of which is
23 based upon chance.
- 24 (5) Video display. – Visual information in the form of an entertaining display,
25 capable of being seen by a sweepstakes entrant, regardless of whether the
26 information is communicated through actual or simulated game play; video
27 images; an "instant reveal" whereby the information is immediately
28 displayed on a screen; or by any other type, method, or mode of
29 communication that is capable of being seen.
- 30 (6) Video sweepstakes establishment. – A place of business in which a video
31 sweepstakes machine or device is operated.
- 32 (7) Video sweepstakes machine or device. – A mechanically, electrically, or
33 electronically operated machine or device that is owned, leased, or otherwise
34 possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes
35 sponsor's or promoter's partners, affiliates, subsidiaries, or contractors, that is
36 intended to be used by a sweepstakes entrant, that uses energy, and that is
37 capable of video display on a screen or other mechanism.

38 **"§ 105-113.122. Excise tax on video sweepstakes establishments and machines.**

39 (a) Excise Tax. – An excise tax is levied on each video sweepstakes establishment
40 operating in this State as follows:

- 41 (1) A rate per video sweepstakes establishment.
42 (2) A rate per video sweepstakes machine or device.
43 (3) A rate on gross receipts.

44 (b) Rate per Establishment. – An annual excise tax at the rate of two thousand dollars
45 (\$2,000) is levied on a video sweepstakes establishment. The amount due is payable by January
46 1 of each year. The full amount of the tax applies to an establishment that operates during any
47 portion of a calendar year.

48 (c) Rate per Machine or Device. – An annual excise tax at the rate of one thousand
49 dollars (\$1,000) is levied on each video sweepstakes machine or device operated in a video
50 sweepstakes establishment. The amount due is payable by January 1 of each year. The full
51 amount of tax applies to a video sweepstakes machine or device that operates during any

1 portion of a calendar year. The Secretary must issue stamps to affix to each video sweepstakes
2 machine or device to indicate payment as required by this Article. The stamp must be displayed
3 conspicuously on the video sweepstakes machine or device, and it must clearly indicate the
4 year for which the tax is paid. Upon payment of the tax, the Secretary shall issue a stamp for
5 each video sweepstakes machine or device for which payment is received.

6 (d) Gross Receipts. – An annual excise tax of four percent (4%) of the taxable gross
7 receipts from operating a video sweepstakes machine or device is levied on each video
8 sweepstakes establishment. The amount due is payable quarterly or monthly in accordance with
9 the schedule and requirements that apply to payments of sales and use tax under
10 G.S. 105-164.16. A return is due quarterly. A quarterly return covers a calendar quarter and is
11 due by the last day of the month that follows the quarter covered by the return. For purposes of
12 this subsection, taxable gross receipts are the gross receipts derived by the establishment that
13 results in a person's eligibility to operate a sweepstakes machine or device at the establishment
14 to determine whether the person has won a sweepstakes prize, less the amount of any prizes
15 transferred to a sweepstakes entrant. The return must include the taxpayer's gross receipts from
16 operating one or more video sweepstakes machines or devices during the reporting period and
17 the prizes awarded during this period to a sweepstakes entrant.

18 (e) Report and Payment. – A person who operates a video sweepstakes establishment
19 must report the taxes payable under this section in the form required by the Secretary. The
20 return must include the address where the video sweepstakes machines or devices are located
21 and whether the location is within the corporate limits of a municipality. Notwithstanding any
22 other provision of law, the person is not required to give identifying information on the return,
23 and the return is not required to be verified by oath or affirmation. The tax is due when the
24 return is filed. Taxes may be paid and stamps may be issued either by mail or in person.

25 **"§ 105-113.123. Use of tax proceeds.**

26 (a) Distribution. – The Secretary shall distribute the net tax proceeds collected under
27 this Article as provided in this section. Effective January 1, 2014, the Secretary must transfer
28 one million dollars (\$1,000,000) annually to the Department of Health and Human Services for
29 gambling addiction education and treatment programs before making the distributions under
30 this section.

31 (b) Administration. – The Department may retain six percent (6%) of the net proceeds
32 for its administrative expenses.

33 (c) Law Enforcement. – The Secretary must distribute nine percent (9%) of the net
34 proceeds collected under this Article to various law enforcement agencies, as provided in this
35 subsection. The monies distributed under this subsection are provided as additional funding for
36 the purposes for which they are distributed and are not intended to supplant existing funding.

37 (1) Three percent (3%) must be distributed to the county sheriff's departments
38 on a per capita basis according to the most recent annual population
39 estimates certified to the Secretary by the State Budget Officer.

40 (2) Three percent (3%) must be distributed to the municipal police departments
41 on a per capita basis according to the most recent annual population
42 estimates certified to the Secretary by the State Budget Officer.

43 (3) Three percent (3%) must be credited to the General Fund and appropriated
44 by the General Assembly in the Current Operations Appropriations Act for
45 the fiscal year that begins the following July 1 to the Department of Public
46 Safety for the support and operation of the Alcohol Law Enforcement
47 Section.

48 (d) Education. – Of the remaining eighty-five percent (85%) of the net proceeds
49 collected under this Article, the first one hundred eighty-nine million two hundred eight-three
50 thousand two hundred forty dollars (\$189,283,240) shall be credited to the Department of
51 Public Instruction and is appropriated to reduce the LEA Flexibility Adjustment, if applicable.

1 After this allocation is made, any remaining proceeds must be credited to the General Fund and
2 appropriated by the General Assembly in the Current Operations Appropriations Act for the
3 fiscal year that begins the following July 1 for education.

4 **"§ 105-113.124. Local tax.**

5 (a) Authorization. – A county or city may, by resolution or ordinance respectively,
6 impose an excise tax as allowed under this section on each video sweepstakes establishment
7 located in that county or city as follows:

8 (1) A rate per video sweepstakes establishment.

9 (2) A rate per video sweepstakes machine or device.

10 (b) Rate per Establishment. – A county or city may impose an annual excise tax at the
11 rate of one thousand dollars (\$1,000) on each video sweepstakes establishment located in that
12 jurisdiction. The amount due is payable by January 1 of each year. The full amount of tax
13 applies to an establishment that operates during any portion of a calendar year.

14 (c) Rate per Machine or Device. – A county or city may impose an annual excise tax at
15 the rate of five hundred dollars (\$500.00) on each video sweepstakes machine or device
16 operated in a video sweepstakes establishment located in that jurisdiction. The amount due is
17 payable by January 1 of each year. The full amount of tax applies to a video sweepstakes
18 machine or device operated during any portion of the calendar year.

19 (d) Administration. – Upon adoption of a resolution or ordinance levying the taxes
20 allowed under this section, the governing body of the county or city must immediately deliver a
21 certified copy of the resolution or ordinance to the Secretary. Upon receipt of the document, the
22 Secretary shall collect and administer the tax. The Secretary must distribute the local revenues
23 collected to the county or city for which the taxes are collected by March 31 of each year.

24 (e) Use of Funds. – Funds distributed by the Secretary to a city under this section may
25 be used for any public purpose. Funds distributed by the Secretary to a county under this
26 section must be allocated as follows:

27 (1) City share. – Fifty percent (50%) of the funds derived from a video
28 sweepstakes establishment located in a city or from a video sweepstakes
29 machine or device operated in an establishment located in a city must be
30 distributed to the city in which the establishment is located. The city may use
31 the funds distributed to it under this subdivision for any lawful purpose.

32 (2) Remaining share. – The remaining funds distributed to a county under this
33 section may be used by the county for any public purpose.

34 (f) Penalty and Collection. – The penalty and collection provisions allowed under
35 Article 9 of this Chapter apply to taxes levied under the authority of this section in the same
36 manner and to the same extent as they apply to taxes levied by the State under this Article.

37 (g) Nature. – The General Assembly finds that the revenue distributed under this
38 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of
39 the North Carolina Constitution and may not be reduced or withheld by the Governor.

40 **"§ 105-113.125. Applicability; illegal activity.**

41 Applicability. – This Article is applicable to any video sweepstakes machine or device
42 without regard to any of the following:

43 (1) How the machine or device is activated.

44 (2) How the machine or device is programmed for operation.

45 (3) How the machine or device determines and associates the prize with an entry
46 or entries at the time the sweepstakes is entered."

47 **SECTION 1.(b)** G.S. 18C-161 reads as rewritten:

48 **"§ 18C-161. Types of income to the North Carolina State Lottery Fund.**

49 The following revenues shall be deposited in the North Carolina State Lottery Fund:

50 (1) All proceeds from the sale of lottery tickets or shares.

51 (2) The funds for initial start-up costs provided by the State.

- 1 (3) All other funds credited or appropriated to the Commission from any source.
- 2 (4) Interest earned by the North Carolina State Lottery Fund.
- 3 (5) Proceeds credited to the North Carolina State Lottery Fund under
- 4 G.S. 105-113.123."

5 SECTION 1.(c) G.S. 18C-162 is amended by adding a new subsection to read:

6 "(d) The proceeds credited to the North Carolina State Lottery Fund under

7 G.S. 105-113.123 shall be allocated for payment of expenses of the Commission in regulating

8 video sweepstakes establishments and video sweepstakes machines and devices, as provided

9 under Chapter 18D of the General Statutes."

10 SECTION 1.(d) G.S. 160A-211 is amended by adding a new subsection to read:

11 "(b1) Video Sweepstakes Restriction. – A city may not impose an excise tax or a license,

12 franchise, or privilege tax on a person operating a video sweepstakes establishment except as

13 provided in G.S. 105-113.124."

14 SECTION 2. The North Carolina General Statutes is amended by adding a new

15 Chapter to read:

16 **"CHAPTER 18D**

17 **"VIDEO SWEEPSTAKES.**

18 **"Article 1.**

19 **Licensure**

20 **"§ 18D-101. Citation.**

21 This Chapter shall be known and may be cited as the North Carolina Video Sweepstakes

22 Act.

23 **"§ 18D-102. Purpose and intent.**

24 The General Assembly declares that the purpose of this Chapter is to regulate any video

25 sweepstakes that are not otherwise unlawful under applicable State law. Nothing in this Chapter

26 shall be construed to make any conduct lawful that is declared to be unlawful under Article 37

27 of Chapter 14 of the General Statutes, or any other provision of law.

28 **"§ 18D-103. Definitions.**

29 The following definitions apply in this Article:

- 30 (1) Department. – The North Carolina Department of Revenue.
- 31 (2) Enter or entry. – The act or process by which a person becomes eligible to
- 32 receive any prize offered in a sweepstakes.
- 33 (3) Entertaining display. – Visual information, capable of being seen by a
- 34 sweepstakes entrant, that takes the form of actual game play, or simulated
- 35 game play. A sweepstakes utilizing a point-of-sale system, capable of
- 36 calculating applicable taxes pursuant to Article 5 of Chapter 105 of the
- 37 General Statutes, and which does not have an entertaining display, to include
- 38 those systems that operate solely by allowing an employee or a customer to
- 39 swipe a card containing a bar code or a visual representation of a bar code,
- 40 are not subject to the provisions of this Article.
- 41 (4) Prize. – Any gift, award, gratuity, good, service, credit, or anything else of
- 42 value that may be transferred to a person, whether possession of the prize is
- 43 actually transferred, or placed on an account or other record as evidence of
- 44 the intent to transfer the prize.
- 45 (5) Sweepstakes. – Any game, advertising scheme or plan, or other promotion
- 46 that, with or without payment of any consideration, a person may enter to
- 47 win or become eligible to receive any prize, the determination of which is
- 48 based upon chance, and in which there is a finite pool of entries.
- 49 (6) Video sweepstakes establishment. – A place of business in which a video
- 50 sweepstakes machine or device is operated.

- 1 (7) Video sweepstakes device. – A mechanically, electrically, or electronically
2 operated device that is owned, leased, or otherwise possessed by a
3 sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or
4 promoter's partners, affiliates, subsidiaries, or contractors, that is intended to
5 be used by a sweepstakes entrant, that uses energy, and that is capable of
6 entertaining display on a screen or other mechanism.
- 7 (8) Video sweepstakes device operator. – A person licensed under this Article to
8 operate or conduct a sweepstakes.
- 9 (9) Video sweepstakes device vendor. – A person licensed under this Article to
10 supply sweepstakes software to a sweepstakes gaming device operator.
- 11 (10) Sweepstakes software. – A computer program used by a sweepstakes device
12 operator to conduct a sweepstakes.

13 **§ 18D-104. Licensure.**

14 (a) License Required. – It shall be unlawful for any establishment to operate a video
15 sweepstakes without the license required by this Chapter.

16 (b) Application for License. – To obtain a license required by this Article, an applicant
17 must:

- 18 (1) File an application with the Department on a form provided by the
19 Department and pay an application fee of \$250. An application must include
20 the applicant's name, address, federal employer identification number, and
21 any other identifying information required by the Department.
- 22 (2) The application shall state the number of video sweepstakes devices to be
23 placed into operation at the video sweepstakes establishment. A licensee
24 may apply to amend the license to add additional devices on a form to be
25 provided by the Department.
- 26 (3) A license is not transferable or assignable and must be displayed at the place
27 of business for which it is issued.

28 (c) Requirements. – An applicant for a license must meet the following requirements:

- 29 (1) If the applicant is a corporation, the applicant must either be incorporated in
30 this State or be authorized to transact business in this State.
- 31 (2) If the applicant for a license is a limited liability company, the applicant
32 must either be organized in this State or be authorized to transact business in
33 this State.
- 34 (3) If the applicant for a license is a limited partnership, the applicant must
35 either be formed in this State or be authorized to transact business in this
36 State.
- 37 (4) If the applicant for a license is an individual or a general partnership, the
38 applicant must designate an agent for service of process and give the agent's
39 name and address.

40 (d) A license shall display the number of sweepstakes gaming devices at a sweepstakes
41 location, and any further information required by the Department.

42 (e) Denial. – The Department may investigate an applicant for a license required under
43 this Article to determine whether the information the applicant submits with the application is
44 accurate and whether the applicant is eligible to be licensed under this Article. The Department
45 may refuse to issue a license to an applicant that has done any of the following:

- 46 (1) Submitted false or misleading information on its application.
- 47 (2) Had a license issued under this Article cancelled by the Department for
48 cause.
- 49 (3) Been convicted of fraud or misrepresentation.
- 50 (4) Been convicted of any other offense that indicates the applicant may not
51 comply with this Article.

1 (5) Been convicted of any crime involving moral turpitude.

2 Article 2.

3 Regulations.

4 **"§ 18D-105. North Carolina Department of Revenue; powers and duties.**

5 (a) The North Carolina Department of Revenue shall have the following powers and
6 duties:

7 (1) To promulgate rules relating to the operation of video sweepstakes devices,
8 which shall include, but is not limited to the following:

9 a. The licensure of manufacturers to insure interfacing with a central
10 monitoring system controlled by the Department.

11 b. The type and number of video sweepstakes devices to be approved
12 for each license issued under this Article.

13 c. The prize claim process.

14 d. Accounting procedures for determining the gross receipts from the
15 operation of video sweepstakes and unclaimed prizes and credits.

16 e. Financial reporting procedures for licensed video sweepstakes
17 operators.

18 f. Insurance and bonding requirements.

19 g. Licensing requirements and qualifications of persons involved in the
20 operation of video sweepstakes.

21 h. Requirements for a central monitoring system to provide auditing
22 program information as approved by the Department.

23 i. Establishment of information systems, operating procedures,
24 reporting, and accounting criteria.

25 j. Any other matters necessary for to insure the integrity of the video
26 sweepstakes games or for the convenience of the public.

27 k. The fines or penalties associated with any violation of Department
28 rules.

29 (2) To engage or contract with any independent firm or agency, including but
30 not limited to the North Carolina Lottery Commission, to act as its agent in
31 fulfilling the duties and responsibilities under this Article.

32 (3) To engage an independent firm experienced in security procedures,
33 including computer security and systems security, to conduct a
34 comprehensive study and evaluation of all aspects of security in the
35 operation of the video sweepstakes devices.

36 (4) To enter into an agreement with the ALE Division to conduct an in-depth
37 background investigation of applicants and licensees to ensure compliance
38 with this Article.

39 (b) Within sixty days after the winners have been determined, a sweepstakes gaming
40 device operator shall provide the Department of Revenue with a certified list of the names and
41 addresses of all persons who have won prizes with a value of more than \$1000, the value of the
42 prizes, and the dates when the prizes were won.

43 **"§ 18D-106. Software; license and certification.**

44 No person, personally or through the person's agent, shall supply sweepstakes software to a
45 sweepstakes gaming device operator without first obtaining a license from the Department. The
46 application for a sweepstakes gaming device vendor license shall be on forms prescribed by the
47 Department and shall contain at least the following information:

48 (1) The full legal name of the sweepstakes gaming device vendor and required
49 contact information, including address, telephone number, federal tax
50 identification number, and contact person.

- 1 (2) The sweepstakes compliance laboratory report certifying the sweepstakes
2 software.
- 3 **"§ 18D-107. Prohibitions; penalties.**
- 4 (a) No person shall do any the following:
- 5 (1) Intentionally design, promote, or conduct a sweepstakes in which the winner
6 may be predetermined or the sweepstakes software may be manipulated or
7 rigged so as to do either of the following:
- 8 a. Allocate a winning sweepstakes or any portion thereof to certain
9 lessees, agents, or franchises.
- 10 b. Allocate a winning sweepstakes or part thereof to a particular period
11 of the sweepstakes or to a particular geographic area.
- 12 (2) Willfully remove, disqualify, disallow, or reject any entry.
- 13 (3) Willfully fail to award prizes offered or award or advertise prizes other than
14 those which have been properly announced under this section.
- 15 (4) Willfully print, publish, or circulate literature or advertisements for a
16 sweepstakes that is false, deceptive, or misleading.
- 17 (5) Knowingly require the participant in a sweepstakes to pay more than fair
18 market value for the item, product or service which entitles a participant to
19 enter a sweepstakes.
- 20 (6) Operate a sweepstakes game which does not have a finite number of entries,
21 or exceeds the finite number of entries per sweepstakes game established by
22 the Department.
- 23 (7) Fail to display the license required under this Article and the sweepstakes
24 software certification in a public and conspicuous place at the location in
25 which the sweepstakes takes place.
- 26 (b) A licensee under this Article shall comply with the following signage requirements:
- 27 (1) Exterior of Premises: Exterior signage shall be limited to the advertisement
28 of the consumer product and/or service sold on the Premises, and that a
29 Sweepstakes Promotion is offered. No signs shall be posted on the exterior
30 of the Premises that suggest gambling takes place on the Premises or
31 displays any image commonly associated with slot machines.
- 32 (2) Interior Premises: The operator shall conspicuously post in the interior of the
33 premises the following:
- 34 (a) All consumer products or services offered for sale shall be identified
35 by the description and price by conspicuous posting.
- 36 (b) Complete rules for all Sweepstakes Promotions shall be posted at the
37 Premises' front or main counter and a complete copy of the rules,
38 prize tables, and odds of winning shall be made available on request
39 without cost.
- 40 (3) Before a consumer may reveal an entry with the use of a sweepstakes
41 gaming device, a sweepstakes gaming device operator shall cause to be
42 displayed on the sweepstakes gaming device in at least a font size of
43 fourteen the following, which shall be affirmatively acknowledged by the
44 consumer:
45 "YOU HAVE ENTERED A SWEEPSTAKES GAME THAT IS
46 PREDETERMINED. YOU CANNOT CHANGE THE OUTCOME BY
47 PLAYING THE GAMES. THIS IS NOT GAMBLING. SWEEPSTAKES
48 ENTRIES CAN BE OPENED IN ANY OF THE GAMES. THERE IS NO
49 RELATIONSHIP BETWEEN THE GAME AND THE AMOUNT OF A
50 PRIZE, IF ANY. THE VALUES OF THE PRIZES SHOWN IN THE
51 GAME ARE FOR ENTERTAINMENT ONLY AND DO NOT IMPLY

1 THAT A PRIZE OF THAT VALUE IS AVAILABLE TO BE
2 AWARDED."

3 (c) A sweepstakes gaming device operator shall not do any of the following:

4 (1) No person shall be issued an ABC Permit that authorizes the retail sale of
5 alcoholic beverages for consumption on the premises of any location in
6 which a sweepstakes licensed under this Chapter takes place.

7 (2) Permit any individual under eighteen years of age to enter or be employed at
8 a facility operated by the sweepstakes gaming device operator for
9 sweepstakes.

10 (3) Offer or payout anyone prize with a value of more than ten thousand dollars.

11 (4) Offer or payout any prize in any form other than a check.

12 (5) Cause the sweepstakes results to be located other than on a server that shall
13 be at the location in which the sweepstakes takes place.

14 (d) The Department or any law enforcement agency may investigate and inspect
15 sweepstakes operations in this state and take any other necessary and reasonable action to
16 determine if a violation of any provision of this chapter has occurred.

17 (e) Unless a greater penalty is otherwise provided by law for conduct which is also a
18 violation of this Article, a person who violates:

19 (1) General Statute 18D-104, by operating without a license, or any provision of
20 this section, is guilty of a Class 2 misdemeanor; is subject to a minimum fine
21 of \$25,000 and a maximum fine of \$100,000; and is barred from obtaining a
22 license under this Chapter.

23 (2) Any other provision of this Chapter shall be subject to a civil penalty, with a
24 minimum fine of \$10,000, and a maximum fine of \$50,000."

25 **SECTION 3.** This act is effective when it becomes law. Section 1 of this act
26 applies to a video sweepstakes establishment and to a video sweepstakes machine or device
27 operated in this State on or after January 1, 2013. Section 2 of this act applies to video
28 sweepstakes devices operated in this State on or after October 1, 2012, and expires on April 1,
29 2013.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 958

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

H958-ATM-13 [v.1]

Page 1 of 1

Comm. Sub. ~~[NO]~~ *YES*

Amends Title [NO]

Date _____, 2012

~~First Edition~~ *PCS30650-TM-31*

Representative Moffitt

- 1 moves to amend the bill on page 2, lines 8-9
- 2 by rewriting the lines to read:
- 3 "corporate document to provide that the maximum size of the Society's board shall be
- 4 twenty-five (25) members and to provide that the following people shall be voting members of
- 5 the Society's".
- 6

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* H 9 5 8 - A T M - 1 3 - V - 1 *

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 1215 A BILL TO BE ENTITLED AN ACT TO SUPPORT THE STATE THEATER OF NORTH CAROLINA KNOWN AS THE FLAT ROCK PLAYHOUSE.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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

2012 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

By Representative Howard, Folwell, Setzer, Starnes (Chairs) for the Committee on FINANCE.

Committee Substitute for

HB 958 A BILL TO BE ENTITLED AN ACT TO CREATE A PUBLIC-PRIVATE PARTNERSHIP FOR THE NORTH CAROLINA ZOOLOGICAL PARK, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON PUBLIC-PRIVATE PARTNERSHIPS.

With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

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



North Carolina General Assembly
House Committee on Finance

Minutes

June 26, 2012

The House Committee on Finance met on Tuesday, June 26, 2012, at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Folwell, Setzer and Lewis; Vice-Chairs McComas and Wainwright; and Representatives K. Alexander, Brawley, Carney, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, T. Moore, Ross, Saine, Samuelson, H. Warren, and Weiss. House Sergeants at Arms present were Bob Rossi, Young Bae, Carlton Adams and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Starnes called the meeting to order and recognized Representative Howard to present **SB 848, AN ACT INCORPORATING ADDITIONAL BASES FOR MAKING ASSESSMENTS UNDER THE CHARTER OF THE CITY OF DURHAM IN THE CASE OF BOTH PETITIONED AND NON-PETITIONED ASSESSMENTS.** Representative Hall explained the bill. Staff assisted in the explanation. Representative Stam moved for a favorable report. The motion passed.

The next matter of business was **HB 994, AN ACT TO PERMIT THE COUNTY OF ROCKINGHAM TO USE DESIGN-BUILD DELIVERY METHODS.** Representative Moore moved that a proposed committee substitute be before the committee for discussion. Representative Jones was recognized to explain the bill. Representative Collins moved for a favorable report to the PCS, unfavorable to the original bill. The motion passed.

The next matter of business was **HB 1179, AN ACT TO REQUIRE THE STATE TO TERMINATE ITS LEASE OF THE INDIAN CULTURAL CENTER PROPERTY AND THE RIVERSIDE GOLF COURSE PROPERTY AND TO DIRECT THE PROGRAM EVALUATION DIVISION TO STUDY THE OPTIONS FOR THE DISPOSITION OF THE PROPERTIES.** Representative Collins moved that a proposed committee substitute be before the committee for discussion. Representative Moore explained the bill. Staff from the Department of Administration was available to answer questions.

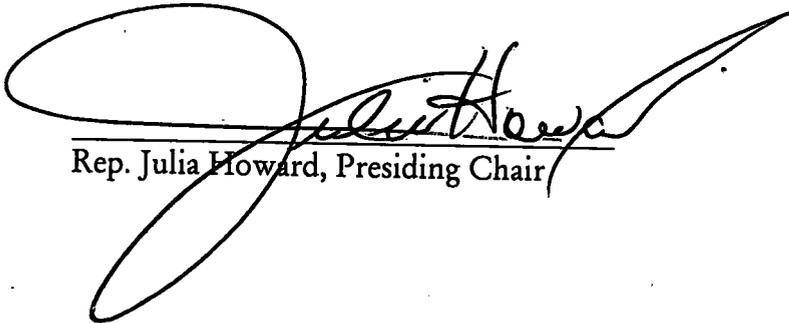
Representative Moore moved for a favorable report on the proposed committee substitute, unfavorable as to the original. The motion passed.

The next matter of business was HB 1180, AN ACT TO IMPOSE A STATE TAX ON THE PRIVILEGE OF OPERATING A VIDEO SWEEPSTAKES ESTABLISHMENT IN THIS STATE AND USE THE PROCEEDS FROM THE STATE TAX FOR LOCAL LAW ENFORCEMENT AND PUBLIC EDUCATION AND TO AUTHORIZE COUNTIES AND CITIES TO IMPOSE A TAX ON THE PRIVILEGE OF OPERATING A VIDEO SWEEPSTAKES ESTABLISHMENT.

Representative Collins moved that a proposed committee substitute be before the committee for discussion. Representative Owens explained the bill. Staff assisted in the explanation.

The next matter of business was SB 939, AN ACT TO STUDY CERTAIN ISSUES PERTAINING TO THE ECOSYSTEM ENHANCEMENT PROGRAM. Representative Collins moved that a proposed committee substitute be before the committee for discussion. Representative Lewis explained the bill. Staff assisted the explanation. Representative Stam motioned for a favorable report. The motion failed.

There being no further business presently before the Committee, the meeting adjourned at 9:51 am.



Rep. Julia Howard, Presiding Chair



Neal Inman, Committee Clerk

VISITOR REGISTRATION SHEET

Finance

(Committee Name)

6.26.2012

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Reggie Hiley	The Longmire Group
Butch Gunnells	NC Bev
Don O'Toole	City of Durham
Amy McConkey	NC Bev
Clare FitzGerald	DENR
Vani Balgunes	DENR
Ru Koyla	Koyla Law Firm
Jim Stanfill	NCEEP
Joe McClees	McClees Consulting
Danielle Musselwhite	Jason Deans + Assoc.
Donna Alderman	NCDOX
Janice Davidson	NC DOR
Tom BEAN	ETF
BRUCE THOMPSON	PARKER POG
Zee Alley	NHRS
Rob Hamme	IZLA
Jamie Onorio	JDJA

VISITOR REGISTRATION SHEET

FINANCE

6/26/12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bill Brooks	NCFPC
Gardner Payne	VJZ
Kathleen W. Joyce	NCAAA
K. Bestman	TSS
DAVID BARNES	PS
Samuel Smith	WM
George Smith	WM
Mark Simpkins	CAVE
Tom Nichols	CapResults
Allison Waller	Nelson Mullins
Gene Fogell	NE Joint Policy Council

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 848

Short Title: Durham City Assessments. (Local)
Sponsors: Senators McKissick and Atwater.
Referred to: State and Local Government.

May 22, 2012

1 A BILL TO BE ENTITLED
2 AN ACT INCORPORATING ADDITIONAL BASES FOR MAKING ASSESSMENTS
3 UNDER THE CHARTER OF THE CITY OF DURHAM IN THE CASE OF BOTH
4 PETITIONED AND NON-PETITIONED ASSESSMENTS.

5 Whereas, Section 77(14) of the Charter of the City of Durham (Charter) currently
6 includes limited bases for making assessments against properties benefitting from
7 improvements; and

8 Whereas, the limited bases for making assessments currently available under the
9 Charter have the potential to allocate assessments to properties in a manner that is
10 disproportionate to the benefits bestowed by the improvements to the properties; and

11 Whereas, by incorporating additional bases for making assessments into the Charter,
12 the Durham City Council will be able to apportion both petitioned and non-petitioned
13 assessments among the benefitted properties in a manner that is more reflective of the benefits
14 bestowed on the benefitted properties; Now, therefore,

15 The General Assembly of North Carolina enacts:

16 SECTION 1. Section 77(14) of the Charter of the City of Durham, being Chapter
17 671 of the Session Laws of 1975, as amended by Chapter 577 of the 1991 Session Laws, reads
18 as rewritten:

19 "Sec. 77. Assessments for Water, Sewer, Street, Sidewalk, Grass Plot, Lighting, and
20 Waterfront Improvements.

21 ...
22 (14) Having determined such total cost, the City Council shall thereupon make a
23 preliminary assessment as hereinafter set out in this section. Such
24 preliminary assessment shall, however, be advisory only, and shall be
25 subject to the action of the Council thereon as hereinafter set out in
26 subsection 17 of this section. The preliminary assessment shall be made on
27 the basis hereinafter set out in this subsection for the classes of
28 improvements indicated; provided, that if the petition, or the resolution, in
29 those cases where the improvement was ordered made without petition,
30 specified that there should be specially assessed against the ~~abutting~~
31 benefited property a smaller proportion of the cost of any improvement than
32 is hereinafter specified in this section, then there shall be assessed against
33 the ~~abutting-benefiting~~ property only such proportion of the cost of the
34 improvement as was specified in the petition or in the resolution.

35 (a) Street paving. The total cost of any street paving improvement, exclusive of so
36 much of the cost as is incurred at street intersections and the share of street railways or



1 railroads, shall be specially assessed against the lots and parcels of land abutting directly on the
2 street paved, according to the extent of their respective frontages thereon, by an equal rate per
3 foot of such frontage. The cost of that part of the paving required to be borne by a street railway
4 or railroad, which paving is done by the City after default by the street railway in making the
5 same, as hereinbefore provided in this section, or which is done by the City by contract with the
6 railway or railroad as provided in subsection 12 of this section, shall be assessed against the
7 street railway or railroad, and the assessment shall be a lien on all of the franchises and
8 property of the street railway or railroad company, and may be collected by sale of such
9 property and franchises as is provided in subsection 23 of this section; Provided, further, that in
10 case of a corner lot, used as a single lot, the Council may provide by ordinance for the City to
11 bear a part of the cost of paving in accordance with the following formula, the amounts or
12 distances therein shown being maximum amounts or distances which may be reduced by the
13 ordinance:

14 (1) In the event that neither of the streets abutting a corner lot, used as a single
15 lot, has ever been paved, such lot shall be exempt from assessment for the
16 paving improvement along side of such lot to the extent of 20 per cent of the
17 first 150 feet thereof or 30 feet, whichever is less. Thereafter, upon the
18 paving of the intersecting street on which such lot abuts, such lot shall be
19 exempt from assessment for the paving of the street to the extent of 50 per
20 cent of the frontage on such street or 30 feet, whichever is less.

21 (2) In the event that the street along side of a corner lot, used as a single lot, is
22 paved and the intersecting street is to be paved, such lot shall be exempt
23 from assessment for the paving of the intersecting street to the extent of 50
24 per cent of the frontage thereon or 30 feet, whichever is less.

25 (3) In the event a street in front of a corner lot, used as a single lot, has been
26 paved and the street along side of such lot is to be paved, the lot shall be
27 exempt from assessment for the paving improvement along side of such lot
28 to the extent of 40 percent of the frontage on such street or 60 feet,
29 whichever is less.

30 The exemption herein provided shall apply only in areas zoned for
31 residential use or for apartments, and such portion of the cost of construction
32 as would otherwise be assessed against such corner lot shall be borne by the
33 City;

34 (b) Sidewalks. The total cost of constructing or reconstructing sidewalks shall be
35 assessed against the lots and parcels of land abutting on that side of the street upon which the
36 improvement is made, according to their respective frontages thereon by an equal rate per foot
37 of such frontage, the lots within a block being deemed to abut upon a sidewalk although the
38 latter extends beyond the lots to the curb line of an intersecting street; Provided, further, that in
39 case of a corner lot, used as a single lot, the Council may provide by ordinance for the City to
40 bear a part of the cost of sidewalk improvements in accordance with the following formula, the
41 amounts or distances therein shown being maximum amounts or distances which may be
42 reduced by the ordinance:

43 (1) In the event that neither of the streets abutting a corner lot, used as a single
44 lot, has sidewalks, such lot shall be exempt from assessment for the sidewalk
45 improvement along side of such lot to the extent of 20 per cent of the first
46 150 feet thereof or 30 feet, whichever is less. Thereafter, upon the
47 construction of sidewalks on the intersecting street, on which such lot abuts,
48 such lot shall be exempt from assessment for the sidewalk improvement on
49 the street to the extent of 50 per cent of the frontage on such street or 30 feet,
50 whichever is less.

1 (2) In the event that the street along side of a corner lot, used as a single lot, has
2 sidewalks and sidewalks are constructed on the intersecting street, such lot
3 shall be exempt from assessment for the sidewalks on the intersecting street
4 to the extent of 50 per cent of the frontage thereon or 30 feet, whichever is
5 less.

6 (3) In the event a street in front of a corner lot, used as a single lot, has
7 sidewalks and sidewalks are to be constructed on the intersecting street, the
8 lot shall be exempt from assessment for the sidewalk improvement along
9 side of such lot to the extent of 40 per cent of the frontage thereon or 60 feet,
10 whichever is less.

11 The exemptions herein provided shall apply only in areas zoned for
12 residential use or for apartments, and such portion of the cost of construction
13 as would otherwise be assessed against such corner lot shall be borne by the
14 City;

15 (c) Water mains and sewers. In the case of water mains and storm and sanitary sewers,
16 the cost of not exceeding an eight-inch water or sanitary sewer main and of not exceeding a
17 thirty-inch storm sewer main and of such portion of the mains as lie within the limits of the
18 street or streets, or parts thereof, to be improved as provided in the petition or resolution
19 ordering the same, shall be assessed against the abutting property. Such cost shall be assessed
20 against the lots and parcels of land abutting on the street or streets, or parts thereof, according
21 to their respective frontages thereon (i.e., the entire frontage benefited by the water or sanitary
22 sewer project) by an equal rate per foot of such frontage; provided, that in case of a corner lot,
23 used as a single lot, no assessment shall be made against the long side of the lot abutting on the
24 intersecting streets for any part of the frontage of such longer side of the lot except that portion
25 in excess of 150 feet if the lot is in a residential section of the City, or in excess of 100 feet if
26 the lot is in a business section of the City, and in such case the portion of the cost as would
27 otherwise be assessed against the lot shall be borne by the City; provided further, that if a water
28 or sanitary sewer main in excess of eight inches in size or a storm sewer main in excess of
29 thirty inches in size is laid in the portion of the street or streets, then the cost of the water or
30 sanitary sewer main in excess of the cost of an eight-inch main and the cost of the storm sewer
31 main in excess of a thirty-inch main shall be borne by the City, provided further, that if the
32 resolution ordered the construction of any septic tank or disposal plant, no part of the cost of
33 the same shall be specially assessed; provided further, that if the resolution ordered the
34 construction of any pumping station, force main or sanitary sewer outfall, the cost thereof may
35 be assessed against the lots and parcels of land abutting on the street or streets, or parts thereof,
36 according to their respective frontages thereon (i.e., the entire frontage benefited by such
37 pumping station, force main or sanitary sewer outfall) by an equal rate per front foot of such
38 frontage; provided, however, in the case of a corner lot, used as a single lot, where there is a
39 sewer already laid on the intersecting street on which the lot abuts and by which the lot is or
40 can be served, no assessment shall be made against the lot for the costs of any pumping station,
41 force main or sanitary sewer outfall incident to the second sewer for any part of the frontage of
42 the lot except that portion in excess of 150 feet if the lot is in a residential section, or in excess
43 of 100 feet if the lot is in a business section, and in such case the portion of the cost as would
44 otherwise be assessed against the lot shall be borne by the City. Nothing contained herein shall
45 be construed to limit the right of the City to contract with any property owner or owners for the
46 construction of any pumping station, outfall, septic tank or disposal plant or for the construction
47 of water mains or storm or sanitary sewers and for the assessment of the cost thereof according
48 to the terms of such contract;

49 (d) Water and Sewer Laterals. The entire cost of each water and sewer lateral required
50 to be laid by the owner of the property for or in connection with which such lateral is laid, but
51 laid by the City after default by the property owner in making the same as hereinbefore

1 provided, shall be specially charged against the particular lot or parcel of land for or in
2 connection with which it was made;

3 (e) Water Mains and Sewers and Laterals; Flat Rate Assessment. In lieu of assessing
4 each water and sanitary sewer improvement project on the basis of the cost of that particular
5 project, the City Council shall have authority to establish flat rates per frontage foot for the
6 assessment of property abutting water and sewer improvement projects, based on the average
7 cost of constructing 8-inch water mains and 8-inch sanitary sewer mains in the City, and shall
8 also have authority to establish flat rates for the assessment of property abutting the installation
9 of water and sanitary sewer laterals, based on the average cost of installing such laterals in the
10 City. The Council may then assess property abutting water and sanitary sewer improvement
11 projects on the basis of the flat rates so established, subject to the right of any nonpetitioning
12 property owner to have the assessment against his property adjusted as provided by law upon a
13 showing that his property has not been benefited to the extent of the assessment;

14 (f) Grass plots. The entire cost of grading or otherwise improving, or of planting, the
15 grass plots in any street or part thereof, shall be assessed against the lots and parcels of land
16 abutting on the street or part thereof wherein or whereon such improvements are made by an
17 equal rate per front foot of such frontage; provided, that this subsection shall be construed to
18 mean that when a grass plot in any street is graded or planted or otherwise improved, the cost
19 thereof shall be assessed against all of the property abutting on the street within the block
20 where such grass plot is located;

21 (g) Lighting improvements. The cost of any lighting improvement, such cost being
22 determined as provided in subsection thirteen of this section, shall be specially assessed against
23 the lots and parcels of land abutting directly on the street or streets, or part thereof, where such
24 improvement is made, according to their respective frontage thereon by an equal rate per foot
25 of such frontage;

26 (h) Water front improvements. The cost of any water front improvement shall be
27 specially assessed against the lots and parcels of land abutting on the improvement according to
28 their respective frontages thereon by an equal rate per foot of such frontage.

29 (i) In addition to the bases for making assessments for the cost of improvements
30 specified above in paragraphs (a) through (h) of this subdivision, the city council may
31 alternatively, or in conjunction, make assessments on the following bases:

32 (1) The area of land served, or subject to being served, by the improvement, at
33 an equal rate per unit of area.

34 (2) The value added to the land served by the improvement, or subject to being
35 served by it, being the difference between the appraised value of the land
36 without improvements as shown on the tax records of the county, and the
37 appraised value of the land with improvements according to the appraisal
38 standards and rules adopted by the county at its last revaluation, at an equal
39 rate per dollar of value added.

40 (3) The number of lots served, or subject to being served, where the project
41 involves extension of an existing system to a residential or commercial
42 subdivision, at an equal rate per lot.

43 (4) A combination of two or more of these alternative bases, which may also be
44 combined with the specific assessment basis listed above in paragraphs (a)
45 through (h) of this subdivision, for each class of improvement.

46 Whenever the basis selected for assessment is either area or value added, the
47 city council may provide for the laying out of benefit zones according to the
48 distance of benefited property from the improvement being undertaken, and
49 may establish differing rates of assessment to apply uniformly throughout
50 each benefit zone. For each improvement, the city council shall endeavor to
51 establish an assessment method from among the bases set out in this section

1 that will most accurately assess each lot or parcel of land according to the
2 benefit conferred upon it by the improvement."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 994
PROPOSED COMMITTEE SUBSTITUTE H994-PCS30655-SV-65

Short Title: Rockingham County Design-Build.

(Local)

Sponsors:

Referred to:

May 21, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE COUNTY OF ROCKINGHAM TO USE DESIGN-BUILD
3 DELIVERY METHODS.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. Notwithstanding G.S. 143-128, 143-129, 143-131, 143-132,
6 143-64.31, and 143-64.32, Rockingham County may use the design-build method of
7 construction for up to three projects involving the construction or renovation of buildings
8 owned by the County. The County shall seek to prequalify and solicit at least three design-build
9 teams to bid on the project and shall receive at least three sealed proposals from those teams for
10 each project. The proposals shall not require the design-build team to submit project design
11 solutions. If three proposals are not received and the project has been publicly advertised for a
12 minimum of 30 days, the County may proceed with the proposals received. The County shall
13 interview at least two of the design-build teams that submit proposals. The County shall award
14 the contract to the best qualified team, taking into consideration in its selection the time of
15 completion of any project, compliance with the provisions of G.S. 143-128.2, and the cost of
16 the project.
17 SECTION 2. This act is effective when it becomes law and expires on June 30,
18 2017.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1179
Committee Substitute Favorable 6/6/12
Third Edition Engrossed 6/13/12
PROPOSED COMMITTEE SUBSTITUTE H1179-PCS11385-SV-67

Short Title: Indian Cul. Ctr/Golf Course Terminate Leases.

(Public)

Sponsors:

Referred to:

May 30, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE STATE TO TERMINATE ITS LEASE OF THE INDIAN
3 CULTURAL CENTER PROPERTY AND THE RIVERSIDE GOLF COURSE
4 PROPERTY AND TO DIRECT THE PROGRAM EVALUATION DIVISION TO
5 STUDY THE OPTIONS FOR THE DISPOSITION OF THE PROPERTIES.
6 Whereas, the State of North Carolina acquired the following tracts or parcels of
7 land located in Maxton Township, Robeson County, for the development, use, and maintenance
8 of an Indian Cultural Center: (i) 386.69 acres, more or less, by deed from the Riverside Country
9 Club of Pembroke, Inc., dated April 14, 1983, recorded in Book 533, Page 164, Robeson
10 County Registry and by deed dated August 24, 1984, recorded in Book 563, Page 254, Robeson
11 County Registry, less and except approximately 110 acres for the use and operation of the
12 Riverside Golf Course; (ii) 99.62 acres, more or less, by deed from Evelyn S. Morgan Abbott,
13 dated March 25, 1988, recorded in Book 575, Page 523, Robeson County Registry; (iii) 10
14 acres, more or less, by deed from H.C. Locklear, et ux, dated December 12, 1985, recorded in
15 Book 586, Page 142, Robeson County Registry; and (iv) 42.50 acres, more or less, by deed
16 from Ronald Revels and wife, Dorisetta Revels, dated December 17, 1996, recorded in Book
17 931, Page 415, Robeson County Registry; and
18 Whereas, pursuant to Chapter 1074 of the 1989 Session Laws, as amended by
19 Chapter 900 of the 1991 Session Laws and Chapter 88 of the 1993 Session Laws, the General
20 Assembly directed that the State of North Carolina enter into a 99-year lease of the Indian
21 Cultural Center property with a North Carolina nonprofit entity known as the North Carolina
22 Indian Cultural Center, Inc. (NCICC); and
23 Whereas, the State of North Carolina entered into a 99-year lease agreement, dated
24 May 12, 1994, with NCICC, which lease was subsequently amended on December 9, 1997, and
25 June 6, 2001, in accordance with S.L. 1997-41 and S.L. 2001-89 (collectively, the "lease"); and
26 Whereas, the lease provides in paragraph 8 that the Indian Cultural Center property
27 is to "be maintained and improved, at no cost or expense to the [State of North Carolina], for
28 those activities covered by the original charter of [T]he North Carolina Indian Cultural Center,
29 Inc., on file with the North Carolina Secretary of State"; and
30 Whereas, as provided in its charter, the organizational purposes of NCICC are, in
31 part: "a. [t]o respectfully present to the public accurate information on Native North American
32 history, art, and culture"; and "b. [t]o develop, establish, manage, furnish, equip, maintain,



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1 preserve, exhibit and interpret to the public the North Carolina Indian Cultural Center with its
2 Indian villages, arts and crafts, archaeological digs, museums, art exhibits, library, visitors'
3 center, recreational facilities, entertainment, restaurants, concessions, and other related
4 operations of an artistic, economic development, educational, and cultural nature"; and

5 Whereas, in addition to the maintenance requirements of paragraph 8, paragraphs 16
6 and 20 of the lease require NCICC to maintain during its term of possession, at its expense, the
7 Indian Cultural Center property and all permanent structures located on the property in
8 accordance with all applicable laws, rules, ordinances, orders, and regulations of State and
9 county governmental agencies; and

10 Whereas, in March 2010, the Office of State Construction assessed the condition of
11 the improvements at the Indian Cultural Center property, from which assessment it appears that
12 the improvements on the property have not been maintained as required in paragraphs 8, 16,
13 and 20 of the lease; and

14 Whereas, subsequently, the North Carolina Department of Insurance conducted a
15 fire and safety inspection at the Indian Cultural Center property, from which inspection it
16 appears that the improvements on the property have not been maintained as required in
17 paragraphs 8, 16, and 20 of the lease; and

18 Whereas, the Riverside Golf Course, comprising approximately 110 acres, is
19 contiguous to Indian Cultural Center property and uses as a means of access the main road
20 extending through the Indian Cultural Center property; and

21 Whereas, pursuant to paragraph 13 of the lease, the State of North Carolina retained
22 the right of ingress and egress, both vehicular and pedestrian, over the main road extending
23 through the Indian Cultural Center property for the purpose of accessing the Riverside Golf
24 Course; and

25 Whereas, NCICC has hindered or prevented access to the Riverside Golf Course by
26 the State, its lessees, contractors, and invitees by changing the locks on the entrance gate to the
27 Indian Cultural Center property and by other means; and

28 Whereas, paragraph 25 of the lease requires NCICC to keep in force, and maintain
29 throughout the term of the lease, fire and extended coverage insurance on the permanent
30 structures located on the Indian Cultural Center property; and

31 Whereas, pursuant to paragraph 26 of the lease, NCICC is required to keep in force,
32 for the mutual benefit of the State and NCICC, at no cost to the State, comprehensive broad
33 form general public liability insurance on the terms and conditions set forth in the lease; and

34 Whereas, NCICC has failed to provide evidence to the State that the insurance
35 required under paragraphs 25 and 26 of the lease is in force; and

36 Whereas, upon consultation with the Department of Administration, the Office of
37 the Attorney General provided NCICC with notice in a letter dated January 18, 2011, that
38 NCICC was in breach of its obligations under the lease for defaults that included some of those
39 set forth above; and

40 Whereas, the General Assembly also finds that NCICC is, and has been for some
41 time, in breach of its obligations under the lease for the defaults set forth above and other
42 defaults and that it would be in the best interest of the State if the lease were terminated and
43 existing law amended to allow the State of North Carolina to effect an alternate arrangement
44 for the disposition and management of the Indian Cultural Center property other than the lease
45 with NCICC; and

46 Whereas, pursuant to subsection (a) of Section 18 of Chapter 1074 of the 1989
47 Session Laws, as amended by Section 22 of Chapter 900 of the 1991 Session Laws, Section 1
48 of Chapter 88 of the 1993 Session Laws, Section 33 of Chapter 561 of the 1993 Session Laws,
49 Section 1 of S.L. 1997-41, and Section 1 of S.L. 2001-89, the Riverside Golf Course was
50 excluded from the real property subject to the lease and operated for a period of time under
51 separate lease agreements; and

1 Whereas, the Riverside Golf Course is not currently in operation and all lease
2 agreements for the Riverside Golf Course have either expired or allow for termination upon 30
3 days' notice by the State; Now, therefore,

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Termination of leases and repossession of land. – Notwithstanding
6 the provisions of subsection (a) of Section 18 of Chapter 1074 of the 1989 Session Laws, as
7 amended by subsection (e) of Section 22 of Chapter 900 of the 1991 Session Laws, Section 1 of
8 Chapter 88 of the 1993 Session Laws, Section 33 of Chapter 561 of the 1993 Session Laws,
9 Section 1 of S.L. 1997-41, and Section 1 of S.L. 2001-89, the State of North Carolina shall
10 immediately terminate its lease of the Indian Cultural Center property pursuant to the terms of
11 the lease and repossess the property. The State of North Carolina shall also terminate its lease
12 of the Riverside Golf Course property upon giving 30 days' notice pursuant to the terms of the
13 lease and repossess the property. The State of North Carolina shall not sell, lease, or otherwise
14 dispose of the Indian Cultural Center property or the Riverside Golf Course property until the
15 Joint Legislative Program Evaluation Oversight Committee has made its final
16 recommendations upon completion of the study directed by Section 2 of this act and the
17 General Assembly has enacted legislation directing action on this issue.

18 **SECTION 2.(a)** PED Study. –The Joint Legislative Program Evaluation Oversight
19 Committee shall include in the 2012-2013 Work Plan for the Program Evaluation Division of
20 the General Assembly a study to evaluate the options for disposing of the Indian Cultural
21 Center property and the Riverside Golf Course property in such a way that ensures that the
22 properties will continue to serve all of the purposes listed in this section. The purposes are:

- 23 (1) The preservation, exhibition, and interpretation of Native North American
24 arts, crafts, and artifacts.
- 25 (2) The provision of information to the public on Native North American history
26 and culture.
- 27 (3) The installation of new and the renovation of existing public recreational and
28 entertainment facilities.
- 29 (4) The cultivation of economic development enterprises.

30 **SECTION 2.(b)** Reporting. – The Program Evaluation Division shall submit its
31 findings and recommendations to the Joint Legislative Program Evaluation Oversight
32 Committee at a date to be determined by the Joint Legislative Program Evaluation Oversight
33 Committee. The Committee shall submit its findings and recommendations to the General
34 Assembly on or before the convening of the 2013 General Assembly.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1180
PROPOSED COMMITTEE SUBSTITUTE H1180-CSRbx-93 [v.1]

Short Title: Video Sweepstakes to Support Education.

(Public)

Sponsors:

Referred to:

May 30, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE AND IMPOSE AN EXCISE TAX ON VIDEO SWEEPSTAKES,
3 TO USE THE PROCEEDS FOR LAW ENFORCEMENT AND PUBLIC EDUCATION,
4 AND TO PROVIDE FOR A DETERMINATION BY THE 2013 GENERAL ASSEMBLY
5 ON WHETHER THE EXPIRATION DATE OF THE REGULATORY REQUIREMENTS
6 IN THE ACT SHOULD BE EXTENDED.

7 Whereas, the General Assembly of North Carolina, in order to insure that the
8 gambling laws were not circumvented and to protect consumers from negative collateral
9 consequences of "sweepstakes" machines, enacted G.S. 14-306.4 in 2010; and

10 Whereas, the Superior Court for Guilford County, in Hest Technologies v. State,
11 found that, except for a single subdivision in the statute, the act making certain video
12 sweepstakes unlawful was constitutional; and

13 Whereas, the North Carolina Court of Appeals, upon appellate review and in a split
14 decision, found that the statute was unconstitutional; and

15 Whereas, the State has appealed the ruling of the North Carolina Court of Appeals
16 to the North Carolina Supreme Court, and filed its brief to the Court on June 15, 2012, and

17 Whereas, it cannot be determined when the North Carolina Supreme Court may
18 issue its decision whether the statute is or is not enforceable; and

19 Whereas, what had been an illegal activity is now being pursued across the State
20 without any regulation as to the integrity of software being utilized; the number of entries that
21 may be allowed per sweepstakes; an accounting as to how many winning entries and the
22 amounts being distributed as prizes; the age of persons who are allowed into "sweepstakes
23 parlors;" the presence of alcohol on the premises; and other matters which are legitimate
24 subjects of government regulation to insure against corrupt practices and to prevent consumers
25 of the State from being victimized; and

26 Whereas, it is the General Assembly's intent to enact regulations so long as video
27 sweepstakes are deemed lawful; Now, therefore,
28 The General Assembly of North Carolina enacts:

29 SECTION 1.(a) Chapter 105 of the General Statutes is amended by adding a new
30 article to read:

31 "Article 2E.
32 "Video Sweepstakes Revenue for Education and Law Enforcement.
33 "§ 105-113.120. Purpose; administration.



* H 1 1 8 0 - C S R B X - 9 3 - V - 1 *

1 (a) Purpose. – The taxes imposed in this Article provide revenue for the State's
2 education needs and for law enforcement.

3 (b) Administration. – Article 9 of this Chapter applies to this Article.

4 **"§ 105-113.121. Definitions.**

5 The following definitions apply in this Article:

6 (1) Enter or entry. – The act or process by which a person becomes eligible to
7 receive any prize offered in a sweepstakes.

8 (2) Entertaining display. – Visual information, capable of being seen by a
9 sweepstakes entrant, that takes the form of actual game play, or simulated
10 game play. A sweepstakes utilizing a point-of-sale system, capable of
11 calculating applicable taxes pursuant to Article 5 of Chapter 105 of the
12 General Statutes, and which does not have an entertaining display, to include
13 those systems that operate solely by allowing an employee or a customer to
14 swipe a card containing a bar code or a visual representation of a bar code,
15 are not subject to the provisions of this Article.

16 (3) Prize. – Any gift, award, gratuity, good, service, credit, or anything else of
17 value that may be transferred to a person, whether possession of the prize is
18 actually transferred, or placed on an account or other record as evidence of
19 the intent to transfer the prize.

20 (4) Sweepstakes. – Any game, advertising scheme or plan, or other promotion
21 that, with or without payment of any consideration, a person may enter to
22 win or become eligible to receive any prize, the determination of which is
23 based upon chance.

24 (5) Video display. – Visual information in the form of an entertaining display,
25 capable of being seen by a sweepstakes entrant, regardless of whether the
26 information is communicated through actual or simulated game play; video
27 images; an "instant reveal" whereby the information is immediately
28 displayed on a screen; or by any other type, method, or mode of
29 communication that is capable of being seen.

30 (6) Video sweepstakes establishment. – A place of business in which a video
31 sweepstakes machine or device is operated.

32 (7) Video sweepstakes machine or device. – A mechanically, electrically, or
33 electronically operated machine or device that is owned, leased, or otherwise
34 possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes
35 sponsor's or promoter's partners, affiliates, subsidiaries, or contractors, that is
36 intended to be used by a sweepstakes entrant, that uses energy, and that is
37 capable of video display on a screen or other mechanism.

38 **"§ 105-113.122. Excise tax on video sweepstakes establishments and machines.**

39 (a) Excise Tax. – An excise tax is levied on each video sweepstakes establishment
40 operating in this State as follows:

41 (1) A rate per video sweepstakes establishment.

42 (2) A rate per video sweepstakes machine or device.

43 (3) A rate on gross receipts.

44 (b) Rate per Establishment. – An annual excise tax at the rate of two thousand dollars
45 (\$2,000) is levied on a video sweepstakes establishment. The amount due is payable by January
46 1 of each year. The full amount of the tax applies to an establishment that operates during any
47 portion of a calendar year.

48 (c) Rate per Machine or Device. – An annual excise tax at the rate of one thousand
49 dollars (\$1,000) is levied on each video sweepstakes machine or device operated in a video
50 sweepstakes establishment. The amount due is payable by January 1 of each year. The full
51 amount of tax applies to a video sweepstakes machine or device that operates during any

1 portion of a calendar year. The Secretary must issue stamps to affix to each video sweepstakes
2 machine or device to indicate payment as required by this Article. The stamp must be displayed
3 conspicuously on the video sweepstakes machine or device, and it must clearly indicate the
4 year for which the tax is paid. Upon payment of the tax, the Secretary shall issue a stamp for
5 each video sweepstakes machine or device for which payment is received.

6 (d) Gross Receipts. – An annual excise tax of four percent (4%) of the taxable gross
7 receipts from operating a video sweepstakes machine or device is levied on each video
8 sweepstakes establishment. The amount due is payable quarterly or monthly in accordance with
9 the schedule and requirements that apply to payments of sales and use tax under
10 G.S. 105-164.16. A return is due quarterly. A quarterly return covers a calendar quarter and is
11 due by the last day of the month that follows the quarter covered by the return. For purposes of
12 this subsection, taxable gross receipts are the gross receipts derived by the establishment that
13 results in a person's eligibility to operate a sweepstakes machine or device at the establishment
14 to determine whether the person has won a sweepstakes prize, less the amount of any prizes
15 transferred to a sweepstakes entrant. The return must include the taxpayer's gross receipts from
16 operating one or more video sweepstakes machines or devices during the reporting period and
17 the prizes awarded during this period to a sweepstakes entrant.

18 (e) Report and Payment. – A person who operates a video sweepstakes establishment
19 must report the taxes payable under this section in the form required by the Secretary. The
20 return must include the address where the video sweepstakes machines or devices are located
21 and whether the location is within the corporate limits of a municipality. Notwithstanding any
22 other provision of law, the person is not required to give identifying information on the return,
23 and the return is not required to be verified by oath or affirmation. The tax is due when the
24 return is filed. Taxes may be paid and stamps may be issued either by mail or in person.

25 **"§ 105-113.123. Use of tax proceeds.**

26 (a) Distribution. – The Secretary shall distribute the net tax proceeds collected under
27 this Article as provided in this section. Effective January 1, 2014, the Secretary must transfer
28 one million dollars (\$1,000,000) annually to the Department of Health and Human Services for
29 gambling addiction education and treatment programs before making the distributions under
30 this section.

31 (b) Administration. – The Department may retain six percent (6%) of the net proceeds
32 for its administrative expenses.

33 (c) Law Enforcement. – The Secretary must distribute nine percent (9%) of the net
34 proceeds collected under this Article to various law enforcement agencies, as provided in this
35 subsection. The monies distributed under this subsection are provided as additional funding for
36 the purposes for which they are distributed and are not intended to supplant existing funding.

37 (1) Three percent (3%) must be distributed to the county sheriff's departments
38 on a per capita basis according to the most recent annual population
39 estimates certified to the Secretary by the State Budget Officer.

40 (2) Three percent (3%) must be distributed to the municipal police departments
41 on a per capita basis according to the most recent annual population
42 estimates certified to the Secretary by the State Budget Officer.

43 (3) Three percent (3%) must be credited to the General Fund and appropriated
44 by the General Assembly in the Current Operations Appropriations Act for
45 the fiscal year that begins the following July 1 to the Department of Public
46 Safety for the support and operation of the Alcohol Law Enforcement
47 Section.

48 (d) Education. – Of the remaining eighty-five percent (85%) of the net proceeds
49 collected under this Article, the first one hundred eighty-nine million two hundred eight-three
50 thousand two hundred forty dollars (\$189,283,240) shall be credited to the Department of
51 Public Instruction and is appropriated to reduce the LEA Flexibility Adjustment, if applicable.

1 After this allocation is made, any remaining proceeds must be credited to the General Fund and
2 appropriated by the General Assembly in the Current Operations Appropriations Act for the
3 fiscal year that begins the following July 1 for education.

4 **"§ 105-113.124. Local tax.**

5 (a) Authorization. – A county or city may, by resolution or ordinance respectively,
6 impose an excise tax as allowed under this section on each video sweepstakes establishment
7 located in that county or city as follows:

8 (1) A rate per video sweepstakes establishment.

9 (2) A rate per video sweepstakes machine or device.

10 (b) Rate per Establishment. – A county or city may impose an annual excise tax at the
11 rate of one thousand dollars (\$1,000) on each video sweepstakes establishment located in that
12 jurisdiction. The amount due is payable by January 1 of each year. The full amount of tax
13 applies to an establishment that operates during any portion of a calendar year.

14 (c) Rate per Machine or Device. – A county or city may impose an annual excise tax at
15 the rate of five hundred dollars (\$500.00) on each video sweepstakes machine or device
16 operated in a video sweepstakes establishment located in that jurisdiction. The amount due is
17 payable by January 1 of each year. The full amount of tax applies to a video sweepstakes
18 machine or device operated during any portion of the calendar year.

19 (d) Administration. – Upon adoption of a resolution or ordinance levying the taxes
20 allowed under this section, the governing body of the county or city must immediately deliver a
21 certified copy of the resolution or ordinance to the Secretary. Upon receipt of the document, the
22 Secretary shall collect and administer the tax. The Secretary must distribute the local revenues
23 collected to the county or city for which the taxes are collected by March 31 of each year.

24 (e) Use of Funds. – Funds distributed by the Secretary to a city under this section may
25 be used for any public purpose. Funds distributed by the Secretary to a county under this
26 section must be allocated as follows:

27 (1) City share. – Fifty percent (50%) of the funds derived from a video
28 sweepstakes establishment located in a city or from a video sweepstakes
29 machine or device operated in an establishment located in a city must be
30 distributed to the city in which the establishment is located. The city may use
31 the funds distributed to it under this subdivision for any lawful purpose.

32 (2) Remaining share. – The remaining funds distributed to a county under this
33 section may be used by the county for any public purpose.

34 (f) Penalty and Collection. – The penalty and collection provisions allowed under
35 Article 9 of this Chapter apply to taxes levied under the authority of this section in the same
36 manner and to the same extent as they apply to taxes levied by the State under this Article.

37 (g) Nature. – The General Assembly finds that the revenue distributed under this
38 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of
39 the North Carolina Constitution and may not be reduced or withheld by the Governor.

40 **"§ 105-113.125. Applicability; illegal activity.**

41 Applicability. – This Article is applicable to any video sweepstakes machine or device
42 without regard to any of the following:

43 (1) How the machine or device is activated.

44 (2) How the machine or device is programmed for operation.

45 (3) How the machine or device determines and associates the prize with an entry
46 or entries at the time the sweepstakes is entered."

47 **SECTION 1.(b) G.S. 18C-161 reads as rewritten:**

48 **"§ 18C-161. Types of income to the North Carolina State Lottery Fund.**

49 The following revenues shall be deposited in the North Carolina State Lottery Fund:

50 (1) All proceeds from the sale of lottery tickets or shares.

51 (2) The funds for initial start-up costs provided by the State.

- 1 (3) All other funds credited or appropriated to the Commission from any source.
- 2 (4) Interest earned by the North Carolina State Lottery Fund.
- 3 (5) Proceeds credited to the North Carolina State Lottery Fund under
- 4 G.S. 105-113.123."

5 **SECTION 1.(c)** G.S. 18C-162 is amended by adding a new subsection to read:

6 "(d) The proceeds credited to the North Carolina State Lottery Fund under

7 G.S. 105-113.123 shall be allocated for payment of expenses of the Commission in regulating

8 video sweepstakes establishments and video sweepstakes machines and devices, as provided

9 under Chapter 18D of the General Statutes."

10 **SECTION 1.(d)** G.S. 160A-211 is amended by adding a new subsection to read:

11 "(b1) Video Sweepstakes Restriction. – A city may not impose an excise tax or a license,

12 franchise, or privilege tax on a person operating a video sweepstakes establishment except as

13 provided in G.S. 105-113.124."

14 **SECTION 2.** The North Carolina General Statutes is amended by adding a new

15 Chapter to read:

16 **"CHAPTER 18D**

17 **"VIDEO SWEEPSTAKES.**

18 **"Article 1.**

19 **Licensure**

20 **"§ 18D-101. Citation.**

21 This Chapter shall be known and may be cited as the North Carolina Video Sweepstakes

22 Act.

23 **"§ 18D-102. Purpose and intent.**

24 The General Assembly declares that the purpose of this Chapter is to regulate any video

25 sweepstakes that are not otherwise unlawful under applicable State law. Nothing in this Chapter

26 shall be construed to make any conduct lawful that is declared to be unlawful under Article 37

27 of Chapter 14 of the General Statutes, or any other provision of law.

28 **"§ 18D-103. Definitions.**

29 The following definitions apply in this Article:

- 30 (1) Department. – The North Carolina Department of Revenue.
- 31 (2) Enter or entry. – The act or process by which a person becomes eligible to
- 32 receive any prize offered in a sweepstakes.
- 33 (3) Entertaining display. – Visual information, capable of being seen by a
- 34 sweepstakes entrant, that takes the form of actual game play, or simulated
- 35 game play. A sweepstakes utilizing a point-of-sale system, capable of
- 36 calculating applicable taxes pursuant to Article 5 of Chapter 105 of the
- 37 General Statutes, and which does not have an entertaining display, to include
- 38 those systems that operate solely by allowing an employee or a customer to
- 39 swipe a card containing a bar code or a visual representation of a bar code,
- 40 are not subject to the provisions of this Article.
- 41 (4) Prize. – Any gift, award, gratuity, good, service, credit, or anything else of
- 42 value that may be transferred to a person, whether possession of the prize is
- 43 actually transferred, or placed on an account or other record as evidence of
- 44 the intent to transfer the prize.
- 45 (5) Sweepstakes. – Any game, advertising scheme or plan, or other promotion
- 46 that, with or without payment of any consideration, a person may enter to
- 47 win or become eligible to receive any prize, the determination of which is
- 48 based upon chance, and in which there is a finite pool of entries.
- 49 (6) Video sweepstakes establishment. – A place of business in which a video
- 50 sweepstakes machine or device is operated.

- 1 (7) Video sweepstakes device. – A mechanically, electrically, or electronically
2 operated device that is owned, leased, or otherwise possessed by a
3 sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or
4 promoter's partners, affiliates, subsidiaries, or contractors, that is intended to
5 be used by a sweepstakes entrant, that uses energy, and that is capable of
6 entertaining display on a screen or other mechanism.
- 7 (8) Video sweepstakes device operator. – A person licensed under this Article to
8 operate or conduct a sweepstakes.
- 9 (9) Video sweepstakes device vendor. – A person licensed under this Article to
10 supply sweepstakes software to a sweepstakes gaming device operator.
- 11 (10) Sweepstakes software. – A computer program used by a sweepstakes device
12 operator to conduct a sweepstakes.

13 **§ 18D-104. Licensure.**

14 (a) License Required. – It shall be unlawful for any establishment to operate a video
15 sweepstakes without the license required by this Chapter.

16 (b) Application for License. – To obtain a license required by this Article, an applicant
17 must:

- 18 (1) File an application with the Department on a form provided by the
19 Department and pay an application fee of \$250. An application must include
20 the applicant's name, address, federal employer identification number, and
21 any other identifying information required by the Department.
- 22 (2) The application shall state the number of video sweepstakes devices to be
23 placed into operation at the video sweepstakes establishment. A licensee
24 may apply to amend the license to add additional devices on a form to be
25 provided by the Department.
- 26 (3) A license is not transferable or assignable and must be displayed at the place
27 of business for which it is issued.

28 (c) Requirements. – An applicant for a license must meet the following requirements:

- 29 (1) If the applicant is a corporation, the applicant must either be incorporated in
30 this State or be authorized to transact business in this State.
- 31 (2) If the applicant for a license is a limited liability company, the applicant
32 must either be organized in this State or be authorized to transact business in
33 this State.
- 34 (3) If the applicant for a license is a limited partnership, the applicant must
35 either be formed in this State or be authorized to transact business in this
36 State.
- 37 (4) If the applicant for a license is an individual or a general partnership, the
38 applicant must designate an agent for service of process and give the agent's
39 name and address.

40 (d) A license shall display the number of sweepstakes gaming devices at a sweepstakes
41 location, and any further information required by the Department.

42 (e) Denial. – The Department may investigate an applicant for a license required under
43 this Article to determine whether the information the applicant submits with the application is
44 accurate and whether the applicant is eligible to be licensed under this Article. The Department
45 may refuse to issue a license to an applicant that has done any of the following:

- 46 (1) Submitted false or misleading information on its application.
- 47 (2) Had a license issued under this Article cancelled by the Department for
48 cause.
- 49 (3) Been convicted of fraud or misrepresentation.
- 50 (4) Been convicted of any other offense that indicates the applicant may not
51 comply with this Article.

1 (5) Been convicted of any crime involving moral turpitude.

2 Article 2.

3 Regulations.

4 "§ 18D-105. North Carolina Department of Revenue; powers and duties.

5 (a) The North Carolina Department of Revenue shall have the following powers and
6 duties:

7 (1) To promulgate rules relating to the operation of video sweepstakes devices,
8 which shall include, but is not limited to the following:

9 a. The licensure of manufacturers to insure interfacing with a central
10 monitoring system controlled by the Department.

11 b. The type and number of video sweepstakes devices to be approved
12 for each license issued under this Article.

13 c. The prize claim process.

14 d. Accounting procedures for determining the gross receipts from the
15 operation of video sweepstakes and unclaimed prizes and credits.

16 e. Financial reporting procedures for licensed video sweepstakes
17 operators.

18 f. Insurance and bonding requirements.

19 g. Licensing requirements and qualifications of persons involved in the
20 operation of video sweepstakes.

21 h. Requirements for a central monitoring system to provide auditing
22 program information as approved by the Department.

23 i. Establishment of information systems, operating procedures,
24 reporting, and accounting criteria.

25 j. Any other matters necessary for to insure the integrity of the video
26 sweepstakes games or for the convenience of the public.

27 k. The fines or penalties associated with any violation of Department
28 rules.

29 (2) To engage or contract with any independent firm or agency, including but
30 not limited to the North Carolina Lottery Commission, to act as its agent in
31 fulfilling the duties and responsibilities under this Article.

32 (3) To engage an independent firm experienced in security procedures,
33 including computer security and systems security, to conduct a
34 comprehensive study and evaluation of all aspects of security in the
35 operation of the video sweepstakes devices.

36 (4) To enter into an agreement with the ALE Division to conduct an in-depth
37 background investigation of applicants and licensees to ensure compliance
38 with this Article.

39 (b) Within sixty days after the winners have been determined, a sweepstakes gaming
40 device operator shall provide the Department of Revenue with a certified list of the names and
41 addresses of all persons who have won prizes with a value of more than \$1000, the value of the
42 prizes, and the dates when the prizes were won.

43 "§ 18D-106. Software; license and certification.

44 No person, personally or through the person's agent, shall supply sweepstakes software to a
45 sweepstakes gaming device operator without first obtaining a license from the Department. The
46 application for a sweepstakes gaming device vendor license shall be on forms prescribed by the
47 Department and shall contain at least the following information:

48 (1) The full legal name of the sweepstakes gaming device vendor and required
49 contact information, including address, telephone number, federal tax
50 identification number, and contact person.

1 (2) The sweepstakes compliance laboratory report certifying the sweepstakes
2 software.

3 **"§ 18D-107. Prohibitions; penalties.**

4 (a) No person shall do any the following:

5 (1) Intentionally design, promote, or conduct a sweepstakes in which the winner
6 may be predetermined or the sweepstakes software may be manipulated or
7 rigged so as to do either of the following:

8 a. Allocate a winning sweepstakes or any portion thereof to certain
9 lessees, agents, or franchises.

10 b. Allocate a winning sweepstakes or part thereof to a particular period
11 of the sweepstakes or to a particular geographic area.

12 (2) Willfully remove, disqualify, disallow, or reject any entry.

13 (3) Willfully fail to award prizes offered or award or advertise prizes other than
14 those which have been properly announced under this section.

15 (4) Willfully print, publish, or circulate literature or advertisements for a
16 sweepstakes that is false, deceptive, or misleading.

17 (5) Knowingly require the participant in a sweepstakes to pay more than fair
18 market value for the item, product or service which entitles a participant to
19 enter a sweepstakes.

20 (6) Operate a sweepstakes game which does not have a finite number of entries,
21 or exceeds the finite number of entries per sweepstakes game established by
22 the Department.

23 (7) Fail to display the license required under this Article and the sweepstakes
24 software certification in a public and conspicuous place at the location in
25 which the sweepstakes takes place.

26 (b) A licensee under this Article shall comply with the following signage requirements:

27 (1) Exterior of Premises: Exterior signage shall be limited to the advertisement
28 of the consumer product and/or service sold on the Premises, and that a
29 Sweepstakes Promotion is offered. No signs shall be posted on the exterior
30 of the Premises that suggest gambling takes place on the Premises or
31 displays any image commonly associated with slot machines.

32 (2) Interior Premises: The operator shall conspicuously post in the interior of the
33 premises the following:

34 (a) All consumer products or services offered for sale shall be identified
35 by the description and price by conspicuous posting.

36 (b) Complete rules for all Sweepstakes Promotions shall be posted at the
37 Premises' front or main counter and a complete copy of the rules,
38 prize tables, and odds of winning shall be made available on request
39 without cost.

40 (3) Before a consumer may reveal an entry with the use of a sweepstakes
41 gaming device, a sweepstakes gaming device operator shall cause to be
42 displayed on the sweepstakes gaming device in at least a font size of
43 fourteen the following, which shall be affirmatively acknowledged by the
44 consumer:

45 "YOU HAVE ENTERED A SWEEPSTAKES GAME THAT IS
46 PREDETERMINED. YOU CANNOT CHANGE THE OUTCOME BY
47 PLAYING THE GAMES. THIS IS NOT GAMBLING. SWEEPSTAKES
48 ENTRIES CAN BE OPENED IN ANY OF THE GAMES. THERE IS NO
49 RELATIONSHIP BETWEEN THE GAME AND THE AMOUNT OF A
50 PRIZE, IF ANY. THE VALUES OF THE PRIZES SHOWN IN THE
51 GAME ARE FOR ENTERTAINMENT ONLY AND DO NOT IMPLY

1 THAT A PRIZE OF THAT VALUE IS AVAILABLE TO BE
2 AWARDED."

3 (c) A sweepstakes gaming device operator shall not do any of the following:

4 (1) No person shall be issued an ABC Permit that authorizes the retail sale of
5 alcoholic beverages for consumption on the premises of any location in
6 which a sweepstakes licensed under this Chapter takes place.

7 (2) Permit any individual under eighteen years of age to enter or be employed at
8 a facility operated by the sweepstakes gaming device operator for
9 sweepstakes.

10 (3) Offer or payout anyone prize with a value of more than ten thousand dollars.

11 (4) Offer or payout any prize in any form other than a check.

12 (5) Cause the sweepstakes results to be located other than on a server that shall
13 be at the location in which the sweepstakes takes place.

14 (d) The Department or any law enforcement agency may investigate and inspect
15 sweepstakes operations in this state and take any other necessary and reasonable action to
16 determine if a violation of any provision of this chapter has occurred.

17 (e) Unless a greater penalty is otherwise provided by law for conduct which is also a
18 violation of this Article, a person who violates:

19 (1) General Statute 18D-104, by operating without a license, or any provision of
20 this section, is guilty of a Class 2 misdemeanor; is subject to a minimum fine
21 of \$25,000 and a maximum fine of \$100,000; and is barred from obtaining a
22 license under this Chapter.

23 (2) Any other provision of this Chapter shall be subject to a civil penalty, with a
24 minimum fine of \$10,000, and a maximum fine of \$50,000."

25 **SECTION 3.** This act is effective when it becomes law. Section 1 of this act
26 applies to a video sweepstakes establishment and to a video sweepstakes machine or device
27 operated in this State on or after January 1, 2013. Section 2 of this act applies to video
28 sweepstakes devices operated in this State on or after October 1, 2012, and expires on April 1,
29 2013.



HOUSE BILL 1180: Video Sweepstakes Entertainment Tax

2011-2012 General Assembly

Committee:	House Finance	Date:	June 27, 2012
Introduced by:	Reps. Owens, Spear, Collins, McGee	Prepared by:	Cindy Avrette
Analysis of:	PCS to First Edition H1180-CSRbx-93		Committee Counsel

SUMMARY: *House Finance has discussed House Bill 1180 at its meeting last Thursday and yesterday. Based on committee discussion and member concerns, the PCS has evolved. The PCS does the following:*

- *The PCS provides that video sweepstakes will be regulated by the Department of Revenue, rather than the Lottery Commission, effective October 1, 2012. The section of the bill that provides for regulation will expire April 1, 2013. It is anticipated that the North Carolina Supreme Court will make a decision in the Hest case by that time. However, if it has not made a decision by April 1, 2013, the General Assembly may extend the sunset. If the court rules against the State, and the games remain legal, the General Assembly may repeal the sunset provision.*
- *The PCS provides that video sweepstakes establishments and video sweepstakes machines and devices will be subject to an excise tax. The tax becomes effective January 1, 2013. The tax will apply to any establishment operating in this State and to any machine or device operated in this State, regardless of whether or not the operation is legal or illegal.*
- *Under the PCS, effective January 1, 2014, the first \$1,000,000 of revenue will be transferred to DHHS for gambling addiction education and treatment programs. The PCS distributes the remaining tax revenue as follows: 6% will go to the Department of Revenue for administrative expenses; 3% will go to the county sheriff's departments; 3% will go to the city police departments; 3% will go the General Fund to be appropriated for the support and operation of the Alcohol Law Enforcement Section; 85% will be earmarked for public education. Of the amount earmarked for public education, the first \$189,283,240 will be appropriated to DPI to reduce the LEA budget adjustment. The remaining amount earmarked for public education will be credited to the General Fund and appropriated for education. The PCS notes that the intent of the distribution for law enforcement is to increase funding for it, not to supplant current funding.*
- *The PCS provides a uniform tax on video sweepstakes establishments for both counties and cities. If a county chooses to tax video sweepstakes establishments, it must share 50% of the revenue it receives from establishments located in a city with that city.*

CURRENT LAW: In 2010, the General Assembly expanded the prohibition it enacted on video poker machines in 2006 to include video sweepstakes and similar devices. On March 6, 2012, the N.C. Court of Appeals held that the ban on video sweepstakes and similar devices was an unconstitutional restriction of free speech. The case, *Hest Technologies, Inc. v. North Carolina*, has been appealed to the N.C. Supreme Court. The Supreme Court has not yet set a time for oral arguments, so it will likely be 2013 at the earliest before the case is decided.

The State repealed most of its privilege taxes in the 1990s. Counties do not have general authority to impose privilege taxes. Cities, however, have the power to levy privilege license taxes on all trades,

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occupation, professions, businesses, and franchises carried on within the city unless the law provides otherwise. Since the tax law is silent in regards to video sweepstakes, cities arguably have the authority to tax them. This authority has been upheld by the court of appeals in *IMT, Inc. v. City of Lumberton* on February 21, 2012. In that case, the court of appeals upheld Lumberton's imposition of a \$5,000 per establishment and \$2,500 per machine privilege license tax on internet sweepstakes businesses.

BILL ANALYSIS: The PCS for House Bill 1180 does not repeal the statute the General Assembly enacted in 2010 that made video sweepstakes machines and devices illegal.

Revenue Enhancement and Use of Proceeds:

Section 1 of the PCS imposes an excise tax on video sweepstake establishments operating in the State and an excise tax on video sweepstakes machines and devices operating in this State. The tax applies regardless of the outcome of the court decision. In that respect, the tax is similar to the tax on unauthorized controlled substances enacted by the General Assembly in 1989.

Like the original bill, the PCS imposes three different taxes:

- An annual tax of \$2,000 per establishment. The tax would be payable on a calendar year basis. The full amount of tax applies to a person who, during any portion of a calendar year, operates a video sweepstakes establishment.
- An annual tax per machine or device of \$1,000. Evidence of payment of the tax would be acknowledged by a stamp affixed to the machine or device.
- A 4% tax on the gross receipts from operating a video sweepstakes machine or device. Taxable gross receipts are the gross receipts derived by the establishment from a person that results in the person's eligibility to operate a sweepstakes machine or device at the establishment to determine whether the person has won a sweepstakes prize, less then amount of any prizes transferred to a sweepstakes entrant. This tax would be payable quarterly if the taxpayer is consistently liable for less than \$100 a month and would be payable monthly if the taxpayer is consistently liable for more than \$100 a month but less than \$20,000 a month. If the taxpayer is consistently liable for at least \$20,000 a month, the tax would be payable in accordance with the schedule and requirements that apply to payments of sales and use tax.

Eighty-five percent (85%) of the revenue derived from these taxes would be earmarked for public education. The first \$189,283,240 would be appropriated to DPI to reduce the LEA budget adjustment. The remainder would be appropriated to education as provided in the budget bill. Six percent (6%) of the revenue would be used for administrative expenses of the Department of Revenue. The remaining 9% would be allocated for law enforcement: 3% distributed to county sheriff's departments on a per capita basis; 3% distributed to municipal police departments on a per capita basis; and 3% appropriated for the support and operation of ALE.

Like the original bill, the PCS authorizes a uniform local privilege tax structure for counties and cities. Since counties do not currently have the authority to levy a privilege tax on a video sweepstakes establishment, this authority would be new for counties and would result in additional revenue. Under the broad privilege tax authority available to cities, several have levied privilege taxes on video sweepstakes establishments and in some instances the taxes currently levied are greater than the ones that would be allowed under this act. The taxes authorized for local governments would be in addition to the State taxes, and could result in a three-tier tax on video sweepstakes establishments located in a city. The local taxes would be administered by the State and distributed to the local governments on a quarterly basis. The taxes authorized for counties and cities would be as follows: an annual tax per establishment of \$1,000 and an annual tax per machine or device of \$500. The PCS provides that a

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county must share with a city one-half of the revenue it derives from an establishment or machine or device located in the city.

Regulation of Video Sweepstakes Establishments:

Section 2 of the PCS creates a new Chapter 18D, Video Sweepstakes. This section is new in the PCS. This Chapter is to provide regulations while video sweepstakes are "legal." It states that its intent is to "regulate any video sweepstakes that are not otherwise unlawful under applicable State law."

- The act puts regulatory authority with the Department of Revenue. Operators are required to obtain a license (\$250 application fee), and appropriate screening is conducted.
- Regulations are put in place to insure the integrity of the software; allows the Commission to insure that it can monitor how the games are conducted, and how the prizes that are awarded; limits entry into sweepstakes parlors to those 18 and over, and provides signage requirements; prohibits the purchase or consumption of alcohol in sweepstakes parlors; and allows the Commission to enact other regulations as necessary.
- Provides the Commission with power to deny licenses and to investigate for regulatory violations. Provides for criminal penalties and fines for certain violations, and civil penalties for certain regulatory violations.
- The act has a sunset provision which can be addressed by the 2013 legislature.
 - If the Supreme Court has not ruled by April 1, 2013, the GA can extend the sunset.
 - If the Court says that the statute is enforceable, and the games are illegal, the GA can let the regulations expire or repeal them.
 - If the Court rules that the video games are legal, then the GA can repeal the sunset provision, and until the GA decides to pass new legislation to prohibit them (or decides to do nothing), then the regulatory framework will stay in effect.

EFFECTIVE DATE: The bill would become effective when it becomes law. The regulation of the industry would apply to video sweepstakes establishments operating on or after October 1, 2012. The tax would apply to video sweepstakes establishments operated in this State on or after January 1, 2013.

H1180-SMRB-167(CSRBx-93) v1



North Carolina General Assembly
House Committee on Finance

Minutes

June 27, 2012

The House Committee on Finance met on Wednesday, June 27, 2012, at 9:00 am in Room 1228 of the Legislative Building. The following members were present: Chairpersons Howard, Folwell, Setzer and Lewis; Vice-Chairs McComas and Wainwright; and Representatives K. Alexander, Brawley, Carney, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, T. Moore, Ross, Saine, Samuelson, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, Jesse Hayes and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Starnes called the meeting to order and recognized Representative Brown to present the **SB 231, AN ACT TO ESTABLISH THE HOUSE SELECT STUDY COMMITTEE ON MUNICIPAL INCORPORATIONS, EXTRATERRITORIAL JURISDICTION, AND MUNICIPAL SERVICES**. By motion of Representative McCormick, a proposed committee substitute was placed before the committee and adopted for discussion. Representative Howard motioned for a favorable report on the PCS, unfavorable as to the original. The motion passed.

The next matter of business was **HB 1077, AN ACT TO ALLOW THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO A PILOT PUBLIC-PRIVATE PARTNERSHIP TOLL PROJECT**. By motion of Representative H. Warren, a proposed committee substitute was placed before the committee for discussion. Representative Mills was recognized to explain the bill. Staff from the Department of Transportation and the Office of the State Treasurer answered questions from members of the committee. Representative Hackney moved to amend the bill. Representative Weiss moves to adopt the amendment. The motion carried. Representative Carney moved for a favorable report for the PCS as amended, unfavorable as to the original report. The motion carried.

The next matter of business was the proposed committee substitute for **SB 399, A BILL TO BE ENTITLED AN ACT TO STUDY CERTAIN ISSUES PERTAINING TO THE ECOSYSTEM ENHANCEMENT PROGRAM**. Representative H. Warren moved to

reconsider the proposed committee substitute. The motion carried. Representative Lewis explained the bill. Representative Lewis moved to amend the bill. The motion carried. Representative Lewis moved for a favorable report to the PCS as amended unfavorable as to the original report. The motion carried.

The next matter of business before the committee was the proposed committee substitute for SB 599, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO ESTABLISH THE EQUAL OPPORTUNITY TAX CREDIT. Representative H. Warren moved to have the PCS before the committee for discussion. The motion carried. Representatives Stam and Brandon explained the bill.

There being no further business presently before the Committee, the meeting adjourned at 9:55 am.



Rep. Edgar Starnes, Presiding Chair



Neal Inman, Committee Clerk

6-27-12

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Finance

DATE: 6/27/12 Room: RM 1228

*Name: <u>Madeline Bankson - Hamilton</u>	<u>Maggie Swanson</u>
County: <u>New Hanover</u>	<u>Wake</u>
Sponsor: <u>Hamilton</u>	<u>Starr</u>
*Name: <u>Anna Wallace</u>	
County: <u>Stanly</u>	
Sponsor: <u>Burr</u>	
*Name: <u>SUMMER BLACKWELDER</u>	
County: <u>CABARRUS</u>	
Sponsor: <u>THOM TILLIS</u>	
*Name: <u>Kristen Alderman</u>	
County: <u>Forsyth</u>	
Sponsor: <u>McGee</u>	
*Name: <u>Kayla Alderman</u>	
County: <u>Forsyth</u>	
Sponsor: <u>Bill McGee</u>	

House Sgt-At Arms:

- 1. Name: Young Bae
- 2. Name: John Brandon
- 3. Name: Joe Crook

- 4. Name: Carl Morello
- 5. Name: _____
- 6. Name: _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 599*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S599-CSMC-27 [v.4]

6/26/2012 7:08:25 PM

Short Title: Equal Opportunity Scholarship Tax Credit.

(Public)

Sponsors:

Referred to:

April 14, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO ESTABLISH THE EQUAL OPPORTUNITY TAX
3 CREDIT.

4 The General Assembly of North Carolina enacts:

5 Whereas, the State has a Constitutional obligation to fund the delivery of a sound
6 basic education to children; and

7 Whereas, children of families with limited financial resources need expanded
8 educational opportunities; and

9 Whereas, a solid educational foundation can help reduce the socioeconomic
10 achievement gap; and

11 Whereas, by creating educational environments that enable all of North Carolina's
12 children to learn, the State can improve the quality of the education it funds; Now, therefore,

13 SECTION 1. Article 39 of Chapter 115C of the General Statutes is amended by
14 adding a new Part to read:

15 "Part 2A. Scholarship-Funding Organizations:

16 "§ 115C-562.1. Definitions.

17 The following definitions apply in this Part:

18 (1) Division. – The Division of Nonpublic Education, Department of
19 Administration.

20 (2) Donations. – Money given to a scholarship-funding organization for which a
21 taxpayer may be allowed a tax credit pursuant to G.S. 105-129.101.

22 (3) Donation scholarships. – Scholarships awarded by a scholarship-funding
23 organization using money given to a scholarship-funding organization for
24 which a taxpayer may be allowed a tax credit pursuant to G.S. 105-129.101.

25 (4) Eligible students. – A student who has not yet received a high school
26 diploma and who meets all of the following requirements:

27 1. Whose enrollment status is one of the following:

28 a. Was a full-time student at a North Carolina public school
29 during the previous semester.

30 b. Received a scholarship from an eligible scholarship-funding
31 organization during the previous school year for attendance at
32 a North Carolina nonpublic school.

33 c. Is entering kindergarten or the first grade.



* S 5 9 9 - C S M C - 2 7 - V - 4 *

1 2. Belongs to a household with an income level not in excess of two
2 hundred twenty-five percent (225%) of the federal poverty level.

3 (5) Nonpublic school. – A school that meets the requirements of Part 1 or 2 of
4 this Article.

5 (6) Scholarship-funding organization. – A North Carolina charitable
6 organization certified by the Division to meet all criteria for eligibility to
7 receive donations.

8 **"§ 115C-562.2. Certification of eligible scholarship funding organizations.**

9 (a) A North Carolina charitable organization shall apply annually to the Division for
10 certification as a scholarship-funding organization in a form prescribed by the Division.
11 Applications shall be received by the Division for certification for the next calendar year no
12 later than June 1. The Division shall issue certifications to organizations meeting the criteria in
13 subsection (b) of this section no later than August 1. A scholarship-funding organization may
14 receive donations and award donation scholarships upon issuance of certification by the
15 Division.

16 (b) The Division shall certify an organization as an eligible scholarship-funding
17 organization upon a finding that the organization meets the following criteria:

18 (1) Is an exempt organization under section 501(c)(3) of the Internal Revenue
19 Code.

20 (2) Uses one hundred percent (100%) of donations to fund donation scholarships
21 if the organization has been certified for 24 consecutive months or less, or
22 uses at least ninety-three percent (93%) of donations to fund donation
23 scholarships if the organization has been certified for more than 24
24 consecutive months.

25 (3) Does not award donation scholarships to students within five degrees of
26 kinship, as defined in G.S. 104A-1, of family of paid staff or board members
27 of the scholarship-funding organization.

28 (4) Does not permit donors to designate donation scholarships for the direct
29 benefit of a particular nonpublic school or eligible student.

30 (5) Does not show preference to a particular school or limit participation to
31 requirements other than those specified in this Article.

32 (6) Does not discriminate on the basis of race, color, ethnicity, national origin,
33 sex, or religion.

34 (7) Funds donation scholarships of not more than four thousand dollars (\$4,000)
35 per year per eligible student for tuition and fees for books, transportation,
36 equipment, or other items required by the nonpublic school.

37 (8) Awards donation scholarships to eligible students to attend any nonpublic
38 school and does not limit availability to students of only one school.

39 (9) Awards donation scholarships to eligible students in the order in which the
40 applications are received. Notwithstanding this requirement, a
41 scholarship-funding organization may give priority to donation scholarship
42 awards to eligible students who received a donation scholarship from the
43 scholarship-funding organization during the previous school year.

44 (10) Restricts award of donation scholarships to eligible students.

45 (11) Permits an eligible student receiving a donation scholarship to enroll in a
46 different nonpublic school and remain eligible. An eligible student receiving
47 a donation scholarship who transfers to another nonpublic school during the
48 year may be eligible to receive a pro rata share of any unexpended portion of
49 the donation scholarship for tuition and fees at the nonpublic school to which
50 the student transfers.

1 (12) Has no paid staff of the scholarship-funding organization that has been
2 convicted of any crime listed in G.S. 115C-238.29K. Evidence of criminal
3 history record checks of paid staff shall be included in an organization's
4 application.

5 (13) Has satisfied or otherwise resolved a notice of an overdue tax debt received
6 by the Department of Revenue.

7 (c) The Division shall provide an annual list of certified scholarship-funding
8 organizations to the Department of Revenue no later than August 1, and shall notify the
9 Department of Revenue of any changes to the annual list within three business days. A current
10 copy of the list shall also be maintained on the Division's Web site.

11 **"§ 115C-562.3. Obligations of scholarship-funding organizations.**

12 (a) A scholarship-funding organization shall submit the following information to the
13 Division:

14 (1) An annual financial and compliance audit of all accounts and records
15 pertaining to donations and donation scholarships conducted by an
16 independent certified public accountant. The audit shall be conducted in
17 compliance with generally accepted auditing standards. The report must
18 include a report on financial statements presented in accordance with
19 generally accepted accounting principles for nonprofit organizations and a
20 determination of compliance with the statutory eligibility and expenditure
21 requirements set forth in this Part. Audits shall be provided to the Division
22 no later than October 1.

23 (2) An annual report to the Division no later than July 15 on donation
24 scholarship awards, including the following information:

25 a. Total number, grade level, race, ethnicity, and sex of eligible students
26 awarded donation scholarships.

27 b. Amount of donation scholarship funding awarded.

28 c. Percentage of first-time recipients of donation scholarships who were
29 enrolled at a public school during the previous semester.

30 d. The local school administrative unit or charter school in which an
31 eligible student was enrolled in the prior semester, when applicable.

32 e. The nonpublic schools at which donation scholarship recipients are
33 enrolled.

34 f. Other information necessary for the Division to perform its duties.

35 (b) A scholarship-funding organization shall maintain separate accounts for donation
36 scholarship funds and operating funds.

37 (c) A donation scholarship fund shall carry forward no more than twenty percent (20%)
38 of donations to the following fiscal year. Any donations remaining on June 30 of each year in
39 excess of the twenty percent (20%) that may be carried forward shall be returned to the State
40 Treasurer for deposit in the State General Fund.

41 (d) The Division shall give written notice to a scholarship-funding organization that
42 fails to comply with the requirements of this Part. The scholarship-funding organization shall
43 have 90 days to correct all deficiencies. If a scholarship-funding organization fails to correct all
44 deficiencies within 90 days, the Division shall revoke the certification of the
45 scholarship-funding organization, and shall immediately notify the Department of Revenue of
46 the revocation. The scholarship-funding organization shall notify the parent or guardian of any
47 eligible student receiving a donation scholarship from the scholarship-funding organization of
48 the loss of certification.

49 (e) A scholarship-funding organization shall require taxpayers making donations to
50 provide to the scholarship-funding organization a copy of the written certification issued to the
51 taxpayer pursuant to G.S. 105-129.103. Within five business days of receipt of a donation, a

1 scholarship-funding organization shall report to the Department of Revenue the amount of the
2 donation from the taxpayer and a copy of the taxpayer's written certification.

3 **"§ 115C-562.4. Obligations of nonpublic schools receiving scholarship funds.**

4 (a) A nonpublic school that accepts donation scholarship funds from a
5 scholarship-funding organization shall comply with the following:

- 6 (1) Provide to the scholarship-funding organization documentation for required
7 tuition and fees charged to the eligible student by the nonpublic school.
8 (2) Conduct a criminal background check for the staff member with the highest
9 decision-making authority, as defined by the bylaws or articles of
10 incorporation, to ensure that person has not been convicted of any crime
11 listed in G.S. 115C-239.29K.
12 (3) Provide to the parent or guardian of an eligible student whose tuition and
13 fees are paid in whole or in part with a donation scholarship an annual
14 written explanation of the student's progress, including the student's scores
15 on any standardized achievement tests.
16 (4) Submit to the Division by July 15 of each year the test scores of any
17 nationally standardized achievement test administered to any eligible student
18 receiving a donation scholarship. Test performance data reported to the
19 Division is not a public record under Chapter 132 of the General Statutes.
20 (5) Provide to the Division graduation rates of the eligible students receiving
21 donation scholarships in a manner consistent with nationally recognized
22 standards.
23 (6) Contract with an independent certified accountant to perform a financial
24 review, consistent with generally accepted accounting principles, for each
25 school year in which the school receives more than five hundred thousand
26 dollars (\$500,000) in donation scholarships awarded under this section.

27 (b) A nonpublic school enrolling more than 25 eligible students whose tuition and fees
28 are paid in whole or in part with a donation scholarship shall report to the Division on the
29 aggregate standardized test performance of these students. Test performance data reported to
30 the Division is not a public record under Chapter 132 of the General Statutes. Test performance
31 data may be shared with public or private institutions of higher education located in North
32 Carolina and shall be provided to an independent research organization selected by the Division
33 for research purposes as permitted by the Federal Education Rights and Privacy Act, 20 U.S.C.
34 § 1232g.

35 (c) A nonpublic school accepting donation scholarship funds that fails to comply with
36 the requirements of this section shall be deemed ineligible to receive future donation
37 scholarships from a scholarship-funding organization. The nonpublic school shall notify the
38 parent or guardian of any enrolled eligible student receiving a donation scholarship that the
39 nonpublic school is no longer eligible to receive future donation scholarships. The Division
40 shall notify scholarship-funding organizations of any school that is determined to be ineligible
41 for receipt of donation scholarships.

42 **"§ 115C-562.5. Scholarship endorsement.**

43 The scholarship-funding organization shall remit, at least two times each school year, a
44 donation scholarship payment certificate to the nonpublic school for endorsement by at least
45 one of the eligible student's parents or guardians. The parent or guardian shall restrictively
46 endorse the donation scholarship award to the nonpublic school for deposit into the account of
47 the nonpublic school. The parent or guardian shall not designate any entity or individual
48 associated with the nonpublic school as the parent's attorney-in-fact to endorse the donation
49 scholarship payment certificate, but shall endorse the donation scholarship payment certificate
50 in person at the site of the nonpublic school. A parent or guardian's failure to comply with this
51 section shall result in forfeit of the donation scholarship. A donation scholarship forfeited for

1 failure to comply with this section shall be returned to the scholarship-funding organization to
2 be awarded to another eligible student for that school year.

3 **"§ 115C-562.6. Division reporting requirements.**

4 (a) The Division shall report to the Department of Public Instruction annually, no later
5 than August 1, the number of eligible students who have received donation scholarships
6 through a scholarship-funding organization and who were enrolled the prior semester in a local
7 school administrative unit or charter school, by previously attended local school administrative
8 unit or charter school. The Department of Public Instruction shall adjust the allotments of local
9 school administrative units or charter schools based on the number of students awarded a
10 donation scholarship who attended a local school administrative unit or charter school during
11 the prior semester. The amount of the adjustment shall equal the average per pupil allocation
12 for average daily membership from the local school administrative unit or charter school.

13 (b) The Division shall report annually, no later than March 1, to the Joint Legislative
14 Education Oversight Committee on the following:

- 15 (1) Number and name of scholarship-funding organizations certified by the
16 Division.
- 17 (2) Total number, grade level, race, ethnicity, and sex of eligible students
18 receiving donation scholarships.
- 19 (3) Amount of donation scholarship funding awarded, by scholarship-funding
20 organization.
- 21 (4) Number of eligible students receiving donation scholarships previously
22 enrolled in local school administrative units or charter schools in the prior
23 semester, by previously attended local school administrative unit or charter
24 school.
- 25 (5) Nonpublic schools in which donation scholarship recipients are enrolled,
26 including numbers of donation scholarship students at each nonpublic
27 school.
- 28 (6) Revocations of certification of scholarship-funding organizations and
29 nonpublic schools deemed ineligible to receive donation scholarships.
- 30 (7) Number of contributors and dollar amounts of donations received by
31 scholarship-funding organizations.

32 (c) The Division shall report annually, no later than October 1, to the Department of
33 Public Instruction and the Joint Legislative Education Oversight Committee on the learning
34 gains of eligible students receiving donation scholarships. This report shall be conducted by an
35 independent research organization to be selected by the Division, which may be a public or
36 private entity or university. The independent research organization shall report to the Division
37 on the learning gains of eligible students receiving donation scholarships on a Statewide basis
38 and shall compare, to the extent possible, the learning gains of these by nonpublic school to the
39 Statewide learning gains of public school students with similar socioeconomic backgrounds,
40 using aggregate standardized test performance data provided to the Division by nonpublic
41 schools and by the Department of Public Instruction."

42 SECTION 2. Subchapter I of Chapter 105 of the General Statutes is amended by
43 adding a new Article to read:

44 "Article 3L.

45 "Equal Opportunity Scholarship Tax Credit.

46 **"§ 105-129.100. Definitions.**

47 For purposes of this Article, a "scholarship-funding organization" is an organization
48 certified by the Division of Nonpublic Education of the Department of Administration pursuant
49 to G.S. 115C-562.2.

50 **"§ 105-129.101. Credit for donations to fund scholarships.**

1 (a) Credit. – A taxpayer that makes and substantiates, as required by G.S. 105-129.103,
2 a monetary donation to a scholarship-funding organization is allowed a tax credit equal to the
3 amount of the donation.

4 (b) Taxes Election. – The credit provided in this section is allowed against the excise
5 tax levied on beer, wine, and liquor in Part 4 of Article 2C of this Chapter, the franchise tax
6 levied in Article 3 of this Chapter, the income taxes levied in Part 1 of Article 4 of this Chapter,
7 or the insurance gross premiums tax levied under Article 8B of this Chapter. The taxpayer shall
8 elect the tax against which a credit will be claimed when filing the return on which the credit is
9 first claimed. This election is binding. Any carryforwards of the credit must be claimed against
10 the same tax.

11 (c) Cap. – The credit allowed in this Article may not exceed the amount of tax against
12 which it is claimed for the taxable period, reduced by the sum of all other credits allowed
13 against that tax, except tax payments made by or on behalf of the taxpayer. This limitation
14 applies to the cumulative amount of the credit, including carryforwards, claimed by the
15 taxpayer under this Article against each tax for the taxable period.

16 (d) Carryforward. – Any unused portion of a credit claimed against the franchise tax
17 levied in Article 3 of this Chapter, the income taxes levied in Part 1 of Article 4 of this Chapter,
18 or the insurance gross premium tax levied under Article 8B of this Chapter may be carried
19 forward for the succeeding five years. Any unused portion of a credit claimed against the excise
20 tax levied in Part 4 of Article 2C of this Chapter may be carried forward for the succeeding five
21 months.

22 (e) Change in Ownership of Business. – As used in this subsection, the term "business"
23 means a taxpayer. If, by sale, merger, consolidation, conversion, acquisition, or bankruptcy of a
24 business, or any transaction, an existing business reformulates itself as another, succeeding
25 business, the successor business may take any credit or carried-over portion of a credit that its
26 predecessor could have taken if it had a tax liability.

27 **"§ 105-129.102. Aggregate cap.**

28 From July 1, 2012, to December 31, 2012, the total amount of donations made for which a
29 tax credit is allowed under this Article may not exceed two million dollars (\$2,000,000). For
30 the calendar year beginning on January 1, 2013, the total amount of donations made in the
31 calendar year for which a tax credit is allowed under this Article may not exceed forty million
32 dollars (\$40,000,000).

33 **"§ 105-129.103. Substantiation.**

34 (a) Request for Written Certification. – To be eligible for the tax credit provided in this
35 Article, the taxpayer shall obtain from the Secretary a written certification that the sum of the
36 taxpayer's donation and all other donations for which the Secretary has issued a written
37 certification does not exceed the aggregate cap provided in G.S. 105-129.102. A request for a
38 written certification shall be on a form prescribed by the Secretary and shall include any
39 relevant supporting documentation the Secretary may require.

40 (b) Written Certification. – The Secretary shall respond to a request within 20 days and
41 may not issue a written certification after December 31 of the calendar year in which the
42 donation is made. Within 120 days of the date the Secretary issues the written certification, the
43 taxpayer shall submit the donation with the written certification to the scholarship-funding
44 organization or shall notify the Department that the donation was not made, whereupon the
45 Secretary may reallocate the amount to another taxpayer. The Secretary shall determine and
46 publish, on a weekly basis, the number and amount of certified donations that have been made.
47 The Secretary shall approve each request submitted in the order the requests are received until
48 the total amount of certified donations equals the aggregate cap provided in G.S. 105-129.102.
49 Each request received on the same business day shall be treated as received at the same time.
50 On the day the requests received, when added to the preceding written certifications issued,
51 exceed the aggregate cap provided in G.S. 105-129.102, the Secretary shall certify the

1 remaining amount under the aggregate cap in proportion to the amount of each request received
2 on that day. Every taxpayer claiming a credit for a donation under this section shall submit to
3 the Department any receipt received from a scholarship-funding organization within seven days
4 of receipt and shall maintain and make available for inspection by the Secretary any records the
5 Secretary considers necessary to determine and verify that the donation has been timely made.
6 The burden of proving eligibility for the credit and the amount of the credit shall rest upon the
7 taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or
8 to make them available for inspection."

9 SECTION 3.(a) G.S. 105-113.82 reads as rewritten:

10 "(a) Amount. – The Secretary must distribute annually a percentage of the net amount of
11 excise taxes collected on the sale of malt beverages and wine during the preceding 12-month
12 period ending March 31 to the counties or cities in which the retail sale of these beverages is
13 authorized in the entire county or city. For purposes of this distribution, the net amount is
14 calculated before any credit allowed under Article 3L of this Chapter is taken against the tax.
15 The percentages to be distributed are as follows:

- 16 (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty and
17 forty-seven hundredths percent (20.47%).
- 18 (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), forty-nine
19 and forty-four hundredths percent (49.44%).
- 20 (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), eighteen
21 percent (18%)."

22 SECTION 3.(b) This section becomes effective when it becomes law and applies
23 to distributions made on or after that date. This section expires for distributions made on or
24 after March 31, 2015.

25 SECTION 4.(a) G.S. 105-130.5(a)(10) reads as rewritten:

26 "(a) The following additions to federal taxable income shall be made in determining
27 State net income:

- 28 ...
- 29 (10) The total amounts allowed under this Chapter during the taxable year as a
30 credit against the taxpayer's income tax. This subdivision does not apply to a
31 credit allowed under Article 3L of this Chapter or under G.S. 105-130.47. A
32 corporation that apportions part of its income to this State shall make the
33 addition required by this subdivision after it determines the amount of its
34 income that is apportioned and allocated to this State and shall not apply to a
35 credit taken under this Chapter the apportionment factor used by it in
36 determining the amount of its apportioned income.

37"

38 SECTION 4.(b) This section is effective for taxable years beginning on or after
39 January 1, 2012, and expires for taxable years beginning on or after January 1, 2014.

40 SECTION 5. G.S. 105-259(b) is amended by adding a new subdivision to read:

41 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
42 access to tax information in the course of service to or employment by the State may not
43 disclose the information to any other person except as provided in this subsection. Standards
44 used or to be used for the selection of returns for examination and data used or to be used for
45 determining the standards may not be disclosed for any purpose. All other tax information may
46 be disclosed only if the disclosure is made for one of the following purposes:

- 47 ...
- 48 (24a) To furnish the Division of Nonpublic Education of the Department of
49 Administration information needed to determine whether a
50 scholarship-funding organization has any overdue tax debts that would
51 prohibit it from being certified pursuant to G.S. 115C-562.2."

1 **SECTION 5.(b)** This section is effective when it becomes law and expires January
2 1, 2015.

3 **SECTION 6.** For the implementation of the provisions of this act, there is
4 appropriated from the General Fund to the Department of Revenue the sum of four hundred
5 seventy-eight thousand thirty-eight dollars (\$478,038) for the 2012-2013 fiscal year and to the
6 Department of Administration the sum of three hundred seventeen thousand nine hundred
7 sixty-six dollars (\$317,966) to be allocated to the Division of Nonpublic Education for the
8 2012-2013 fiscal year. The Department of Revenue may establish two personnel positions to
9 administer the provisions of this act. The Division of Nonpublic Education may establish four
10 personnel positions to administer the provisions of this act.

11 **SECTION 7.** If House Bill 950 becomes law, then Section 2.1 of that act reads as
12 rewritten:

13 **"SECTION 2.1.** Appropriations from the General Fund of the State for the
14 maintenance of the State departments, institutions, and agencies, and for other purposes as
15 enumerated, are adjusted for the fiscal year ending June 30, 2013, according to the schedule
16 that follows. Amounts set out in parentheses are reductions from General Fund appropriations
17 for the 2012-2013 fiscal year.

19 Current Operations – General Fund	2012-2013
21 EDUCATION	
23 Community Colleges System Office	\$ 5,165,000
25 Department of Public Instruction	62,430,967
27 University of North Carolina – Board of Governors	
28 Appalachian State University	573,876
29 East Carolina University	
30 Academic Affairs	4,447,287
31 Health Affairs	0
32 Elizabeth City State University	0
33 Fayetteville State University	473,656
34 NC A&T State University	0
35 NC Central University	0
36 NC State University	
37 Academic Affairs	3,346,252
38 Agricultural Research	0
39 Agricultural Extension	0
40 UNC-Asheville	0
41 UNC-Chapel Hill	
42 Academic Affairs	0
43 Health Affairs	0
44 AHEC	0
45 UNC-Charlotte	0
46 UNC-Greensboro	103,534
47 UNC-Pembroke	0
48 UNC-School of the Arts	0
49 UNC-Wilmington	434,038
50 Western Carolina University	0
51 Winston-Salem State University	0

General Assembly of North Carolina**Session 2011**

1	General Administration		9,808,141
2	University Institution Programs		15,560,828
3	Related Educational Programs		(12,139,141)
4	UNC Financial Aid Private Colleges		4,500,000
5	NC School of Science & Math		0
6	UNC Hospitals		(3,000,000)
7	Total University of North Carolina – Board of Governors	\$	24,108,471
8			
9	HEALTH AND HUMAN SERVICES		
10			
11	Department of Health and Human Services		
12	Division of Central Management and Support	\$	1,307,641
13	Division of Aging and Adult Services		50,000,000
14	Division of Services for Blind/Deaf/Hard of Hearing		(168,336)
15	Division of Child Development		(3,500,000)
16	Division of Health Service Regulation		1,792,559
17	Division of Medical Assistance		194,172,266
18	Division of Mental Health, Dev. Disabilities and Sub. Abuse		(15,196,981)
19	NC Health Choice		(2,007,430)
20	Division of Public Health		11,384,778
21	Division of Social Services		(9,079,116)
22	Division of Vocational Rehabilitation		0
23	Total Health and Human Services	\$	228,705,381
24			
25	NATURAL AND ECONOMIC RESOURCES		
26			
27	Department of Agriculture and Consumer Services	\$	47,362,832
28			
29	Department of Commerce		
30	Commerce		7,471,362
31	Commerce State-Aid		(1,217,540)
32	NC Biotechnology Center		(351,034)
33	Rural Economic Development Center		(3,757,535)
34			
35	Department of Environment and Natural Resources		(39,339,288)
36			
37	DENR Clean Water Management Trust Fund		(500,000)
38			
39	Department of Labor		(316,738)
40			
41	Wildlife Resources Commission		434,397
42			
43	JUSTICE AND PUBLIC SAFETY		
44			
45	Department of Public Safety	\$	(32,231,135)
46			
47	Judicial Department		(2,334,307)
48	Judicial Department – Indigent Defense		0
49			
50	Department of Justice		(6,667,504)
51			

1	GENERAL GOVERNMENT	
2		
3	Department of Administration	\$ (24,861)293,105
4		
5	Department of State Auditor	(213,521)
6		
7	Office of State Controller	1,580,412
8		
9	Department of Cultural Resources	
10	Cultural Resources	(298,866)
11	Roanoke Island Commission	(300,000)
12		
13	State Board of Elections	(102,532)
14		
15	General Assembly	1,570,422
16		
17	Office of the Governor	
18	Office of the Governor	(94,823)
19	Office of State Budget and Management	(116,973)
20	OSBM – Reserve for Special Appropriations	1,438,388
21	Housing Finance Agency	(8,064,634)
22		
23	Department of Insurance	
24	Insurance	459,055
25	Insurance – Volunteer Safety Workers' Compensation	0
26		
27	Office of Lieutenant Governor	(144,150)
28		
29	Office of Administrative Hearings	0
30		
31	Department of Revenue	(1,563,991)(1,085,953)
32		
33	Department of Secretary of State	766,661
34		
35	Department of State Treasurer	
36	State Treasurer	0
37	State Treasurer – Retirement for Fire and Rescue Squad Workers	0
38		
39	RESERVES, ADJUSTMENTS AND DEBT SERVICE	
40		
41	Information Technology Fund	\$ (750,000)
42	Reserve for Job Development Investment Grants (JDIG)	(6,500,000)
43	Judicial Retirement System Contribution	100,000
44	Continuation/Justification Review Reserve	(35,576,758)
45	Compensation and Performance Pay Reserve	(121,105,840)
46	Reserve for Compensation Increases and Personnel Flexibility	159,984,426
47	Disability Income Plan Rate Reduction	(8,688,000)
48	One North Carolina Fund	9,000,000
49	Reserve for VIPER	10,000,000
50		
51	Debt Service	

1 General Debt Service (52,904,635)

2
3 **TOTAL CURRENT OPERATIONS – GENERAL FUND \$ 237,413,109 238,209,113"**

4
5 **SECTION 8.** If House Bill 950 becomes law, then Section 2.2 of that act reads as
6 rewritten:

7 **"GENERAL FUND AVAILABILITY STATEMENT**

8 **SECTION 2.2.(a)** Section 2.2(a) of S.L. 2011-145, as amended by Section 2(b) of
9 S.L. 2011-391 and Section 5(a) of S.L. 2011-395, is repealed. The General Fund availability
10 used in adjusting the 2012-2013 budget is shown below:

	FY 2012-2013
13 Unappropriated Balance Remaining	\$ 41,232,325
14 Anticipated Overcollections from FY 2011-2012	232,500,000
15 Anticipated Reversions for FY 2011-2012	205,500,000
16 Net Supplemental Medicaid Appropriation (S.L. 2012-2)	(154,000,000)
17 Less Earmarkings of Year-End Fund Balance	
18 Savings Reserve Account	(123,170,924)(121,772,922)
19 Repairs and Renovations Reserve Account	(23,170,924)(21,772,922)
20 Beginning Unreserved Fund Balance	\$
21 178,890,477 181,686,481	
22	
23 Revenue Based on Existing Tax Structure	18,931,200,000
24	
25 Nontax Revenue	
26 Investment Income	21,600,000
27 Judicial Fees	258,700,000
28 Disproportionate Share	115,000,000
29 Insurance	73,700,000
30 Other Nontax Revenues	304,400,000
31 Highway Trust Fund Transfer	27,600,000
32 Highway Fund Transfer	212,280,000
33 Total – Nontax Revenues	1,013,280,000
34	
35 Subtotal General Fund Availability	20,123,370,477 20,126,166,481
36	
37 Adjustments to Availability: 2012 Session	
38 E-Commerce Reserve Cash Balance	2,470,642
39 One North Carolina Fund Cash Balance	45,000,000
40 Sale of State Assets Receipt	(25,000,000)
41 Information Technology Internal Service Fund Cash Balance	14,000,000
42 National Mortgage Settlement	9,610,000
43 Highway Fund Transfer – Technical Adjustment	8,000,000
44 Work Opportunity Tax Credit Extension (HB 1015 Reserve)	(800,000)
45 Tax Deduction for Educational Supplies (HB 1015 Reserve)	(1,800,000)
46 Sales Tax Refund Application for	
47 Passenger Air Carriers (HB 1015 Reserve)	(3,150,000)
48 <u>Equal Opportunity Scholarship Tax Credit</u>	<u>(2,000,000)</u>
49 Insurance Regulatory Fund	166,613
50 Teaching Fellows Trust Fund Cash Balance	3,265,000
51 Diversion of Golden L.E.A.F. Funds	3,750,000

1	Charitable Licensing Receipts	979,752
2		
3	Subtotal Adjustments to Availability:	<u>56,492,007</u>54,492,007
4		
5	Revised Total General Fund Availability	<u>20,179,862,484</u>20,180,658,488
6	Less General Fund Appropriations	<u>20,179,862,484</u>20,180,658,488
7		
8	Balance Remaining	0
9		

10 **SECTION 2.2.(b)** Notwithstanding the provisions of G.S. 143C-4-3, the State
 11 Controller shall transfer only ~~twenty-three million one hundred seventy thousand nine hundred~~
 12 ~~twenty-four dollars (\$23,170,924)~~ twenty-one million seven hundred seventy-two thousand
 13 nine hundred twenty-two dollars (\$21,772,922) from the unreserved fund balance to the
 14 Repairs and Renovations Reserve Account on June 30, 2012.

15 **SECTION 2.2.(c)** Funds transferred under this section to the Repairs and
 16 Renovations Reserve Account are appropriated for the 2012-2013 fiscal year to be used in
 17 accordance with G.S. 143C-4-3.

18 **SECTION 2.2.(d)** Notwithstanding G.S. 143C-4-2 and pursuant to subsection (a)
 19 of this section, the State Controller shall transfer ~~one hundred twenty-three million one hundred~~
 20 ~~seventy thousand nine hundred twenty-four dollars (\$123,170,924)~~ one hundred twenty-one
 21 million seven hundred seventy-two thousand nine hundred twenty-two dollars (\$121,772,922)
 22 from the unreserved fund balance to the Savings Reserve Account on June 30, 2012.

23 This is not an "appropriation made by law," as that phrase is used in Section 7(1) of
 24 Article V of the North Carolina Constitution.

25 "

26 **SECTION 9.** Section 1 of this act expires January 1, 2016. Section 2 of this
 27 section is effective for taxable years beginning on or after January 1, 2012, applies to monetary
 28 donations made on or after July 1, 2012, and expires for taxable years beginning on or after
 29 January 1, 2014. The Department of Revenue shall develop the necessary reporting and
 30 application forms required for a credit under Article 3L of Chapter 105 of the General Statutes,
 31 as enacted by this section, on or before September 1, 2012. The Division of Nonpublic
 32 Education shall select an independent research organization as required by G.S. 115C-562.6,
 33 beginning with the 2013-2014 school year. Notwithstanding the application deadlines
 34 established by G.S. 115C-562.2 for certification of eligible scholarship-funding organizations,
 35 applications for certification in 2012 shall be submitted to the Division no later than September
 36 1, 2012, and the Division shall issue certifications no later than September 15, 2012, and shall
 37 provide a list to the Department of Revenue within three business days. The first financial
 38 review for a nonpublic school that accepts scholarship funds from a scholarship-funding
 39 organization, as required by G.S. 115C-562.4, as enacted by this section, shall not be required
 40 until the 2014-2015 school year. The first learning gains report required by G.S. 115C-562.6,
 41 as enacted by this section, shall not be due until October 1, 2014. The remainder of this section
 42 is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA



FISCAL ANALYSIS MEMORANDUM

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

DATE: June 26, 2012
TO: Rep. Paul Stam
FROM: Kristopher Nordstrom
 Fiscal Research Division
RE: Senate Bill 599-CSMC-27 [v.4]

	FISCAL IMPACT				
	(\$ in millions)				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
State revenues:	(\$2.0)	(\$40.0)	\$0.0	\$0.0	\$0.0
State expenditures:	<u>(\$0.1)</u>	<u>(\$27.7)</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>
NET IMPACT:	(\$2.1)	(\$12.3)	\$0.0	\$0.0	\$0.0
State positions (cumulative):	6.0	6.0	0.0	0.0	0.0
LEA revenues:	N/A	N/A	N/A	N/A	N/A
LEA expenditures:	<u>(\$0.3)</u>	<u>(\$11.6)</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>
NET IMPACT:	\$0.3	\$11.6	\$0.0	\$0.0	\$0.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue (DOR), North Carolina Department of Public Instruction (DPI), Local Public Schools (LEAs)					
EFFECTIVE DATES: This bill is effective for taxable years beginning January 1, 2012, and applies to semesters beginning on or after July 1, 2012. Tax credits sunset effective January 1, 2014.					

BILL SUMMARY:

Overview

The bill creates the Equal Opportunity Scholarship Tax Credit program ("the Program"). The Program provides scholarships to eligible students who attend private schools in grades K-12 where tuition is charged (a "private school"). Scholarships are funded by businesses and corporations, which would receive tax credits to offset donations to scholarship-funding organizations (SFOs).

Business Tax Credits

For businesses and corporations, the Program provides tax credits from State taxes for making donations to SFOs. Businesses and corporations would be able to receive a tax credit equal to 100% of the donation amount.

Tax credits are allowed against:

- The excise tax levied in Part 4 of Article 2C of Chapter 105;¹
- The franchise tax levied in Article 3 of Chapter 105;
- Income taxes levied in Part 1 of Article 4 of Chapter 105; or
- The insurance gross premium tax levied under Article 8B of Chapter 105.

Unused credits claimed against the excise tax may be carried forward for five months. Unused credits claimed against income taxes may be carried forward for five years.

Businesses can begin making donations to SFOs can begin receiving tax credits effective July 1, 2012. From July 1, 2012 to December 31, 2012, the total amount of tax credits granted would be \$2 million. For the 2013 calendar year, the total amount of tax credits available may not exceed \$40 million. Tax credits would not be allowable after the 2013 calendar year.

To be eligible for the tax credit, the taxpayer must obtain a written certification from the DOR that there are still credits available under the cap. Within 120 days of receiving the certification, the business must submit the donation with the certification to the SFO. To facilitate this process, the DOR must publish, on at least a weekly basis, updated information on the availability of tax credits. The taxpayer must maintain all required paperwork to prove eligibility of the tax credit.

Donations to SFOs are effective for the 2012 taxable year, and can be made beginning July 1, 2012. DOR would be required to develop the necessary reporting and application forms required for a credit by September 1, 2012.

Scholarship Eligibility

For eligible students, the Program provides scholarships of up to \$4,000 per year. In order to be eligible, students must be from families whose annual income is at or below 225% of the federal poverty guidelines.²

¹ Credits taken against this tax will not affect distributions to counties or cities.

² The federal poverty guidelines are issued each year in the *Federal Register* by the federal Department of Health and Human Services. The guidelines are used for administrative purposes — for instance, determining financial eligibility for certain federal programs. The *Federal Register* notice of the 2012 poverty guidelines is available here: <http://aspe.hhs.gov/poverty/12poverty.shtml>.

S599 – Income Eligibility for Equal Opportunity Scholarships

Parents to Family	Family Income	Maximum Award (\$1,000)
2	\$15,130	\$34,043
3	\$19,090	\$42,953
4	\$23,050	\$51,863
5	\$27,010	\$60,773
6	\$30,970	\$69,683
7	\$34,930	\$78,593
8	\$38,890	\$87,503

Additionally, students must:

- Have spent at least the previous semester in a North Carolina public school;
- Be entering kindergarten or first grade; or
- Have received a scholarship during the previous school year

Eligible students could begin receiving scholarships in the spring 2013 semester of the 2012-13 school year.

Scholarship-Funding Organizations

SFOs must apply annually to the Division of Nonpublic Education (“the Division”) to be certified as an SFO. Applications are due to the Division by June 1 of each year, and certifications to organizations meeting the eligibility criteria must be issued no later than August 1. In order to qualify, as an SFO, an organization must:

- Incorporate as a 501(c)(3) tax-exempt nonprofit corporation and registered with the North Carolina Department of the Secretary of State;
- For the first 24 months of operation, uses 100% of donations to fund scholarships; after 24 months, uses at least 93% of donations to fund scholarships;
- Does not award scholarships to students within five degrees of kinship, as defined by G.S. 104A-1;
- Does not permit donors to designate donations for specific private schools or students;
- Does not show preference to a particular school or limit participation;
- Does not discriminate on the basis of race, color, ethnicity, or national origin;
- Does not issue scholarships greater than \$4,000;
- Awards scholarships to eligible students to attend any eligible private school;
- Awards scholarships to eligible students in the order in which the applications are received (except they can give priority to students who received scholarships the prior school year);
- Does not award scholarship to ineligible students;
- Permits eligible students receiving a scholarship to transfer to another private school and remain eligible;
- Has no paid staff in the scholarship-funding organization that has been convicted of any crime listed in G.S. 115C-238.29K; and

- Has no outstanding tax debt due to the Department of Revenue.

The Division must provide a list of certified SFOs to the Department of Revenue by December 1 of each year, and must maintain a current copy of the list shall also be maintained on the Division's web site. However, for the first year, applications must be submitted to the Division no later than August 15, 2012, and the Division shall issue certifications no later than August 30, 2012.

SFOs must provide an annual financial and compliance audit by October 1 of each year, and an annual report by July 15 of each year. The financial and compliance audit of all accounts and records pertaining to donations and scholarships must be conducted by an independent certified public accountant. The annual report must include information on:

- Total number, grade level, race, ethnicity, and sex of eligible students awarded donation scholarships;
- Amount of donation scholarship funding awarded;
- Percentage of first-time recipients of donation scholarships who were enrolled at a public school during the previous semester;
- The local school administrative unit or charter school in which an eligible student was enrolled in the prior semester, when applicable;
- The private schools at which donation scholarship recipients are enrolled; and
- Other information necessary for the Division to perform its duties.

SFOs are allowed to carry forward up to 20% of funds in their scholarship fund to the next fiscal year. Any additional amounts above 20% must be returned to the State Treasurer for deposit in the State General Fund.

The Division can revoke the certification of any SFO that fails to address any deficiencies within 90 days of receiving written notification of the deficiencies.

Requirements of Private Schools

All private schools accepting scholarship students must:

- Provide the SFO with documentation of the tuition and fees charged to the student;
- Conduct a criminal background check for the staff member with the highest decision-making authority
- Provide written progress reports to parents of scholarship students;
- Submit to the Division the scores of scholarship students on any nationally standardized achievement tests;
- Provide the Division with the graduation rate of scholarship students;
- Contract with an independent certified accountant to perform a financial review if the school receives more than \$500,000 in scholarships from this bill. The first financial review would not be required until the 2014-2015 school year.

Private schools enrolling more than 25 scholarship students shall report to the Division on the aggregate standardized test performance of eligible students.

Tuition Payment Process

In order to remit payment on behalf of scholarship students, the SFO must remit, at least twice per year, a scholarship payment certificate to the private school for endorsement by at least one of the student's parents or guardians. The parent or guardian would then restrictively endorse the scholarship award to the private school for deposit into the account of the private school.

Division of Nonpublic Education Reporting

The Division is required to report to DPI by August 1 of each year with the following information:

- The number of students who have received scholarships through a scholarship-funding organization and who were enrolled the prior semester in an LEA or charter school; and
- The LEA or charter school that those students had previously attended.

The Division is required to report to the Joint Legislative Education Oversight Committee by March 1 of each year with the following information:

- Number and name of SFOs certified by the Division;
- Total number, grade level, race, ethnicity, and sex of students participating in the Program;
- Amount of scholarship funding awarded, by SFO;
- The number of students who have received scholarships through a scholarship-funding organization and who were enrolled the prior semester in an LEA or charter school and the LEA or charter school that those students had previously attended;
- Private schools in which scholarship recipients are enrolled, including numbers of scholarship students at each private school;
- Revocations of certification of SFOs and private schools deemed ineligible to receive scholarships; and
- Number of contributors and dollar amounts of contributions received by SFOs.

The Division is required to report to DPI and the Joint Legislative Education Oversight Committee by October 1 of each year, beginning October 1, 2014, on the learning gains of students receiving donation scholarships, as determined by an independent research organization selected during the 2013-14 school year. To the extent possible, the learning gains of scholarship students should be compared to the learning gains of public school students with similar socioeconomic backgrounds.

Conforming Budget Changes

Section 7 of the bill makes conforming changes to H.B. 950, Modify 2011 Appropriations Act, should it become law, reflecting the decreased revenues and increased expenditures anticipated in FY 2012-13 as a result of this bill. That is, revenues are decreased by \$2,000,000 (reflecting tax credits granted) and expenditures are increased by \$796,004 (reflecting administrative costs to DOR and the Division). There is not an adjustment made for anticipated decrease in public school students. Reduced expenditures in public schools will be realized in January 2013, and reflected in greater than anticipated reversions at the end of FY 2012-13.

ASSUMPTIONS AND METHODOLOGY:

The fiscal analysis of this bill requires an examination of both the supply of available scholarship funds and the demand of students wanting to accept such scholarships to attend a private school. More specifically:

- **Supply of scholarships:** Examining the supply of available scholarship funds requires estimating the dollar value of the contributions that businesses and corporations will make to SFOs (and the corresponding value of the Program tax credits). More specifically, are contributions to SFOs likely to reach the \$40 million cap level in FY 2013-14?
- **Demand for scholarships:** The major question in assessing demand is to determine how many qualified students would be expected to apply for the Program scholarships in a given year. In particular, would the demand for scholarships be sufficient to utilize the annually available supply of scholarship funds? Furthermore, how many of those scholarship recipients would have been expected to attend a private school even if the Program did not exist?

Supply of Scholarships/Tax Credits

Analysis indicates that businesses and corporations in North Carolina would donate to North Carolina SFOs at a level sufficient meet the \$40 million cap in FY 2013-14.

While several states (Arizona, Florida, Georgia, Indiana, Iowa, Oklahoma, Pennsylvania, and Rhode Island) have some form of tax credit scholarship program, none are an exact match with the Program proposed by this bill. States have varying guidelines for:

- Which types of entities can claim a scholarship tax credit (e.g., corporations, individuals, etc.);
- Which types of state taxes the entity can claim its credit against (e.g., corporate income tax, insurance premiums tax, franchise tax, etc.);
- Which types of donations generate a tax credit (e.g., donations to scholarship-granting organizations only, or to other educational improvement organizations);
- The size of the credit relative to the contribution;
- Whether or not unused credits can be carried forward; and
- The size of the statewide cap on available credits.

The Florida Tax Credit Scholarship Program provides the most telling data for determining the value of credits that would likely be granted in the proposed North Carolina Program. First, Florida's allowable tax credit cap is set at a high enough level (compared to the size of Florida's economy) that it gives a good indication of the potential supply of donations/tax credits. The tax credit cap in the proposed North Carolina Program has the potential to increase to levels – relative to the size of other states' economies – that far surpasses the cap levels in most other states with similar programs, but would be similar to the relative cap size in Florida. Second, Florida provides a suitable comparison of the supply of donations/tax credits because the Florida credit applies to similar revenue sources.³

³ As of FY 2011-12, the Florida Tax Credit Scholarship Program allows tax credits against the corporate income tax, insurance premium tax, beverage excise tax, severance taxes on oil and gas production, and self-accrued sales tax liabilities of direct pay permit holders. Additionally, until FY 2011-12, credits against corporate income taxes were only allowed up to 75% of the corporation's contribution.

Data from Florida indicates that North Carolina would likely grant the maximum amount of tax credits allowable. The Florida Tax Credit Scholarship Program reached its tax credit cap of \$175 million for FY 2011-12, triggering an increase in the cap for FY 2012-13 to \$219 million.⁴ Analysis from the Florida Senate Finance and Tax Committee indicates that the cap will continue to be met, and increased, reaching \$341.8 million by FY 2014-15.⁵

The table below examines the actual and anticipated tax credits awarded under the Florida Tax Credit Scholarship Program against the potential tax credits that might be awarded under the North Carolina Program. Tax credits in each state are shown as a percentage of each state's GDP in order to make a comparison of the relative size of each state's anticipated level of tax credits. An annual growth rate of 4.5% is applied to both states' GDPs to account for anticipated economic growth in each state.⁶

Fiscal Year	Florida			North Carolina		
	Allowable Tax Credits	State GDP	Ratio	Allowable Tax Credits	State GDP	Ratio
2009-10	118,000,000	747,735,000,000	0.0158%		424,935,000,000	
2010-11	140,000,000	781,383,075,000	0.0179%		444,057,075,000	
2011-12	175,000,000	816,545,313,375	0.0214%		464,039,643,375	
2012-13	218,750,000	853,289,852,477	0.0256%	2,000,000	484,921,427,327	0.0004%
2013-14	273,437,500	891,687,895,838	0.0307%	40,000,000	506,742,891,557	0.0079%
2014-15	341,796,875	931,813,851,151	0.0367%			

Based on the evidence above, it is reasonable to conclude that businesses and corporations in North Carolina would donate to North Carolina SFOs at a level sufficient meet the \$40 million cap in FY 2013-14. The Florida Senate Finance and Tax Committee analysis implies that allowable credits could approach 0.0367% of Florida's economy. The \$40 million tax credit cap proposed by this bill only represents 0.0079% of North Carolina's anticipated GDP in FY 2013-14. Relative to the size of Florida's economy, tax credits at the maximum levels allowable under this bill would be below the levels that Florida has already experienced. As a result, one would expect the value of tax credits under the North Carolina Program to be equal to the \$40 million cap in FY 2013-14.

It is important to note that the supply of scholarships equals the availability of tax credits for FY 2012-13 and FY 2013-14. Beginning September 15, 2014, SFOs may begin retaining up to 7% of all donated funds to cover administrative costs at the SFO. As a result, scholarship availability is less than the tax credit cap, beginning in FY 2014-15.

⁴ Historical data provided by the Florida Department of Revenue.

⁵ Florida Senate Finance and Tax Committee, PCS/SB 2126 (Amended Cap and Maximum Scholarship Award Provisions) Revenue Estimating Conference, March 12, 2010, as found at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2010/pdf/page%20144-148.pdf>

⁶ FY 2009-10 state GDPs from US Bureau of Economic Analysis "Current-Dollar GDP by State, 2007-2010" as found at: http://www.bea.gov/newsreleases/regional/gdp_state/2011/xls/gsp0611.xls

Demand for Scholarships

This analysis assumes that there would be sufficient demand for scholarships to utilize all available funds for the time period covered by this fiscal analysis.

Demand will come from some number of students who are incentivized by this program to transfer from a public school to a private school (for the sake of this analysis, "public school students") and some number of students who would have attended a private school even in the absence of this Program ("private school students").

This analysis assumes that 90% of all eligible private school students would apply for a scholarship. The reason this number is below 100% is that a small minority of eligible students might not be aware of the Program, or might oppose receiving government support for philosophical reasons. Unfortunately, there is no available data from which to determine the actual demand from students who would have attended a private school in the absence of the Program. Therefore, this analysis assumes approximately 5,100 private school students will apply for Program scholarships.

Demand from eligible public school students is expected to be only 0.9% in FY 2012-13. This is approximately one-fourth of the demand observed in the Florida Tax Credit Scholarship Program. Because students can only begin receiving the scholarship in spring 2013, students who would otherwise have been enrolled in a public school would have to transfer mid-year in order to receive a scholarship. This analysis assumes that parents and guardians are less likely to transfer their children to a new school in the middle of a school year than they are during the summer, between school years. The demand is unlikely to increase significantly in FY 2013-14, as the Program's sunset provision means that no scholarships will be available in for the 2014-15 school year. As a result, this analysis assumes approximately 7,000 public school students will apply for scholarships each year.

In FY 2013-14, one would anticipate availability of approximately 10,526 scholarships, which is less than anticipated demand of approximately 12,100 students.

Estimated Fiscal Impact

The fiscal impact of this bill hinges on whether or not the decreased expenditures resulting from students transferring from public to private schools outweighs the value of the Programs' tax credits. In addition, there are likely to be certain administrative costs that would negatively impact the fiscal analysis of this proposal.

State Revenues

As stated above, this analysis assumes that tax credits will equal the available cap in each year covered by this fiscal analysis. That is, \$2 million of tax credits will be issued in FY 2012-13, increasing to \$40 million in FY 2013-14. Each dollar of tax credits represents a decrease in State revenues.

Public School Expenditures

In general terms, the State saves money for each student who is incentivized by the Program to transfer from a public school to a private school because the foregone revenue funding the scholarship is less than what the State would have spent educating that student in a public school.

However, the State loses money on each student receiving a scholarship who would have attended a private school even in the absence of the Program. For these students, the State loses the revenue associated with the scholarship donation, but does not experience an associated decrease in public school expenditures.

Estimating the number of public school students receiving scholarships and the number of private school students receiving scholarships requires estimating the relative demand for scholarships between each of these groups of students.

To determine relative demand, one must first estimate the eligible population of students (those within 225% of the federal poverty level) in both public and private schools. Utilizing data from the IPUMS-USA database, we estimate that approximately 52% of public school students meet the family income eligibility requirement, while 33% of private school students meet the family income eligibility requirement.⁷

As explained above, demand from eligible public school students is expected to be 0.9% in FY 2012-13 and FY 2013-14. Demand from eligible private school students is expected to be 90% in FY 2012-13 and FY 2013-14.

Based on the above, the following estimated factors are used to determine the relative demand for scholarships between students in grades K-1 who would have attended public school in the absence of the Program versus students in grades K-1 who would have attended a private school even if they had not received a scholarship:

- Number of public school students (1,492,793 in FY 2012-13, increasing 1.3% each year)
- Number of private school students in grades K-1 (17,200 in FY 2012-13, increasing 1.3% each year)
- Percent of public school students meeting the Program's income eligibility requirement (52%)
- Percent of private school students meeting the Program's income eligibility requirement (33%)
- Demand from eligible public school students (0.9%)
- Demand from eligible private school students (90%)

Using the above factors, it is assumed that approximately 42% of scholarships would be awarded to private school students in each year of the Program.

⁷ Steven Ruggles, J. Trent Alexander, Katie Genadek, Ronald Goeken, Matthew B. Schroeder, and Matthew Sobek. Integrated Public Use Microdata Series: Version 5.0 [Machine-readable database]. Minneapolis: University of Minnesota, 2010.

For FY 2012-13, a total of 526 scholarships are expected to be available. 222 are expected to be awarded to private school students and 304 are expected to be awarded to public school students.

Determining availability of scholarships in FY 2013-14 requires examining how cohorts of each type of scholarship student advance through school from year-to-year. This analysis assumes that 10% of "private school awardees" do not re-apply for the scholarship in the subsequent year. That is, this analysis assumes a turnover rate of 10% for "private school awardees". This analysis assumes a turnover rate of 15% for "public school awardees". That is, 458 scholarships would be carried forward from FY 2012-13 to 2013-14. The relative demand analysis is used to determine the mix of remaining scholarships.

The fiscal impact of each type of awardee is as follows:

- "Private school awardees": For each of these students, the State loses the revenue associated with the scholarship donation (\$3,800).
- "Public school awardees": For each of these students, the State loses the revenue associated with the scholarship donation (\$3,800), but decreases State expenditures in public schools (\$4,652 in FY 2012-13, increasing 1% per year).

LEA Impact

LEAs experience a decrease in local expenditures related to each "public school awardee". There is no LEA fiscal impact related to "private school awardees".

It is important to note that LEAs will not necessarily decrease expenditures as enrollments decrease in their public schools. The amounts shown indicate the amount by which LEAs could *potentially* decrease their local expenditures, and still provide the same local support for public schools as is currently provided.

Administrative Costs

Administration of the Program would place additional requirements on DOR and the Division.

For the DOR, two additional positions would be required to manage the process for awarding tax credits. This analysis assumes salary plus benefits of \$65,000 per position, with expenditures increasing in future years commensurate with inflation related to salaries.⁸ Additionally, DOR will be required to update certain software systems in order to automate processes. These system upgrades are expected to be a nonrecurring cost of \$300,000 in FY 2012-13.

For the Division, new responsibilities include:

- Creating the SFO application form
- Processing SFO certification requests
- Receiving and processing reports from SFOs
- Ensuring SFOs are in compliance with eligibility requirements
- Developing annual reports
- Contracting with an independent researcher

⁸ Salaries in future years are inflated using projected inflationary increases for salary and wages from Moody's Analytics available at: <https://www.economy.com/default.asp>

All of these responsibilities are outside of the scope of the Division's current responsibilities, and cannot be executed within existing resource levels.

The Division identified the following needs to carry out the increased responsibilities created by this bill:

- Additional personnel:
 - 1 lead program specialist to coordinate the Program for the Division
 - 2 educational specialists to conduct compliance visits to non-public schools
 - 1 program assistant to receive and manage scholarship funding data
 - Related expenses for travel, equipment, and furnishings
- A contract with an accountant to verify SFO compliance
- A contract with an independent researcher
- Additional database/technology capabilities to collect and manage information, as well as to automate SFO application process

These estimates appear reasonable given the existing resource levels at the Division.

The table below summarizes the estimated administrative costs for DOR and the Division.

S599 Administrative Costs

	2012-13	2013-14
Department of Revenue		
Program Specialist	\$84,466	\$90,602
Program Specialist	\$84,466	\$90,602
Travel, Equipment, Supplies	\$9,106	\$2,261
Technology Upgrades	\$300,000	\$0
Department of Revenue Subtotal	\$478,038	\$183,464
Division of Nonpublic Education		
Education Program Specialist	\$71,381	\$76,504
Education Program Specialist	\$71,381	\$76,504
Lead Education Program Specialist	\$78,000	\$83,635
Program Assistant V.	\$47,551	\$50,830
Travel, Equipment, Supplies	\$33,937	\$13,975
Contract with Independent Researcher	\$0	\$100,000
Contract for Accounting Services	\$0	\$20,000
Contract for Database/Technology	\$15,716	\$10,438
Division of Nonpublic Education Subtotal	\$317,966	\$431,886
TOTAL ADMINISTRATIVE COSTS	\$796,004	\$615,350

Fiscal Impact Summary

The table below summarizes the total fiscal impact of the Program, utilizing the data described above. It is important to note that the fiscal estimate below assumes that organizations choose to become SFOs. If no SFOs form, there would not be any fiscal impact of this bill. Please see Technical Considerations for additional information.

Equal Opportunity Scholarship - Estimated Fiscal Impact on State and LEAs

	2012-13	2013-14	2014-15	2015-16	2016-17
Tax Credits Granted	(\$2,000,000)	(\$40,000,000)	\$0	\$0	\$0
Scholarship Dollars Available**	\$2,000,000	\$40,000,000	\$0	\$0	\$0
Maximum Scholarship Award	\$4,000	\$4,000	N/A	N/A	N/A
Average Scholarship Award	\$3,800	\$3,800	N/A	N/A	N/A
New Scholarships Available	526	10,068	N/A	N/A	N/A
Private School Awardees	222	4,493	N/A	N/A	N/A
Public School Awardees	304	6,033	N/A	N/A	N/A
Avg. Public School Exp. Per Child	\$4,652	\$4,699	N/A	N/A	N/A
Reduced Public School Expenditures	\$707,104	\$28,346,171	N/A	N/A	N/A
Administrative costs	(\$796,004)	(\$615,350)	N/A	N/A	N/A
Net Fiscal Impact on State	(\$2,088,900)	(\$12,269,179)	N/A	N/A	N/A
LEA Exp. Per Eligible Student	\$1,898	\$1,917	N/A	N/A	N/A
LEA Operational Savings	\$288,496	\$11,565,140	N/A	N/A	N/A
Net Fiscal Impact on LEAs	\$288,496	\$11,565,140	N/A	N/A	N/A

SOURCES OF DATA:

- Florida Department of Revenue
- Florida Senate Finance and Tax Committee, PCS/SB-2126 (Amended Cap and Maximum Scholarship Award Provisions) Revenue Estimating Conference, March 12, 2010, as found at:
<http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2010/pdf/page%20144-148.pdf>
- US Bureau of Economic Analysis "Current-Dollar GDP by State, 2007-2010" as found at:
http://www.bea.gov/newsreleases/regional/gdp_state/2011/xls/gsp0611.xls
- Florida Department of Education student membership data found at
<http://www.fldoe.org/eias/eiaspubs/archives.asp>
- Florida Office of Independent Education and Parental Choice, *Florida Tax Credit Scholarship Program Quarterly Reports*, as found at:
http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports.asp
- Step Up for Students
- Moody's Analytics *Economy.com* inflationary rate estimates for salaries & wages
- Steven Ruggles, J. Trent Alexander, Katie Genadek, Ronald Goeken, Matthew B. Schroeder, and Matthew Sobek. Integrated Public Use Microdata Series: Version 5.0 [Machine-readable database]. Minneapolis: University of Minnesota, 2010

TECHNICAL CONSIDERATIONS:

Supply of SFOs

It is unclear whether or not any SFOs will form to administer this Program. The bill permits SFOs to retain up to 7% of all donations after being certified for more than 24 consecutive months. The earliest an SFO could begin retaining donations would be September 15, 2014. As the tax credit expires at the end of the 2013 calendar year, it is unlikely SFOs will receive significant donations after September 15, 2014. As a result, there is no financial incentive for any SFOs to form.



SENATE BILL 599: Equal Opportunity Scholarship Tax Credit

2011-2012 General Assembly

Committee: House Finance	Date: June 27, 2012
Introduced by: Sens. Bingham, Brock, Rouzer	Prepared by: Dan Ettefagh
Analysis of: S599-CSMC-27	Committee Counsel

SUMMARY: *The Proposed Committee Substitute for Senate Bill 599 would create a tax credit for certain business entities that make donations to scholarship-funding organizations (SFOs), which would, in turn, award scholarships to eligible students to attend nonpublic schools. The PCS also modifies budget appropriations to cover the costs associated with the tax credit and authorizes additional personnel for the Department of Revenue and the Division of Nonpublic Education to implement the provisions of the act.*

BILL ANALYSIS OF PCS:

Section 1: Scholarship-Funding Organizations

SFOs may award donation scholarships using money donated to them for which taxpayers may be allowed a tax credit under Section 2 of the bill. Eligible students would be able to use the donation scholarship for tuition and fees at nonpublic schools. In order to be "eligible," a student would have to meet all of the following requirements:

- Have not yet received a high school diploma;
- Was a full-time student at a North Carolina public school during the previous semester, received a scholarship from an eligible SFO during the previous school year or is entering kindergarten or first grade; and
- Belong to a household with an income level not in excess of 225% of the federal poverty level.

Certification of SFOs – North Carolina charitable organizations can apply annually to the Division of Nonpublic Education in the Department of Administration (DNPE) for certification as an SFO. Once certified, a SFO may receive donations and award donation scholarships. The DNPE must certify an organization as an SFO if the organization:

- Is exempt under Section 501(c)(3) of the Internal Revenue Code.
- Uses 100% of donations to fund donation scholarships if the SFO has been certified for 24 consecutive months or less or uses at least 93% of donations to fund donation scholarships if the SFO has been certified for more than 24 consecutive months.
- Does not award donation scholarships within 5 degrees of lineal or collateral kinship of family of paid staff or board members of the SFO.
- Does not permit donors to designate donation scholarships for the direct benefit of a particular nonpublic school or eligible student.
- Does not show preference to a particular school or limit participation to any requirements other than those specified.
- Does not discriminate on the basis of race, color, ethnicity, national origin, sex, or religion.
- Funds donation scholarships of not more than \$4,000 per year per eligible student for tuition and fees for books, transportation, equipment or other items required by the nonpublic school.
- Awards donation scholarships to eligible students to attend any nonpublic school and does not limit availability to students of only one school.

Senate Bill 599

Page 2

- Awards donation scholarships to eligible students in the order in which the applications are received, however, it may give priority to eligible students who received a donation scholarship from it during the previous school year.
- Restricts award of donation scholarships to eligible students.
- Permits an eligible student receiving a donation scholarship to enroll in a different nonpublic school and remain eligible.
- Has no paid staff in the SFO that has been convicted of particular crimes and provides evidence of criminal history checks in the SFO's application.
- Has satisfied or otherwise resolved any notices of overdue tax debts from the DOR.

The DNPE must give DOR an annual list of certified SFOs by August 1 and maintain a current list on their website.

Obligations of SFOs

The following information must be submitted by a SFO to the DNPE:

- An annual financial and compliance audit conducted by an independent certified public accountant of accounts and records pertaining to donations and donation scholarships.
- An annual report on donation scholarship awards that includes information on:
 - Total number, grade level, race, ethnicity, and sex of eligible students awarded donation scholarships.
 - Amount of donation scholarship funding awarded.
 - Percentage of first time recipients of donation scholarships who were enrolled at a public school during the previous semester.
 - The local school administrative unit or charter school in which an eligible student was enrolled in the prior semester, when applicable.
 - The nonpublic schools at which donation scholarship recipients are enrolled.
 - Other information necessary for the DNPE to perform its duties.

SFOs can carry forward no more than 20% of donations to the following fiscal year. Donations in excess of the 20% that can be carried forward that remain on June 30 of each year must be returned to the State. The DNPE must give written notice to a SFO that is not in compliance with requirements for SFOs, and it has 90 days to correct the deficiencies. If the deficiencies are not corrected, then the certification must be revoked and the SFO must notify parents of eligible students receiving a donation scholarship of the revocation. SFOs must require taxpayers making donations to it to also provide a copy of the written certification issued by the DOR. The SFOs must also report the amount of the donation to the DOR.

Obligations of Nonpublic Schools Receiving Scholarship Funds

Nonpublic schools that accept scholarship funds from SFOs must comply with the following:

- Provide documentation to the SFO for required tuition and fees charged to the eligible student by the nonpublic school.
- Conduct a criminal background check for the staff member with the highest decision making authority to ensure that person has not been convicted of specified crimes.
- Provide to the parent or guardian of an eligible student whose tuition and fees are paid in whole or in part with a donation scholarship an annual written explanation of the student's progress, including the student's scores on any standardized achievement tests.

Senate Bill 599

Page 3

- Submit to the DNPE by July 15 of each year the test scores of any nationally standardized achievement test administered to any student receiving a donation scholarship.
- Provide to the DNPE graduation rates of the students receiving donation scholarships in a manner consistent with nationally recognized standards.
- Contract with an independent certified accountant to perform a financial review for each school year in which the school receives more than five hundred thousand dollars (\$500,000) in donation scholarships.

Nonpublic schools that enroll more than 25 students whose tuition and fees are paid in whole or in part with a donation scholarship must report to the DNPE on the aggregate standardized test performance of eligible students. Test performance data must be provided to an independent research organization selected by DNPE for research purposes.

If a nonpublic school that accepts donation scholarships fails to comply with the mandatory requirements, it would be determined to be ineligible to receive future scholarships from a SFO and would have to notify parents or guardians of enrolled students receiving a donation scholarship that the nonpublic school cannot receive future scholarships. The DNPE must notify SFOs of any nonpublic schools that are ineligible for donation scholarship funds.

Scholarship Endorsement – The SFO must remit a scholarship payment certificate to the nonpublic school at least two times each school year. This payment must be endorsed by the student's parent or guardian in person at the site of the nonpublic school. Failure to comply with this requirement would result forfeiture of the scholarship.

Reporting Requirements for DNPE – The DNPE must report to the Department of Public Instruction (DPI) annually on the number of students who have received donation scholarships through a SFO and who were enrolled the prior semester in a local school administrative unit (LEA) or charter school, by previously attended LEA or charter school. The DPI must adjust the allocations of LEAs or charter schools based on the number of students awarded donation scholarships and must equal the average per pupil allocation for average daily membership from the LEA or charter school.

The DNPE must also report annually to the Joint Legislative Education Oversight Committee (JLEOC) on a number of different items including numbers and names of SFOs; total number, grade level, race, ethnicity, and sex of eligible students; amount of scholarship funding awarded by SFOs; and number of contributors and dollar amounts of contributions received by SFOs. Finally, the DNPE must report to the DPI and the JLEOC on the learning gains of students receiving donation scholarships with the evaluation conducted by an independent research organization.

Section 2: Equal Opportunity Scholarship Tax Credit

Tax Credit for Donations to Scholarship-Funding Organizations - Taxpayers that make monetary donations to a SFO would be able to take a tax credit equal to the amount of the donation. The tax credit would be allowed against the following taxes: (i) excise, (ii) franchise, (iii) income, or (iv) insurance gross premium, with the taxpayer making the election of which tax against which the credit will be claimed. This election would be binding and must be made when filing the return on which the tax credit is first claimed and any carryforwards of the credit must be claimed against the same tax.

Any tax credits allowed cannot exceed the amount of tax against which it is claimed for the taxable period, reduced by the sum of all other credits allowed against that tax, except for tax payments made by or on behalf of the taxpayer. The limitation applies to the cumulative amount of the credit including carryforwards claimed by the taxpayer against each tax for the taxable period.

Any unused portion of a credit claimed against the franchise tax, income tax, or insurance gross premium tax can be carried forward for five years. Unused portions of a credit claimed against the excise tax can be carried forward for five months. Successor businesses can take tax credits or carried-over portions of credits that the predecessor could have taken.

Aggregate Cap and Limitations – From July 1, 2012 to December 31, 2012, the total amount of tax credits allowed for monetary donations could not exceed \$2,000,000. For the calendar year beginning January 1, 2013,

Senate Bill 599

Page 4

the total amount of tax credits allowed for monetary donations made in that calendar year could not exceed \$40,000,000. The only tax credit with an aggregate cap is the qualified business investments tax credit, which is distributed on a pro rata basis in any year in which the cap is reached, rather than, as here, on a first-come, first served basis until the cap is reached. Practically speaking, prior to making a donation, the taxpayer must receive a certification for the donation to get a credit, which would indicate whether the donation would result in a dollar-for-dollar tax credit.

Substantiation - To be eligible for the tax credit, the taxpayer would have to obtain a written certification from the Secretary of Revenue (Secretary) that the sum of the tax credit for the donation and the tax credit for all other donations for which the Secretary has issued a written certification is not more than the aggregate cap.

The Secretary must respond to requests for certifications in 20 days and could not issue a written certification after December 31 of the calendar year in which the donation is made. Within 120 days of the issuance of a written certification, the taxpayer must submit the donation with the written certification to the SFO or notify the DOR that the donation was not made. The Secretary must publish on a weekly basis the number and amount of tax credits for which certified donations have been made. Requests must be approved in the order in which they are received by the Secretary until the total amount of all certified donations equals the aggregate cap. Request received on the same business day must be treated as received at the same time. The Secretary would issue certifications in proportion to each request received on the day the aggregate cap is exceeded.

Taxpayers must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to verify that the donation was timely made. The burden of proving eligibility for the credit and the amount of the credit is on the taxpayer.

Sections 3, 4, and 5 make conforming changes and provide that (i) that the local beer and wine distribution of the excise tax would be unaffected by credits taken against excise tax and (ii) disclosures of information could be made by DOR to the DNPE to determine whether a SFO had overdue tax debts that would prevent it from being certified.

APPROPRIATION:

In **Section 6**, the bill would appropriate \$478,038 to DOR and \$317,966 to the Department of Administration for the DNPE for the 2012-2013 fiscal year.

In **Section 7**, the bill would adjust General Fund appropriations and availability.

EFFECTIVE DATE: Section 1 is effective when it becomes law and expires January 1, 2016. Section 2 of the bill would be effective for taxable years beginning on or after January 1, 2012, would apply to donations made on or after July 1, 2012, and would expire for taxable years beginning on or after January 1, 2014. Section 3, the hold harmless provision for beer and wine excise tax distribution, would be effective when it becomes law and would apply to distributions made on or after that date, expiring for distributions made on or after March 31, 2015. Section 4 is effective for taxable years beginning on or after January 1, 2012, and expires for taxable years beginning on or after January 1, 2014. Section 5 is effective when it becomes law and expires January 1, 2015. DOR must develop necessary forms required for a tax credit on or before September 1, 2012. The DNPE must select an independent research organization by the beginning of the 2013-2014 school year. Applications for certifications of SFOs for 2012 must be submitted to the DNPE by September 1, 2012 with certifications issued no later than September 15, 2012 and a list provided to the DOR within three business days. The first financial review for a nonpublic school that accepts scholarship funds from an SFO would be required for the 2014-2015 school year. The first learning gains report would be due October 1, 2014. The remainder of the act is effective when it becomes law.

BACKGROUND: Nine states have scholarship tax credit programs: Arizona, Florida, Georgia, Indiana, Iowa, Oklahoma, Pennsylvania, Rhode Island and Virginia.

Arizona allows individuals to claim a credit on income tax, and corporations to claim credits on income tax and insurance premiums. Corporations may also receive a credit for donations intended for foster children and children with disabilities, subject to a separate statewide cap.

Senate Bill 599

Page 5

Florida allows corporations to claim credits on taxes for income, gas & oil production, insurance premiums, sales tax for holders of direct pay permits, and excise taxes on alcoholic beverages, with a statewide cap of \$229 million in 2012-2013, the highest in the nation.

Georgia allows both individuals and corporations to claim credits for "qualified education expenses," which includes donations to scholarship-funding organizations.

Indiana allows individuals and corporations to claim a credit against income tax for 50% of the donation to a "scholarship granting organization."

Iowa permits only individuals to claim a tax credit for donations to "school tuition organizations" with no limit on the individual credit, but subject to a statewide cap of \$8.75 million.

Oklahoma allows both individuals and corporations to claim credits equal to 50% of donations to scholarship-granting organizations, subject to individual and statewide caps. If the taxpayer makes a written pledge to donate the same amount for three consecutive years the credit is increased to 75% of the donation, subject to the same caps. Instead of being carried over, credits that exceed the statewide cap are reduced in proportion to the taxpayer's share of the state cap.

Pennsylvania allows business firms to claim a credit for 75% of a one-year donation, and 90% of a two-year donation, subject to caps for each business and statewide. Businesses may also claim credits for donations to pre-kindergarten scholarship organizations under a separate state cap.

Rhode Island allows businesses to claim a credit for 75% of a donation or 90% of a donation if the business commits in writing to making the same donation for two consecutive years, subject to individual and statewide caps.

Virginia permits individuals and businesses to claim a credit for 65% of a minimum donation of \$500, with a maximum of \$50,000 on all available credits in a taxable year for individuals and a statewide cap of \$25 million for both individuals and business.

S599-SMMC-11(e2) v4

**Drupti Chauhan and Kara McCraw, Counsel to the House and Senate Education Committees, significantly contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 231

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/8/11
House Committee Substitute Favorable 6/7/12

House Committee Substitute #2 Favorable 6/19/12

PROPOSED HOUSE COMMITTEE SUBSTITUTE S231-PCS35397-SV-68

Short Title: Incorporation/ETJ Study.

(Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE HOUSE SELECT STUDY COMMITTEE ON MUNICIPAL INCORPORATIONS, EXTRATERRITORIAL JURISDICTION, AND MUNICIPAL SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Committee created. – The House Select Study Committee on Municipal Incorporations, Extraterritorial Jurisdiction, and Municipal Services is created.

SECTION 2. Membership. – The Speaker of the House of Representatives shall appoint six members of the House of Representatives and four public members to serve as members of the House Select Study Committee on Municipal Incorporations, Extraterritorial Jurisdiction, and Municipal Services. In the event a vacancy occurs on the Committee, the Speaker of the House of Representatives shall appoint a replacement from the members of the House of Representatives.

SECTION 3. Study. – The House Select Study Committee on Municipal Incorporations, Extraterritorial Jurisdiction, and Municipal Services shall study issues related to the standards required for the incorporation of a municipality, extraterritorial jurisdiction, and the extension of municipal services, as it relates to incorporation, and any other issues related to the incorporation of a municipality as the Committee deems appropriate.

SECTION 4. Report. – The House Select Study Committee on Municipal Incorporations, Extraterritorial Jurisdiction, and Municipal Services shall submit a final report of its findings and recommendations to the 2013 General Assembly on or before the convening of the 2013 General Assembly. The report may include draft legislation to implement its recommendations along with an analysis of the fiscal impact of each recommendation. The Committee shall terminate upon filing its final report.

SECTION 5. Expenses of members. – Members of the House Select Study Committee on Municipal Incorporations, Extraterritorial Jurisdiction, and Municipal Services shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1 and G.S. 138-5.

SECTION 6. Cochairs; meetings. – The Speaker of the House of Representatives shall designate two cochairs of the House Select Study Committee on Municipal Incorporations, Extraterritorial Jurisdiction, and Municipal Services from among the respective



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1 appointees. The Committee shall meet upon the call of the cochairs. A majority of the members
2 of the Committee shall constitute a quorum. The Legislative Services Commission shall grant
3 adequate meeting space to the Committee in the State Legislative Building or the Legislative
4 Office Building.

5 **SECTION 7. Staff.** – The Legislative Services Commission, through the
6 Legislative Services Officer, shall assign professional staff to assist the House Select Study
7 Committee on Municipal Incorporations, Extraterritorial Jurisdiction, and Municipal Services
8 in its work. The House of Representatives Supervisor of Clerks shall assign clerical staff to the
9 Committee, and the expenses related to the clerical employees shall be borne by the
10 Committee.

11 **SECTION 8. Powers.** – The House Select Study Committee on Municipal
12 Incorporations, Extraterritorial Jurisdiction, and Municipal Services, while in the discharge of
13 official duties, may exercise all the powers provided under the provisions of G.S. 120-19
14 through G.S. 120-19.4.

15 **SECTION 9. Cooperation by government agencies.** – The House Select Study
16 Committee on Municipal Incorporations, Extraterritorial Jurisdiction, and Municipal Services
17 may call upon any department, agency, institution, or officer of the State or any political
18 subdivision of the State for facilities, data, or other assistance.

19 **SECTION 10.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 1077*
Committee Substitute Favorable 6/26/12
PROPOSED COMMITTEE SUBSTITUTE H1077-PCS30660-RBx-91

Short Title: PPP I-77 High Occupancy Toll Project.

(Public)

Sponsors:

Referred to:

May 24, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PILOT PROJECT FOR TOLLING THE I-77 HIGH
3 OCCUPANCY TOLL PROJECT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 136-18 reads as rewritten:

6 "§ 136-18. Powers of Department of Transportation.

7 The said Department of Transportation is vested with the following powers:

8 ...
9 (39) To enter into partnership agreements with private entities, and authorized
10 political subdivisions to finance, by tolls, contracts, and other financing
11 methods authorized by law, the cost of acquiring, constructing, equipping,
12 maintaining, and operating transportation infrastructure in this State, and to
13 plan, design, develop, acquire, construct, equip, maintain, and operate
14 transportation infrastructure in this State. An agreement entered into under
15 this subdivision requires the concurrence of the Board of Transportation.
16 The Department shall report to the Chairs of the Joint Legislative
17 Transportation Oversight Committee, the Chairs of the House of
18 Representatives Appropriations Subcommittee on Transportation, and the
19 Chairs of the Senate Appropriations Committee on the Department of
20 Transportation, at the same time it notifies the Board of Transportation of
21 any proposed agreement under this subdivision. No contract for
22 transportation infrastructure subject to such an agreement that commits the
23 Department to make nonretainage payments for undisputed capital costs of a
24 completed transportation infrastructure to be made later than 18 months after
25 final acceptance by the Department of such transportation infrastructure
26 shall be executed without approval of the Local Government Commission.
27 Any contracts for construction of highways, roads, streets, and bridges
28 which are awarded pursuant to an agreement entered into under this section
29 shall comply with the competitive bidding requirements of Article 2 of this
30 Chapter.

31 The following provisions may apply to an agreement entered into in
32 connection with the I-77 High Occupancy Toll project that extends from the
33 junction at NC 150 at Exit 36 to I-277 at Exit 9B:



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- 1 a. A private entity or its contractors must provide performance and
2 payment security in the form and in the amount determined by the
3 Department of Transportation. The form of the performance and
4 payment security may consist of bonds, letters of credit, parent
5 guaranties, or other instruments acceptable to the Department of
6 Transportation.
- 7 b. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement
8 entered into under this subdivision may allow the private entity to
9 assign, transfer, sell, hypothecate, and otherwise convey some or all
10 of its right, title, and interest in and to such agreement, and any rights
11 and remedies thereunder, to a lender, bondholder, or any other party.
12 However, in no event shall any such assignment create additional
13 debt or debt-like obligations of the State of North Carolina, the
14 Department, or any other agency, authority, commission, or similar
15 subdivision of the State to any lender, bondholder, entity purchasing
16 a participation in the right to receive the payment, trustee, trust, or
17 any other party providing financing or funding of projects described
18 in this section. The foregoing shall not preclude the Department from
19 making any payments due and owing pursuant to an agreement
20 entered into under this section.
- 21 c. The Department of Transportation may fix, revise, charge, and
22 collect tolls and fees to the same extent allowed under Article 6H of
23 Chapter 136 of the General Statutes. The Department may assign its
24 authority to fix, revise, charge, and collect tolls and fees to the
25 private entity.

26 ...

27 (43) For the purposes of financing the I-77 High Occupancy Toll project that
28 extends from the junction at NC 150 at Exit 36 to I-277 at Exit 9B, the
29 Department of Transportation may act as a conduit issuer for private activity
30 bonds to the extent the bonds do not constitute a debt obligation of the State.
31 The issuance of private activity bonds under this subdivision and any related
32 actions shall be governed by The State and Local Government Revenue
33 Bond Act, Article 5 of Chapter 159 of the General Statutes, with
34 G.S. 159-88 satisfied by adherence to the requirements of subdivision (39)
35 of this section."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
Sen.)

1 moves to amend the bill on page 1, line 32

2 () WHICH CHANGES THE TITLE and page 2, line 26,

3 by _____

4
5 by adding the following immediately
6 after the word "project":
7

8 " that extends from the junction at
9 NC-150 at EXH 36 to I-277
10 at Exit 9B."
11
12
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SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 399
PROPOSED HOUSE COMMITTEE SUBSTITUTE S399-PCS15261-RB-92

Short Title: Ecosystem Enhancement Program.

(Public)

Sponsors:

Referred to:

March 23, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO STUDY CERTAIN ISSUES PERTAINING TO THE ECOSYSTEM
3 ENHANCEMENT PROGRAM.

4 The General Assembly of North Carolina enacts:

5 SECTION 1.1. Study. – The Legislative Research Commission is authorized to
6 study issues related to the Ecosystem Enhancement Program. The Commission shall
7 specifically study the following items:

- 8 (1) The process for annual adjustments of EEP fees, including whether the use
9 of the Civil Works Construction Cost Index System published by the U.S.
10 Army Corps of Engineers as a basis for fee escalation is necessary given the
11 past direction of the General Assembly to base program fees on actual costs.
12 (2) Whether compensatory mitigation should be allowed to be performed in any
13 hydrologic area located in the same river basin as the site being mitigated.
14 For purposes of this subdivision, the terms "compensatory mitigation" and
15 "hydrologic area" shall have the definition attributed to them in
16 G.S. 143-214.11.
17 (3) Whether the compensatory mitigation fee payment system represents the
18 most efficient and effective way to provide compensatory mitigation and
19 how the program could be revised to lessen its economic impact on the
20 State's businesses and industries.

21 SECTION 1.2. Report. – The Legislative Research Commission shall report its
22 findings, together with any recommended legislation, to the 2013 General Assembly upon its
23 convening.

24 SECTION 1.3. Funding. – The Legislative Services Officer shall allocate funds
25 appropriated to the General Assembly for the expenditures of the Legislative Services
26 Commission in conducting this study.

27 SECTION 2. Effective date. – This act is effective when it becomes law.



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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. 399 - PCS95214

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep. Lewis
Sen.)

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

2 () WHICH CHANGES THE TITLE

3 by through page 1, line 31,

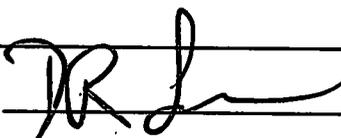
4 by rewriting the lines to read:

5 "AN ACT TO STUDY CERTAIN
6 ISSUES PERTAINING TO THE ECOSYSTEM
7 ENHANCEMENT PROGRAM." ;

8 and on page 2, lines 20-36, by rewriting the
9 lines to read:

10 "SECTION 2. This act is effective
11 when it becomes law." ;

12 and by renumbering section 2 as
13 section 1 accordingly.

SIGNED 

ADOPTED _____ FAILED _____ TABLED _____



North Carolina General Assembly
House Committee on Finance

Minutes

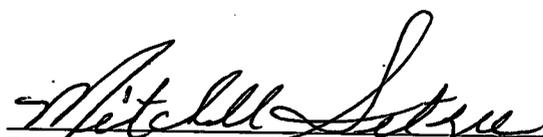
~
June 28, 2012

The House Committee on Finance met on Thursday, June 28, 2012, at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Folwell, Setzer and Starnes; Vice-Chairs Lewis and McComas; and Representatives K. Alexander, Brawley, Carney, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, T. Moore, Ross, Saine, Samuelson, H. Warren, and Weiss. House Sergeants at Arms present were John Brandon, Clyde Cook, Young Bae and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Setzer called the meeting to order and recognized Representative Mills to present **SB 876, AN ACT TO REMOVE A CERTAIN DESCRIBED TRACT FROM THE CORPORATE LIMITS OF THE TOWN OF MOORESVILLE AT THE REQUEST OF THE TOWN BOARD OF COMMISSIONERS**. Representative Folwell moved for a favorable report. Motion passed.

The next matter of business was the proposed committee substitute for **SB 599, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO ESTABLISH THE EQUAL OPPORTUNITY TAX CREDIT**. Representative Stam explained the bill. Members of the Research staff assisted in explanation. Representative Brandon moved for a favorable report on the PCS, unfavorable to the original. The motion failed. Representative Faison moved for an unfavorable report. The motion passed.

There being no further business presently before the Committee, the meeting adjourned at 9:45 am.


Rep. Mitchell Setzer, Presiding Chair


Neal Inman, Committee Clerk

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Finance

DATE: 6/28/16 Room: 544

*Name: Jessica White

County: Davie County

Sponsor: Julia Howard

*Name: Summer Blackwelder

County: Cabarrus

Sponsor: Thom Tillis

*Name: Anna Wallace

County: Stanly

Sponsor: Justin Burr

*Name: Maggie Swain

County: Wake

Sponsor: Paul Stam

*Name: Phillip Wray

County: Northampton

Sponsor: Wray

House Sgt-At Arms:

1. Name: Young Bae

4. Name: Joe Crook

2. Name: John Brandon

5. Name: Carter Adams

3. Name: Cerv Morello

6. Name: _____

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE _____

DATE: _____ Room: _____

*Name: Derrick McNeill

County: Moore

Sponsor: Tillis

*Name: Bailey Jones

County: Mecklenburg

Sponsor: Ruth Samuleson

*Name: Peter Ojo 0-36

County: Cumberland

Sponsor: Glazier

*Name: Margaret Coleman

County: Sampson

Sponsor: Larry Bell

*Name: Michael Knutson

County: Wayne

Sponsor: Eaton Sager

House Sgt-At Arms:

1. Name: _____

4. Name: _____

2. Name: _____

5. Name: _____

3. Name: _____

6. Name: _____

VISITOR REGISTRATION SHEET

HOUSE FINANCE

JUNE 28, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bob Cohen	dhny
Weldon Jones	Jordan Price
Matt Farrell	NCSBA
Paul Jones	NCSB
Leanne Winn	NCSBA
Kenneth Jones	NCSA
Ann Miller	SBE
Bill O'Donnell	PEFNC
Kevin Bryant	PEFNC
Darrell Allisa	PEFNC
Karen Bestman	TSS

VISITOR REGISTRATION SHEET

Finance

6/28/12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Zeb Alley	NMRS
Dawn Fenton	CLT
Julia Adams	The Arc of NC
Allison Waller	NMRS
Barbara Condon	BROOK
DOE	NCRMA
Clare Fitzgerald	DENR
Bill Brooks	NCFPC
DANIEL BARN	TWENTY NINE
Krist Horton	DHHS
Rev. MARK CREECH	CAE

VISITOR REGISTRATION SHEET

HOUSE FINANCE

JUNE 28, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Anne Murtha	NC DCR
Christy Agner	DOA
Kari Barsness	DENR
Jimmy Broughton	Womble Carlyle
Sean Moser	Natl Guard / DPS
Andrew Cagle	NC Sheriffs' Assn.
David Heben	NC Center for Nonprofits
Gene Byall	NC Family Policy Council
Chris Hill	NC Justice Center
Wendy Kelly	Policy Group
Carly Thomas	NCA

VISITOR REGISTRATION SHEET

HOUSE FINANCE

JUNE 28, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Katie Hallaway	LOWE'S
Philip Isley	Buick
Butch Gunnells	NCRW
Bill Rowe	NC Justice Center
Hubert Ransom	NCRMA
Suzanne Brasby	SEANC
Tom BEAN	EDF
Dave Bone	SA
Brian Lewis	NCAE
Reggie Holley	The Longmire Group/AFEDC
Kara Weishaar	SA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 599*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S599-CSMC-27 [v.4]

6/26/2012 7:08:25 PM

Short Title: Equal Opportunity Scholarship Tax Credit.

(Public)

Sponsors:

Referred to:

April 14, 2011

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO ESTABLISH THE EQUAL OPPORTUNITY TAX
3 CREDIT.
4 The General Assembly of North Carolina enacts:
5 Whereas, the State has a Constitutional obligation to fund the delivery of a sound
6 basic education to children; and
7 Whereas, children of families with limited financial resources need expanded
8 educational opportunities; and
9 Whereas, a solid educational foundation can help reduce the socioeconomic
10 achievement gap; and
11 Whereas, by creating educational environments that enable all of North Carolina's
12 children to learn, the State can improve the quality of the education it funds; Now, therefore,
13 SECTION 1. Article 39 of Chapter 115C of the General Statutes is amended by
14 adding a new Part to read:
15 "Part 2A. Scholarship-Funding Organizations.
16 "§ 115C-562.1. Definitions.
17 The following definitions apply in this Part:
18 (1) Division. – The Division of Nonpublic Education, Department of
19 Administration.
20 (2) Donations. – Money given to a scholarship-funding organization for which a
21 taxpayer may be allowed a tax credit pursuant to G.S. 105-129.101.
22 (3) Donation scholarships. – Scholarships awarded by a scholarship-funding
23 organization using money given to a scholarship-funding organization for
24 which a taxpayer may be allowed a tax credit pursuant to G.S. 105-129.101.
25 (4) Eligible students. – A student who has not yet received a high school
26 diploma and who meets all of the following requirements:
27 1. Whose enrollment status is one of the following:
28 a. Was a full-time student at a North Carolina public school
29 during the previous semester.
30 b. Received a scholarship from an eligible scholarship-funding
31 organization during the previous school year for attendance at
32 a North Carolina nonpublic school.
33 c. Is entering kindergarten or the first grade.



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1 2. Belongs to a household with an income level not in excess of two
2 hundred twenty-five percent (225%) of the federal poverty level.

3 (5) Nonpublic school. – A school that meets the requirements of Part 1 or 2 of
4 this Article.

5 (6) Scholarship-funding organization. – A North Carolina charitable
6 organization certified by the Division to meet all criteria for eligibility to
7 receive donations.

8 **"§ 115C-562.2. Certification of eligible scholarship funding organizations.**

9 (a) A North Carolina charitable organization shall apply annually to the Division for
10 certification as a scholarship-funding organization in a form prescribed by the Division.
11 Applications shall be received by the Division for certification for the next calendar year no
12 later than June 1. The Division shall issue certifications to organizations meeting the criteria in
13 subsection (b) of this section no later than August 1. A scholarship-funding organization may
14 receive donations and award donation scholarships upon issuance of certification by the
15 Division.

16 (b) The Division shall certify an organization as an eligible scholarship-funding
17 organization upon a finding that the organization meets the following criteria:

18 (1) Is an exempt organization under section 501(c)(3) of the Internal Revenue
19 Code.

20 (2) Uses one hundred percent (100%) of donations to fund donation scholarships
21 if the organization has been certified for 24 consecutive months or less, or
22 uses at least ninety-three percent (93%) of donations to fund donation
23 scholarships if the organization has been certified for more than 24
24 consecutive months.

25 (3) Does not award donation scholarships to students within five degrees of
26 kinship, as defined in G.S. 104A-1, of family of paid staff or board members
27 of the scholarship-funding organization.

28 (4) Does not permit donors to designate donation scholarships for the direct
29 benefit of a particular nonpublic school or eligible student.

30 (5) Does not show preference to a particular school or limit participation to
31 requirements other than those specified in this Article.

32 (6) Does not discriminate on the basis of race, color, ethnicity, national origin,
33 sex, or religion.

34 (7) Funds donation scholarships of not more than four thousand dollars (\$4,000)
35 per year per eligible student for tuition and fees for books, transportation,
36 equipment, or other items required by the nonpublic school.

37 (8) Awards donation scholarships to eligible students to attend any nonpublic
38 school and does not limit availability to students of only one school.

39 (9) Awards donation scholarships to eligible students in the order in which the
40 applications are received. Notwithstanding this requirement, a
41 scholarship-funding organization may give priority to donation scholarship
42 awards to eligible students who received a donation scholarship from the
43 scholarship-funding organization during the previous school year.

44 (10) Restricts award of donation scholarships to eligible students.

45 (11) Permits an eligible student receiving a donation scholarship to enroll in a
46 different nonpublic school and remain eligible. An eligible student receiving
47 a donation scholarship who transfers to another nonpublic school during the
48 year may be eligible to receive a pro rata share of any unexpended portion of
49 the donation scholarship for tuition and fees at the nonpublic school to which
50 the student transfers.

- 1 (12) Has no paid staff of the scholarship-funding organization that has been
2 convicted of any crime listed in G.S. 115C-238.29K. Evidence of criminal
3 history record checks of paid staff shall be included in an organization's
4 application.
- 5 (13) Has satisfied or otherwise resolved a notice of an overdue tax debt received
6 by the Department of Revenue.
- 7 (c) The Division shall provide an annual list of certified scholarship-funding
8 organizations to the Department of Revenue no later than August 1, and shall notify the
9 Department of Revenue of any changes to the annual list within three business days. A current
10 copy of the list shall also be maintained on the Division's Web site.
- 11 **"§ 115C-562.3. Obligations of scholarship-funding organizations.**
- 12 (a) A scholarship-funding organization shall submit the following information to the
13 Division:
- 14 (1) An annual financial and compliance audit of all accounts and records
15 pertaining to donations and donation scholarships conducted by an
16 independent certified public accountant. The audit shall be conducted in
17 compliance with generally accepted auditing standards. The report must
18 include a report on financial statements presented in accordance with
19 generally accepted accounting principles for nonprofit organizations and a
20 determination of compliance with the statutory eligibility and expenditure
21 requirements set forth in this Part. Audits shall be provided to the Division
22 no later than October 1.
- 23 (2) An annual report to the Division no later than July 15 on donation
24 scholarship awards, including the following information:
- 25 a. Total number, grade level, race, ethnicity, and sex of eligible students
26 awarded donation scholarships.
- 27 b. Amount of donation scholarship funding awarded.
- 28 c. Percentage of first-time recipients of donation scholarships who were
29 enrolled at a public school during the previous semester.
- 30 d. The local school administrative unit or charter school in which an
31 eligible student was enrolled in the prior semester, when applicable.
- 32 e. The nonpublic schools at which donation scholarship recipients are
33 enrolled.
- 34 f. Other information necessary for the Division to perform its duties.
- 35 (b) A scholarship-funding organization shall maintain separate accounts for donation
36 scholarship funds and operating funds.
- 37 (c) A donation scholarship fund shall carry forward no more than twenty percent (20%)
38 of donations to the following fiscal year. Any donations remaining on June 30 of each year in
39 excess of the twenty percent (20%) that may be carried forward shall be returned to the State
40 Treasurer for deposit in the State General Fund.
- 41 (d) The Division shall give written notice to a scholarship-funding organization that
42 fails to comply with the requirements of this Part. The scholarship-funding organization shall
43 have 90 days to correct all deficiencies. If a scholarship-funding organization fails to correct all
44 deficiencies within 90 days, the Division shall revoke the certification of the
45 scholarship-funding organization, and shall immediately notify the Department of Revenue of
46 the revocation. The scholarship-funding organization shall notify the parent or guardian of any
47 eligible student receiving a donation scholarship from the scholarship-funding organization of
48 the loss of certification.
- 49 (e) A scholarship-funding organization shall require taxpayers making donations to
50 provide to the scholarship-funding organization a copy of the written certification issued to the
51 taxpayer pursuant to G.S. 105-129.103. Within five business days of receipt of a donation, a

1 scholarship-funding organization shall report to the Department of Revenue the amount of the
2 donation from the taxpayer and a copy of the taxpayer's written certification.

3 **"§ 115C-562.4. Obligations of nonpublic schools receiving scholarship funds.**

4 (a) A nonpublic school that accepts donation scholarship funds from a
5 scholarship-funding organization shall comply with the following:

- 6 (1) Provide to the scholarship-funding organization documentation for required
7 tuition and fees charged to the eligible student by the nonpublic school.
- 8 (2) Conduct a criminal background check for the staff member with the highest
9 decision-making authority, as defined by the bylaws or articles of
10 incorporation, to ensure that person has not been convicted of any crime
11 listed in G.S. 115C-239.29K.
- 12 (3) Provide to the parent or guardian of an eligible student whose tuition and
13 fees are paid in whole or in part with a donation scholarship an annual
14 written explanation of the student's progress, including the student's scores
15 on any standardized achievement tests.
- 16 (4) Submit to the Division by July 15 of each year the test scores of any
17 nationally standardized achievement test administered to any eligible student
18 receiving a donation scholarship. Test performance data reported to the
19 Division is not a public record under Chapter 132 of the General Statutes.
- 20 (5) Provide to the Division graduation rates of the eligible students receiving
21 donation scholarships in a manner consistent with nationally recognized
22 standards.
- 23 (6) Contract with an independent certified accountant to perform a financial
24 review, consistent with generally accepted accounting principles, for each
25 school year in which the school receives more than five hundred thousand
26 dollars (\$500,000) in donation scholarships awarded under this section.

27 (b) A nonpublic school enrolling more than 25 eligible students whose tuition and fees
28 are paid in whole or in part with a donation scholarship shall report to the Division on the
29 aggregate standardized test performance of these students. Test performance data reported to
30 the Division is not a public record under Chapter 132 of the General Statutes. Test performance
31 data may be shared with public or private institutions of higher education located in North
32 Carolina and shall be provided to an independent research organization selected by the Division
33 for research purposes as permitted by the Federal Education Rights and Privacy Act, 20 U.S.C.
34 § 1232g.

35 (c) A nonpublic school accepting donation scholarship funds that fails to comply with
36 the requirements of this section shall be deemed ineligible to receive future donation
37 scholarships from a scholarship-funding organization. The nonpublic school shall notify the
38 parent or guardian of any enrolled eligible student receiving a donation scholarship that the
39 nonpublic school is no longer eligible to receive future donation scholarships. The Division
40 shall notify scholarship-funding organizations of any school that is determined to be ineligible
41 for receipt of donation scholarships.

42 **"§ 115C-562.5. Scholarship endorsement.**

43 The scholarship-funding organization shall remit, at least two times each school year, a
44 donation scholarship payment certificate to the nonpublic school for endorsement by at least
45 one of the eligible student's parents or guardians. The parent or guardian shall restrictively
46 endorse the donation scholarship award to the nonpublic school for deposit into the account of
47 the nonpublic school. The parent or guardian shall not designate any entity or individual
48 associated with the nonpublic school as the parent's attorney-in-fact to endorse the donation
49 scholarship payment certificate, but shall endorse the donation scholarship payment certificate
50 in person at the site of the nonpublic school. A parent or guardian's failure to comply with this
51 section shall result in forfeit of the donation scholarship. A donation scholarship forfeited for

1 failure to comply with this section shall be returned to the scholarship-funding organization to
2 be awarded to another eligible student for that school year.

3 **"§ 115C-562.6. Division reporting requirements.**

4 (a) The Division shall report to the Department of Public Instruction annually, no later
5 than August 1, the number of eligible students who have received donation scholarships
6 through a scholarship-funding organization and who were enrolled the prior semester in a local
7 school administrative unit or charter school, by previously attended local school administrative
8 unit or charter school. The Department of Public Instruction shall adjust the allotments of local
9 school administrative units or charter schools based on the number of students awarded a
10 donation scholarship who attended a local school administrative unit or charter school during
11 the prior semester. The amount of the adjustment shall equal the average per pupil allocation
12 for average daily membership from the local school administrative unit or charter school.

13 (b) The Division shall report annually, no later than March 1, to the Joint Legislative
14 Education Oversight Committee on the following:

- 15 (1) Number and name of scholarship-funding organizations certified by the
16 Division.
- 17 (2) Total number, grade level, race, ethnicity, and sex of eligible students
18 receiving donation scholarships.
- 19 (3) Amount of donation scholarship funding awarded, by scholarship-funding
20 organization.
- 21 (4) Number of eligible students receiving donation scholarships previously
22 enrolled in local school administrative units or charter schools in the prior
23 semester, by previously attended local school administrative unit or charter
24 school.
- 25 (5) Nonpublic schools in which donation scholarship recipients are enrolled,
26 including numbers of donation scholarship students at each nonpublic
27 school.
- 28 (6) Revocations of certification of scholarship-funding organizations and
29 nonpublic schools deemed ineligible to receive donation scholarships.
- 30 (7) Number of contributors and dollar amounts of donations received by
31 scholarship-funding organizations.

32 (c) The Division shall report annually, no later than October 1, to the Department of
33 Public Instruction and the Joint Legislative Education Oversight Committee on the learning
34 gains of eligible students receiving donation scholarships. This report shall be conducted by an
35 independent research organization to be selected by the Division, which may be a public or
36 private entity or university. The independent research organization shall report to the Division
37 on the learning gains of eligible students receiving donation scholarships on a Statewide basis
38 and shall compare, to the extent possible, the learning gains of these by nonpublic school to the
39 Statewide learning gains of public school students with similar socioeconomic backgrounds,
40 using aggregate standardized test performance data provided to the Division by nonpublic
41 schools and by the Department of Public Instruction."

42 SECTION 2. Subchapter I of Chapter 105 of the General Statutes is amended by
43 adding a new Article to read:

44 "Article 3L.

45 "Equal Opportunity Scholarship Tax Credit.

46 **"§ 105-129.100. Definitions.**

47 For purposes of this Article, a "scholarship-funding organization" is an organization
48 certified by the Division of Nonpublic Education of the Department of Administration pursuant
49 to G.S. 115C-562.2.

50 **"§ 105-129.101. Credit for donations to fund scholarships.**

1 (a) Credit. – A taxpayer that makes and substantiates, as required by G.S. 105-129.103,
2 a monetary donation to a scholarship-funding organization is allowed a tax credit equal to the
3 amount of the donation.

4 (b) Taxes Election. – The credit provided in this section is allowed against the excise
5 tax levied on beer, wine, and liquor in Part 4 of Article 2C of this Chapter, the franchise tax
6 levied in Article 3 of this Chapter, the income taxes levied in Part 1 of Article 4 of this Chapter,
7 or the insurance gross premiums tax levied under Article 8B of this Chapter. The taxpayer shall
8 elect the tax against which a credit will be claimed when filing the return on which the credit is
9 first claimed. This election is binding. Any carryforwards of the credit must be claimed against
10 the same tax.

11 (c) Cap. – The credit allowed in this Article may not exceed the amount of tax against
12 which it is claimed for the taxable period, reduced by the sum of all other credits allowed
13 against that tax, except tax payments made by or on behalf of the taxpayer. This limitation
14 applies to the cumulative amount of the credit, including carryforwards, claimed by the
15 taxpayer under this Article against each tax for the taxable period.

16 (d) Carryforward. – Any unused portion of a credit claimed against the franchise tax
17 levied in Article 3 of this Chapter, the income taxes levied in Part 1 of Article 4 of this Chapter,
18 or the insurance gross premium tax levied under Article 8B of this Chapter may be carried
19 forward for the succeeding five years. Any unused portion of a credit claimed against the excise
20 tax levied in Part 4 of Article 2C of this Chapter may be carried forward for the succeeding five
21 months.

22 (e) Change in Ownership of Business. – As used in this subsection, the term "business"
23 means a taxpayer. If, by sale, merger, consolidation, conversion, acquisition, or bankruptcy of a
24 business, or any transaction, an existing business reformulates itself as another, succeeding
25 business, the successor business may take any credit or carried-over portion of a credit that its
26 predecessor could have taken if it had a tax liability.

27 **"§ 105-129.102. Aggregate cap.**

28 From July 1, 2012, to December 31, 2012, the total amount of donations made for which a
29 tax credit is allowed under this Article may not exceed two million dollars (\$2,000,000). For
30 the calendar year beginning on January 1, 2013, the total amount of donations made in the
31 calendar year for which a tax credit is allowed under this Article may not exceed forty million
32 dollars (\$40,000,000).

33 **"§ 105-129.103. Substantiation.**

34 (a) Request for Written Certification. – To be eligible for the tax credit provided in this
35 Article, the taxpayer shall obtain from the Secretary a written certification that the sum of the
36 taxpayer's donation and all other donations for which the Secretary has issued a written
37 certification does not exceed the aggregate cap provided in G.S. 105-129.102. A request for a
38 written certification shall be on a form prescribed by the Secretary and shall include any
39 relevant supporting documentation the Secretary may require.

40 (b) Written Certification. – The Secretary shall respond to a request within 20 days and
41 may not issue a written certification after December 31 of the calendar year in which the
42 donation is made. Within 120 days of the date the Secretary issues the written certification, the
43 taxpayer shall submit the donation with the written certification to the scholarship-funding
44 organization or shall notify the Department that the donation was not made, whereupon the
45 Secretary may reallocate the amount to another taxpayer. The Secretary shall determine and
46 publish, on a weekly basis, the number and amount of certified donations that have been made.
47 The Secretary shall approve each request submitted in the order the requests are received until
48 the total amount of certified donations equals the aggregate cap provided in G.S. 105-129.102.
49 Each request received on the same business day shall be treated as received at the same time.
50 On the day the requests received, when added to the preceding written certifications issued,
51 exceed the aggregate cap provided in G.S. 105-129.102, the Secretary shall certify the

1 remaining amount under the aggregate cap in proportion to the amount of each request received
2 on that day. Every taxpayer claiming a credit for a donation under this section shall submit to
3 the Department any receipt received from a scholarship-funding organization within seven days
4 of receipt and shall maintain and make available for inspection by the Secretary any records the
5 Secretary considers necessary to determine and verify that the donation has been timely made.
6 The burden of proving eligibility for the credit and the amount of the credit shall rest upon the
7 taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or
8 to make them available for inspection."

9 **SECTION 3.(a)** G.S. 105-113.82 reads as rewritten:

10 "(a) Amount. – The Secretary must distribute annually a percentage of the net amount of
11 excise taxes collected on the sale of malt beverages and wine during the preceding 12-month
12 period ending March 31 to the counties or cities in which the retail sale of these beverages is
13 authorized in the entire county or city. For purposes of this distribution, the net amount is
14 calculated before any credit allowed under Article 3L of this Chapter is taken against the tax.

15 The percentages to be distributed are as follows:

- 16 (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty and
17 forty-seven hundredths percent (20.47%).
- 18 (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), forty-nine
19 and forty-four hundredths percent (49.44%).
- 20 (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), eighteen
21 percent (18%)."

22 **SECTION 3.(b)** This section becomes effective when it becomes law and applies
23 to distributions made on or after that date. This section expires for distributions made on or
24 after March 31, 2015.

25 **SECTION 4.(a)** G.S. 105-130.5(a)(10) reads as rewritten:

26 "(a) The following additions to federal taxable income shall be made in determining
27 State net income:

- 28 ...
- 29 (10) The total amounts allowed under this Chapter during the taxable year as a
30 credit against the taxpayer's income tax. This subdivision does not apply to a
31 credit allowed under Article 3L of this Chapter or under G.S. 105-130.47. A
32 corporation that apportions part of its income to this State shall make the
33 addition required by this subdivision after it determines the amount of its
34 income that is apportioned and allocated to this State and shall not apply to a
35 credit taken under this Chapter the apportionment factor used by it in
36 determining the amount of its apportioned income.

37"

38 **SECTION 4.(b)** This section is effective for taxable years beginning on or after
39 January 1, 2012, and expires for taxable years beginning on or after January 1, 2014.

40 **SECTION 5.** G.S. 105-259(b) is amended by adding a new subdivision to read:

41 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
42 access to tax information in the course of service to or employment by the State may not
43 disclose the information to any other person except as provided in this subsection. Standards
44 used or to be used for the selection of returns for examination and data used or to be used for
45 determining the standards may not be disclosed for any purpose. All other tax information may
46 be disclosed only if the disclosure is made for one of the following purposes:

47 ...

- 48 (24a) To furnish the Division of Nonpublic Education of the Department of
49 Administration information needed to determine whether a
50 scholarship-funding organization has any overdue tax debts that would
51 prohibit it from being certified pursuant to G.S. 115C-562.2."

1 **SECTION 5.(b)** This section is effective when it becomes law and expires January
 2 1, 2015.

3 **SECTION 6.** For the implementation of the provisions of this act, there is
 4 appropriated from the General Fund to the Department of Revenue the sum of four hundred
 5 seventy-eight thousand thirty-eight dollars (\$478,038) for the 2012-2013 fiscal year and to the
 6 Department of Administration the sum of three hundred seventeen thousand nine hundred
 7 sixty-six dollars (\$317,966) to be allocated to the Division of Nonpublic Education for the
 8 2012-2013 fiscal year. The Department of Revenue may establish two personnel positions to
 9 administer the provisions of this act. The Division of Nonpublic Education may establish four
 10 personnel positions to administer the provisions of this act.

11 **SECTION 7.** If House Bill 950 becomes law, then Section 2.1 of that act reads as
 12 rewritten:

13 **"SECTION 2.1.** Appropriations from the General Fund of the State for the
 14 maintenance of the State departments, institutions, and agencies, and for other purposes as
 15 enumerated, are adjusted for the fiscal year ending June 30, 2013, according to the schedule
 16 that follows. Amounts set out in parentheses are reductions from General Fund appropriations
 17 for the 2012-2013 fiscal year.

Current Operations – General Fund	2012-2013
EDUCATION	
Community Colleges System Office	\$ 5,165,000
Department of Public Instruction	62,430,967
University of North Carolina – Board of Governors	
Appalachian State University	573,876
East Carolina University	
Academic Affairs	4,447,287
Health Affairs	0
Elizabeth City State University	0
Fayetteville State University	473,656
NC A&T State University	0
NC Central University	0
NC State University	
Academic Affairs	3,346,252
Agricultural Research	0
Agricultural Extension	0
UNC-Asheville	0
UNC-Chapel Hill	
Academic Affairs	0
Health Affairs	0
AHEC	0
UNC-Charlotte	0
UNC-Greensboro	103,534
UNC-Pembroke	0
UNC-School of the Arts	0
UNC-Wilmington	434,038
Western Carolina University	0
Winston-Salem State University	0

General Assembly of North Carolina		Session 2011
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1	General Administration		9,808,141
2	University Institution Programs		15,560,828
3	Related Educational Programs		(12,139,141)
4	UNC Financial Aid Private Colleges		4,500,000
5	NC School of Science & Math		0
6	UNC Hospitals		(3,000,000)
7	Total University of North Carolina – Board of Governors	\$	24,108,471
8			
9	HEALTH AND HUMAN SERVICES		
10			
11	Department of Health and Human Services		
12	Division of Central Management and Support	\$	1,307,641
13	Division of Aging and Adult Services		50,000,000
14	Division of Services for Blind/Deaf/Hard of Hearing		(168,336)
15	Division of Child Development		(3,500,000)
16	Division of Health Service Regulation		1,792,559
17	Division of Medical Assistance		194,172,266
18	Division of Mental Health, Dev. Disabilities and Sub. Abuse		(15,196,981)
19	NC Health Choice		(2,007,430)
20	Division of Public Health		11,384,778
21	Division of Social Services		(9,079,116)
22	Division of Vocational Rehabilitation		0
23	Total Health and Human Services	\$	228,705,381
24			
25	NATURAL AND ECONOMIC RESOURCES		
26			
27	Department of Agriculture and Consumer Services	\$	47,362,832
28			
29	Department of Commerce		
30	Commerce		7,471,362
31	Commerce State-Aid		(1,217,540)
32	NC Biotechnology Center		(351,034)
33	Rural Economic Development Center		(3,757,535)
34			
35	Department of Environment and Natural Resources		(39,339,288)
36			
37	DENR Clean Water Management Trust Fund		(500,000)
38			
39	Department of Labor		(316,738)
40			
41	Wildlife Resources Commission		434,397
42			
43	JUSTICE AND PUBLIC SAFETY		
44			
45	Department of Public Safety	\$	(32,231,135)
46			
47	Judicial Department		(2,334,307)
48	Judicial Department – Indigent Defense		0
49			
50	Department of Justice		(6,667,504)
51			

1	GENERAL GOVERNMENT	
2		
3	Department of Administration	\$ (24,861) 293,105
4		
5	Department of State Auditor	(213,521)
6		
7	Office of State Controller	1,580,412
8		
9	Department of Cultural Resources	
10	Cultural Resources	(298,866)
11	Roanoke Island Commission	(300,000)
12		
13	State Board of Elections	(102,532)
14		
15	General Assembly	1,570,422
16		
17	Office of the Governor	
18	Office of the Governor	(94,823)
19	Office of State Budget and Management	(116,973)
20	OSBM – Reserve for Special Appropriations	1,438,388
21	Housing Finance Agency	(8,064,634)
22		
23	Department of Insurance	
24	Insurance	459,055
25	Insurance – Volunteer Safety Workers' Compensation	0
26		
27	Office of Lieutenant Governor	(144,150)
28		
29	Office of Administrative Hearings	0
30		
31	Department of Revenue	(1,563,991) (1,085,953)
32		
33	Department of Secretary of State	766,661
34		
35	Department of State Treasurer	
36	State Treasurer	0
37	State Treasurer – Retirement for Fire and Rescue Squad Workers	0
38		
39	RESERVES, ADJUSTMENTS AND DEBT SERVICE	
40		
41	Information Technology Fund	\$ (750,000)
42	Reserve for Job Development Investment Grants (JDIG)	(6,500,000)
43	Judicial Retirement System Contribution	100,000
44	Continuation/Justification Review Reserve	(35,576,758)
45	Compensation and Performance Pay Reserve	(121,105,840)
46	Reserve for Compensation Increases and Personnel Flexibility	159,984,426
47	Disability Income Plan Rate Reduction	(8,688,000)
48	One North Carolina Fund	9,000,000
49	Reserve for VIPER	10,000,000
50		
51	Debt Service	

1	General Debt Service	(52,904,635)
2		
3	TOTAL CURRENT OPERATIONS – GENERAL FUND \$	<u>237,413,109</u>238,209,113"
4		
5	SECTION 8. If House Bill 950 becomes law, then Section 2.2 of that act reads as	
6	rewritten:	
7	"GENERAL FUND AVAILABILITY STATEMENT	
8	SECTION 2.2.(a) Section 2.2(a) of S.L. 2011-145, as amended by Section 2(b) of	
9	S.L. 2011-391 and Section 5(a) of S.L. 2011-395, is repealed. The General Fund availability	
10	used in adjusting the 2012-2013 budget is shown below:	
11		
12		FY 2012-2013
13	Unappropriated Balance Remaining	\$ 41,232,325
14	Anticipated Overcollections from FY 2011-2012	232,500,000
15	Anticipated Reversions for FY 2011-2012	205,500,000
16	Net Supplemental Medicaid Appropriation (S.L. 2012-2)	(154,000,000)
17	Less Earmarkings of Year-End Fund Balance	
18	Savings Reserve Account	(123,170,924)(121,772,922)
19	Repairs and Renovations Reserve Account	(23,170,924)(21,772,922)
20	Beginning Unreserved Fund Balance	\$
21	<u>178,890,477</u>181,686,481	
22		
23	Revenue Based on Existing Tax Structure	18,931,200,000
24		
25	Nontax Revenue	
26	Investment Income	21,600,000
27	Judicial Fees	258,700,000
28	Disproportionate Share	115,000,000
29	Insurance	73,700,000
30	Other Nontax Revenues	304,400,000
31	Highway Trust Fund Transfer	27,600,000
32	Highway Fund Transfer	212,280,000
33	Total – Nontax Revenues	1,013,280,000
34		
35	Subtotal General Fund Availability	<u>20,123,370,477</u>20,126,166,481
36		
37	Adjustments to Availability: 2012 Session	
38	E-Commerce Reserve Cash Balance	2,470,642
39	One North Carolina Fund Cash Balance	45,000,000
40	Sale of State Assets Receipt	(25,000,000)
41	Information Technology Internal Service Fund Cash Balance	14,000,000
42	National Mortgage Settlement	9,610,000
43	Highway Fund Transfer – Technical Adjustment	8,000,000
44	Work Opportunity Tax Credit Extension (HB 1015 Reserve)	(800,000)
45	Tax Deduction for Educational Supplies (HB 1015 Reserve)	(1,800,000)
46	Sales Tax Refund Application for	
47	Passenger Air Carriers (HB 1015 Reserve)	(3,150,000)
48	<u>Equal Opportunity Scholarship Tax Credit</u>	<u>(2,000,000)</u>
49	Insurance Regulatory Fund	166,613
50	Teaching Fellows Trust Fund Cash Balance	3,265,000
51	Diversion of Golden L.E.A.F. Funds	3,750,000

1	Charitable Licensing Receipts	979,752
2		
3	Subtotal Adjustments to Availability:	<u>56,492,007</u>54,492,007
4		
5	Revised Total General Fund Availability	<u>20,179,862,484</u>20,180,658,488
6	Less General Fund Appropriations	<u>20,179,862,484</u>20,180,658,488
7		
8	Balance Remaining	0
9		

10 **SECTION 2.2.(b)** Notwithstanding the provisions of G.S. 143C-4-3, the State
 11 Controller shall transfer only ~~twenty-three million one hundred seventy thousand nine hundred~~
 12 ~~twenty-four dollars (\$23,170,924)~~ twenty-one million seven hundred seventy-two thousand
 13 nine hundred twenty-two dollars (\$21,772,922) from the unreserved fund balance to the
 14 Repairs and Renovations Reserve Account on June 30, 2012.

15 **SECTION 2.2.(c)** Funds transferred under this section to the Repairs and
 16 Renovations Reserve Account are appropriated for the 2012-2013 fiscal year to be used in
 17 accordance with G.S. 143C-4-3.

18 **SECTION 2.2.(d)** Notwithstanding G.S. 143C-4-2 and pursuant to subsection (a)
 19 of this section, the State Controller shall transfer ~~one hundred twenty-three million one hundred~~
 20 ~~seventy thousand nine hundred twenty-four dollars (\$123,170,924)~~ one hundred twenty-one
 21 million seven hundred seventy-two thousand nine hundred twenty-two dollars (\$121,772,922)
 22 from the unreserved fund balance to the Savings Reserve Account on June 30, 2012.

23 This is not an "appropriation made by law," as that phrase is used in Section 7(1) of
 24 Article V of the North Carolina Constitution.

25 "

26 **SECTION 9.** Section 1 of this act expires January 1, 2016. Section 2 of this
 27 section is effective for taxable years beginning on or after January 1, 2012, applies to monetary
 28 donations made on or after July 1, 2012, and expires for taxable years beginning on or after
 29 January 1, 2014. The Department of Revenue shall develop the necessary reporting and
 30 application forms required for a credit under Article 3L of Chapter 105 of the General Statutes,
 31 as enacted by this section, on or before September 1, 2012. The Division of Nonpublic
 32 Education shall select an independent research organization as required by G.S. 115C-562.6,
 33 beginning with the 2013-2014 school year. Notwithstanding the application deadlines
 34 established by G.S. 115C-562.2 for certification of eligible scholarship-funding organizations,
 35 applications for certification in 2012 shall be submitted to the Division no later than September
 36 1, 2012, and the Division shall issue certifications no later than September 15, 2012, and shall
 37 provide a list to the Department of Revenue within three business days. The first financial
 38 review for a nonpublic school that accepts scholarship funds from a scholarship-funding
 39 organization, as required by G.S. 115C-562.4, as enacted by this section, shall not be required
 40 until the 2014-2015 school year. The first learning gains report required by G.S. 115C-562.6,
 41 as enacted by this section, shall not be due until October 1, 2014. The remainder of this section
 42 is effective when it becomes law.



SENATE BILL 599: Equal Opportunity Scholarship Tax Credit

2011-2012 General Assembly

Committee: House Finance	Date: June 27, 2012
Introduced by: Sens. Bingham, Brock, Rouzer	Prepared by: Dan Ettefagh
Analysis of: S599-CSMC-27	Committee Counsel

SUMMARY: *The Proposed Committee Substitute for Senate Bill 599 would create a tax credit for certain business entities that make donations to scholarship-funding organizations (SFOs), which would, in turn, award scholarships to eligible students to attend nonpublic schools. The PCS also modifies budget appropriations to cover the costs associated with the tax credit and authorizes additional personnel for the Department of Revenue and the Division of Nonpublic Education to implement the provisions of the act.*

BILL ANALYSIS OF PCS:

Section 1: Scholarship-Funding Organizations

SFOs may award donation scholarships using money donated to them for which taxpayers may be allowed a tax credit under Section 2 of the bill. Eligible students would be able to use the donation scholarship for tuition and fees at nonpublic schools. In order to be "eligible," a student would have to meet all of the following requirements:

- Have not yet received a high school diploma;
- Was a full-time student at a North Carolina public school during the previous semester, received a scholarship from an eligible SFO during the previous school year or is entering kindergarten or first grade; and
- Belong to a household with an income level not in excess of 225% of the federal poverty level.

Certification of SFOs – North Carolina charitable organizations can apply annually to the Division of Nonpublic Education in the Department of Administration (DNPE) for certification as an SFO. Once certified, a SFO may receive donations and award donation scholarships. The DNPE must certify an organization as an SFO if the organization:

- Is exempt under Section 501(c)(3) of the Internal Revenue Code.
- Uses 100% of donations to fund donation scholarships if the SFO has been certified for 24 consecutive months or less or uses at least 93% of donations to fund donation scholarships if the SFO has been certified for more than 24 consecutive months.
- Does not award donation scholarships within 5 degrees of lineal or collateral kinship of family of paid staff or board members of the SFO.
- Does not permit donors to designate donation scholarships for the direct benefit of a particular nonpublic school or eligible student.
- Does not show preference to a particular school or limit participation to any requirements other than those specified.
- Does not discriminate on the basis of race, color, ethnicity, national origin, sex, or religion.
- Funds donation scholarships of not more than \$4,000 per year per eligible student for tuition and fees for books, transportation, equipment or other items required by the nonpublic school.
- Awards donation scholarships to eligible students to attend any nonpublic school and does not limit availability to students of only one school.

Senate Bill 599

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- Awards donation scholarships to eligible students in the order in which the applications are received, however, it may give priority to eligible students who received a donation scholarship from it during the previous school year.
- Restricts award of donation scholarships to eligible students.
- Permits an eligible student receiving a donation scholarship to enroll in a different nonpublic school and remain eligible.
- Has no paid staff in the SFO that has been convicted of particular crimes and provides evidence of criminal history checks in the SFO's application.
- Has satisfied or otherwise resolved any notices of overdue tax debts from the DOR.

The DNPE must give DOR an annual list of certified SFOs by August 1 and maintain a current list on their website.

Obligations of SFOs

The following information must be submitted by a SFO to the DNPE:

- An annual financial and compliance audit conducted by an independent certified public accountant of accounts and records pertaining to donations and donation scholarships.
- An annual report on donation scholarship awards that includes information on:
 - Total number, grade level, race, ethnicity, and sex of eligible students awarded donation scholarships.
 - Amount of donation scholarship funding awarded.
 - Percentage of first time recipients of donation scholarships who were enrolled at a public school during the previous semester.
 - The local school administrative unit or charter school in which an eligible student was enrolled in the prior semester, when applicable.
 - The nonpublic schools at which donation scholarship recipients are enrolled.
 - Other information necessary for the DNPE to perform its duties.

SFOs can carry forward no more than 20% of donations to the following fiscal year. Donations in excess of the 20% that can be carried forward that remain on June 30 of each year must be returned to the State. The DNPE must give written notice to a SFO that is not in compliance with requirements for SFOs, and it has 90 days to correct the deficiencies. If the deficiencies are not corrected, then the certification must be revoked and the SFO must notify parents of eligible students receiving a donation scholarship of the revocation. SFOs must require taxpayers making donations to it to also provide a copy of the written certification issued by the DOR. The SFOs must also report the amount of the donation to the DOR.

Obligations of Nonpublic Schools Receiving Scholarship Funds

Nonpublic schools that accept scholarship funds from SFOs must comply with the following:

- Provide documentation to the SFO for required tuition and fees charged to the eligible student by the nonpublic school.
- Conduct a criminal background check for the staff member with the highest decision making authority to ensure that person has not been convicted of specified crimes.
- Provide to the parent or guardian of an eligible student whose tuition and fees are paid in whole or in part with a donation scholarship an annual written explanation of the student's progress, including the student's scores on any standardized achievement tests.

Senate Bill 599

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- Submit to the DNPE by July 15 of each year the test scores of any nationally standardized achievement test administered to any student receiving a donation scholarship.
- Provide to the DNPE graduation rates of the students receiving donation scholarships in a manner consistent with nationally recognized standards.
- Contract with an independent certified accountant to perform a financial review for each school year in which the school receives more than five hundred thousand dollars (\$500,000) in donation scholarships.

Nonpublic schools that enroll more than 25 students whose tuition and fees are paid in whole or in part with a donation scholarship must report to the DNPE on the aggregate standardized test performance of eligible students. Test performance data must be provided to an independent research organization selected by DNPE for research purposes.

If a nonpublic school that accepts donation scholarships fails to comply with the mandatory requirements, it would be determined to be ineligible to receive future scholarships from a SFO and would have to notify parents or guardians of enrolled students receiving a donation scholarship that the nonpublic school cannot receive future scholarships. The DNPE must notify SFOs of any nonpublic schools that are ineligible for donation scholarship funds.

Scholarship Endorsement – The SFO must remit a scholarship payment certificate to the nonpublic school at least two times each school year. This payment must be endorsed by the student's parent or guardian in person at the site of the nonpublic school. Failure to comply with this requirement would result forfeiture of the scholarship.

Reporting Requirements for DNPE – The DNPE must report to the Department of Public Instruction (DPI) annually on the number of students who have received donation scholarships through a SFO and who were enrolled the prior semester in a local school administrative unit (LEA) or charter school, by previously attended LEA or charter school. The DPI must adjust the allocations of LEAs or charter schools based on the number of students awarded donation scholarships and must equal the average per pupil allocation for average daily membership from the LEA or charter school.

The DNPE must also report annually to the Joint Legislative Education Oversight Committee (JLEOC) on a number of different items including numbers and names of SFOs; total number, grade level, race, ethnicity, and sex of eligible students; amount of scholarship funding awarded by SFOs; and number of contributors and dollar amounts of contributions received by SFOs. Finally, the DNPE must report to the DPI and the JLEOC on the learning gains of students receiving donation scholarships with the evaluation conducted by an independent research organization.

Section 2: Equal Opportunity Scholarship Tax Credit

Tax Credit for Donations to Scholarship-Funding Organizations - Taxpayers that make monetary donations to a SFO would be able to take a tax credit equal to the amount of the donation. The tax credit would be allowed against the following taxes: (i) excise, (ii) franchise, (iii) income, or (iv) insurance gross premium, with the taxpayer making the election of which tax against which the credit will be claimed. This election would be binding and must be made when filing the return on which the tax credit is first claimed and any carryforwards of the credit must be claimed against the same tax.

Any tax credits allowed cannot exceed the amount of tax against which it is claimed for the taxable period, reduced by the sum of all other credits allowed against that tax, except for tax payments made by or on behalf of the taxpayer. The limitation applies to the cumulative amount of the credit including carryforwards claimed by the taxpayer against each tax for the taxable period.

Any unused portion of a credit claimed against the franchise tax, income tax, or insurance gross premium tax can be carried forward for five years. Unused portions of a credit claimed against the excise tax can be carried forward for five months. Successor businesses can take tax credits or carried-over portions of credits that the predecessor could have taken.

Aggregate Cap and Limitations – From July 1, 2012 to December 31, 2012, the total amount of tax credits allowed for monetary donations could not exceed \$2,000,000. For the calendar year beginning January 1, 2013,

Senate Bill 599

Page 4

the total amount of tax credits allowed for monetary donations made in that calendar year could not exceed \$40,000,000. The only tax credit with an aggregate cap is the qualified business investments tax credit, which is distributed on a pro rata basis in any year in which the cap is reached, rather than, as here, on a first-come, first served basis until the cap is reached. Practically speaking, prior to making a donation, the taxpayer must receive a certification for the donation to get a credit, which would indicate whether the donation would result in a dollar-for-dollar tax credit.

Substantiation - To be eligible for the tax credit, the taxpayer would have to obtain a written certification from the Secretary of Revenue (Secretary) that the sum of the tax credit for the donation and the tax credit for all other donations for which the Secretary has issued a written certification is not more than the aggregate cap.

The Secretary must respond to requests for certifications in 20 days and could not issue a written certification after December 31 of the calendar year in which the donation is made. Within 120 days of the issuance of a written certification, the taxpayer must submit the donation with the written certification to the SFO or notify the DOR that the donation was not made. The Secretary must publish on a weekly basis the number and amount of tax credits for which certified donations have been made. Requests must be approved in the order in which they are received by the Secretary until the total amount of all certified donations equals the aggregate cap. Request received on the same business day must be treated as received at the same time. The Secretary would issue certifications in proportion to each request received on the day the aggregate cap is exceeded.

Taxpayers must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to verify that the donation was timely made. The burden of proving eligibility for the credit and the amount of the credit is on the taxpayer.

Sections 3, 4, and 5 make conforming changes and provide that (i) that the local beer and wine distribution of the excise tax would be unaffected by credits taken against excise tax and (ii) disclosures of information could be made by DOR to the DNPE to determine whether a SFO had overdue tax debts that would prevent it from being certified.

APPROPRIATION:

In **Section 6**, the bill would appropriate \$478,038 to DOR and \$317,966 to the Department of Administration for the DNPE for the 2012-2013 fiscal year.

In **Section 7**, the bill would adjust General Fund appropriations and availability.

EFFECTIVE DATE: Section 1 is effective when it becomes law and expires January 1, 2016. Section 2 of the bill would be effective for taxable years beginning on or after January 1, 2012, would apply to donations made on or after July 1, 2012, and would expire for taxable years beginning on or after January 1, 2014. Section 3, the hold harmless provision for beer and wine excise tax distribution, would be effective when it becomes law and would apply to distributions made on or after that date, expiring for distributions made on or after March 31, 2015. Section 4 is effective for taxable years beginning on or after January 1, 2012, and expires for taxable years beginning on or after January 1, 2014. Section 5 is effective when it becomes law and expires January 1, 2015. DOR must develop necessary forms required for a tax credit on or before September 1, 2012. The DNPE must select an independent research organization by the beginning of the 2013-2014 school year. Applications for certifications of SFOs for 2012 must be submitted to the DNPE by September 1, 2012 with certifications issued no later than September 15, 2012 and a list provided to the DOR within three business days. The first financial review for a nonpublic school that accepts scholarship funds from an SFO would be required for the 2014-2015 school year. The first learning gains report would be due October 1, 2014. The remainder of the act is effective when it becomes law.

BACKGROUND: Nine states have scholarship tax credit programs: Arizona, Florida, Georgia, Indiana, Iowa, Oklahoma, Pennsylvania, Rhode Island and Virginia.

Arizona allows individuals to claim a credit on income tax, and corporations to claim credits on income tax and insurance premiums. Corporations may also receive a credit for donations intended for foster children and children with disabilities, subject to a separate statewide cap.

Senate Bill 599

Page 5

Florida allows corporations to claim credits on taxes for income, gas & oil production, insurance premiums, sales tax for holders of direct pay permits, and excise taxes on alcoholic beverages, with a statewide cap of \$229 million in 2012-2013, the highest in the nation.

Georgia allows both individuals and corporations to claim credits for “qualified education expenses,” which includes donations to scholarship-funding organizations.

Indiana allows individuals and corporations to claim a credit against income tax for 50% of the donation to a “scholarship granting organization.”

Iowa permits only individuals to claim a tax credit for donations to “school tuition organizations” with no limit on the individual credit, but subject to a statewide cap of \$8.75 million.

Oklahoma allows both individuals and corporations to claim credits equal to 50% of donations to scholarship-granting organizations, subject to individual and statewide caps. If the taxpayer makes a written pledge to donate the same amount for three consecutive years the credit is increased to 75% of the donation, subject to the same caps. Instead of being carried over, credits that exceed the statewide cap are reduced in proportion to the taxpayer’s share of the state cap.

Pennsylvania allows business firms to claim a credit for 75% of a one-year donation, and 90% of a two-year donation, subject to caps for each business and statewide. Businesses may also claim credits for donations to pre-kindergarten scholarship organizations under a separate state cap.

Rhode Island allows businesses to claim a credit for 75% of a donation or 90% of a donation if the business commits in writing to making the same donation for two consecutive years, subject to individual and statewide caps.

Virginia permits individuals and businesses to claim a credit for 65% of a minimum donation of \$500, with a maximum of \$50,000 on all available credits in a taxable year for individuals and a statewide cap of \$25 million for both individuals and business.

S599-SMMC-11(e2) v4

**Drupti Chauhan and Kara McCraw, Counsel to the House and Senate Education Committees, significantly contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 876

Short Title: Mooresville Deannexation. (Local)

Sponsors: Senator Carney.

Referred to: State and Local Government.

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO REMOVE A CERTAIN DESCRIBED TRACT FROM THE CORPORATE
LIMITS OF THE TOWN OF MOORESVILLE AT THE REQUEST OF THE TOWN
BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Mooresville are reduced by removing the following two parcels, shown on the Annexation Plat for Morrison Plantation, LLC, dated December 20, 2006, and recorded in the Office of Register of Deeds of Iredell County on July 16, 2007, in Map Book 52 page (slide) 74: (i) property of William Elvin Lawing and wife, Sara King Lawing, DB 644 page 825, Iredell County Registry, PIN # 4637-65-6354, containing 43,056 sf+/-, and (ii) property of Kathryn K. Lawing, DB 541, page 595, Iredell County Registry, PIN # 4637-65-6037, containing 59,309 sf+/-.

SECTION 2. This act becomes effective June 30, 2012.



* S 8 7 6 - V - 1 *



North Carolina General Assembly
House Committee on Finance

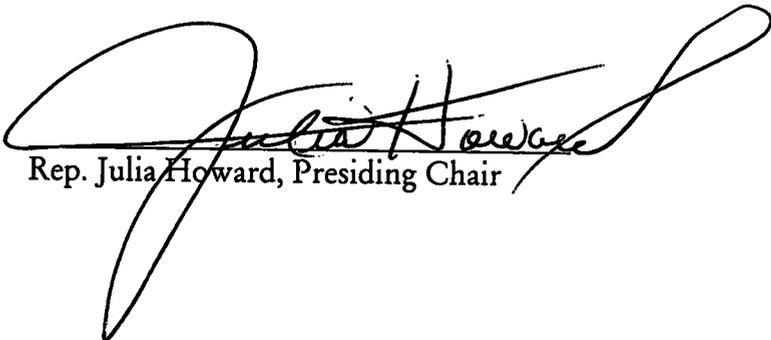
Minutes

July 2, 2012

The House Committee on Finance met on Monday, July 2, 2012, at 10:15 pm in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Howard, Folwell, Setzer and Starnes; Vice-Chairs Lewis and McComas; and Representatives K. Alexander, Brawley, Brandon, Carney, Collins, Cotham, Faison, Hackney, Hall, Hill, Jordan, Luebke, McCormick, McGee, McGuirt, Moffitt, T. Moore, Ross, Saine, Samuelson, H. Warren, and Weiss. House Sergeants at Arms present were Fred Hines, John Brandon, Jesse Hayes and Carl Morello. Visitor Registration Sheets are attached and incorporated into these minutes.

Representative Howard called the meeting to order and recognized Representative Stam to present **SB 847, AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES, INCLUDING SPECIFICALLY AUTHORIZING THE REVISOR OF STATUTES TO PRINT DRAFTERS' COMMENTS TO THREE ACTS ENACTED IN 2011 IN WHICH THIS AUTHORIZATION WAS INADVERTENTLY OMITTED, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER AMENDMENTS.** Representative Stam explained the bill. Research staff assisted in the explanation. Representative Setzer was recognized to introduce an amendment. Representative Setzer moved to adopt the amendment. The motion passed. Representative McComas was recognized to introduce an amendment. Representative McComas moved to adopt the amendment. The motion passed. Representative Moore moved for a favorable report to the bill as amended. The motion passed.

There being no further business presently before the Committee, the meeting adjourned at 10:40 pm.


Rep. Julia Howard, Presiding Chair


Neal Inman, Committee Clerk

VISITOR REGISTRATION SHEET

Finance

7/2/12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
<i>Sam Salun</i>	
<i>John Palumbo</i>	<i>NCMAA</i>
<i>Maar O'Brien</i>	<i>GSK</i>
<i>Will Morgan</i>	<i>Sigma Club</i>
<i>Dee Jett</i>	<i>SEAM</i>
<i>Suzie Ross</i>	<i>SEANC</i>
<i>Kari Barsness</i>	<i>DENR</i>
<i>Matthew Estey</i>	<i>SA</i>

VISITOR REGISTRATION SHEET

HOUSE FINANCE

07-02-12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Colleen Kochanek	KLG
Allison Waller	NIMAS
Erica Nelson	NCHA /
Sarah Hardin	CTL
Steve Brewer	CTL
Richard Galt	atg
Mary Freeman	NCAE
Jennifer Epperson	NCDOT
Jason Deans	DDA
Henry Jones	John Preece
Wendy Kelly	Polig GSD

VISITOR REGISTRATION SHEET

HOUSE FINANCE

07-02-12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>JA</i>	<i>DH</i>
<i>KMF</i>	<i>DH</i>
<i>Ethelene Davis</i> <i>SUBSISTANCE W/M</i>	<i>Ethelene Davis & Assoc., Inc.</i>
<i>Andy Ellen</i>	<i>NCRAA</i>
<i>Gray S. Williams</i>	<i>NC Chamber</i>
<i>John Murawski</i>	<i>NFO</i>
<i>SOLARI</i>	<i>DST</i>
<i>Austin Harris</i>	<i>Williams Mullen</i>
<i>K. Bestman</i>	<i>TSS</i>
<i>Sarah Wolfe</i>	<i>MWC</i>

VISITOR REGISTRATION SHEET

HOUSE FINANCE

07-02-12

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BIRD Philby's	TWC
TOM BOWLIN	NC NG
Matt Meinig	NCLM
Paul Meyer	CNLM
Keith Richards	City of Charlotte
Michael Stomper	Dominion NCPower
Gen. MARK CREECH	CAL
CHRIS DILLON	NC WKS
Jimmy Broughton	Wantsle
Penn Broghill	WCSB
Stuart Brooks	Ward and Smith
Kevin Leonard	NCACC

VISITOR REGISTRATION SHEET

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NAME

FIRM OR AGENCY AND ADDRESS

<i>Robert Helms</i>	NC DPS
William Coe	NC DOT
Mary Maulean Asbill	SELC
Annaliese Ralph	DRNC
Kimberly Denton	NC Conference of District Attorneys
Fay Dore	Conference of DAs
MITCH LEONARD	SEANC
Jaz Turner	PNG
John Monaghan	PNG
HERB CRENSHAW	AT+T
John Cooper	Compass NC
Bill Cury	NC DEAR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

4

SENATE BILL 847*
Rules and Operations of the Senate Committee Substitute Adopted 6/27/12
Third Edition Engrossed 6/27/12
House Committee Substitute Favorable 7/2/12

Short Title: GSC Technical Corrections/Other Changes. (Public)

Sponsors:

Referred to:

May 22, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES,
3 INCLUDING SPECIFICALLY AUTHORIZING THE REVISOR OF STATUTES TO
4 PRINT DRAFTERS' COMMENTS TO THREE ACTS ENACTED IN 2011 IN WHICH
5 THIS AUTHORIZATION WAS INADVERTENTLY OMITTED, AS RECOMMENDED
6 BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER
7 AMENDMENTS.

8 The General Assembly of North Carolina enacts:
9

10 PART I. GENERAL STATUTES COMMISSION TECHNICAL CORRECTIONS

11 SECTION 1.(a) The intent of this section is to codify the permanent reductions to
12 the minimum number of magistrates in various counties and the number of full-time assistant
13 district attorneys in certain prosecutorial districts that have been made by the Administrative
14 Office of the Courts pursuant to Section 15.14 of S.L. 2010-31, as added by Section 6.4 of S.L.
15 2010-123, to the end that the General Statutes reflect the actual authorized numbers of
16 magistrates and assistant district attorneys.

17 SECTION 1.(b) G.S. 7A-60(a) reads as rewritten:

18 "(a) (See Editor's note for staffing changes) The counties of the State are organized
19 into prosecutorial districts, and each district has the counties and the number of full-time
20 assistant district attorneys set forth in the following table:

21			No. of Full-Time
22	Prosecutorial		Asst. District
23	District	Counties	Attorneys
24	1	Camden, Chowan, Currituck,	11
25		Dare, Gates, Pasquotank,	
26		Perquimans	
27	2	Beaufort, Hyde, Martin,	8
28		Tyrrell, Washington	
29	3A	Pitt	11
30	3B	Carteret, Craven, Pamlico	12
31	4	Duplin, Jones, Onslow,	18
32		Sampson	
33	5	New Hanover, Pender	18
34	6A	Halifax	5



1	6B	Bertie, Hertford,	<u>65</u>
2		Northampton	
3	7	Edgecombe, Nash, Wilson	<u>1918</u>
4	8	Greene, Lenoir, Wayne	14
5	9	Franklin, Granville,	<u>1210</u>
6		Vance, Warren	
7	9A	Person, Caswell	6
8	10	Wake	<u>4241</u>
9	11A	Harnett, Lee	9
10	11B	Johnston	10
11	12	Cumberland	23
12	13	Bladen, Brunswick, Columbus	13
13	14	Durham	18
14	15A	Alamance	11
15	15B	Orange, Chatham	10
16	16A	Scotland, Hoke	7
17	16B	Robeson	<u>1312</u>
18	17A	Rockingham	7
19	17B	Stokes, Surry	8
20	18	Guilford	32
21	19A	Cabarrus	9
22	19B	Montgomery, Randolph	<u>109</u>
23	19C	Rowan	8
24	19D	Moore	5
25	20A	Anson, Richmond,	<u>1211</u>
26		Stanly	
27	20B	Union	10
28	21	Forsyth	25
29	22A	Alexander, Iredell	11
30	22B	Davidson, Davie	11
31	23	Alleghany, Ashe, Wilkes,	8
32		Yadkin	
33	24	Avery, Madison, Mitchell,	7
34		Watauga, Yancey	
35	25	Burke, Caldwell, Catawba	<u>1918</u>
36	26	Mecklenburg	58
37	27A	Gaston	<u>1514</u>
38	27B	Cleveland,	11
39		Lincoln	
40	28	Buncombe	14
41	29A	McDowell, Rutherford	7
42	29B	Henderson, Polk, Transylvania	8
43	30	Cherokee, Clay, Graham,	<u>1110</u>
44		Haywood, Jackson, Macon,	
45		Swain."	

SECTION 1.(c) G.S. 7A-133(c) reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

Additional

	Magistrates <u>Min.</u>	Seats of <u>Court</u>
1		
2	<u>County</u>	
3	Camden	
4	Chowan	
5	Currituck	4
6	Dare	
7	Gates	
8	Pasquotank	
9	Perquimans	
10	Martin	
11	Beaufort	
12	Tyrrell	
13	Hyde	
14	Washington	
15	Pitt	Farmville
16		Ayden
17	Craven	Havelock
18	Pamlico	
19	Carteret	
20	Sampson	
21	Duplin	
22	Jones	
23	Onslow	
24	New Hanover	
25	Pender	
26	Halifax	Roanoke
27		Rapids,
28		Scotland Neck
29	Northampton	
30	Bertie	
31	Hertford	
32	Nash	Rocky Mount
33	Edgecombe	Rocky Mount
34	Wilson	
35	Wayne	Mount Olive
36	Greene	
37	Lenoir	La Grange
38	Granville	
39	Vance	
40	Warren	
41	Franklin	
42	Person	
43	Caswell	
44	Wake	Apex,
45		Wendell,
46		Fuquay-
47		Varina,
48		Wake Forest
49	Harnett	Dunn
50	Johnston	Benson,
51		Clayton,

1			Selma
2	Lee	5.55	
3	Cumberland	19	
4	Bladen	54	
5	Brunswick	9	
6	Columbus	9.57.5	Tabor City
7	Durham	13	
8	Alamance	12	Burlington
9	Orange	97	Chapel Hill
10	Chatham	64	Siler City
11	Scotland	5	
12	Hoke	53	
13	Robeson	1513	Fairmont,
14			Maxton,
15			Pembroke,
16			Red Springs,
17			Rowland,
18			St. Pauls
19	Rockingham	97	Reidsville,
20			Eden,
21			Madison
22	Stokes	5	
23	Surry	9	Mt. Airy
24	Guilford	24.4	High Point
25	Cabarrus	9	Kannapolis
26	Montgomery	54	
27	Randolph	109	Liberty
28	Rowan	9	
29	Stanly	65	
30	Union	7	
31	Anson	54	
32	Richmond	65	Hamlet
33	Moore	6.55	Southern
34			Pines
35	Forsyth	15	Kernersville
36	Alexander	4	
37	Davidson	108	Thomasville
38	Davie	43	
39	Iredell	9	Mooresville
40	Alleghany	2	
41	Ashe	43	
42	Wilkes	6	
43	Yadkin	43	
44	Avery	4	
45	Madison	4	
46	Mitchell	4	
47	Watauga	54	
48	Yancey	3	
49	Burke	6.755.6	
50	Caldwell	76	
51	Catawba	10	Hickory

1	Mecklenburg	26.50	
2	Gaston	17	
3	Cleveland	<u>87</u>	
4	Lincoln	6	
5	Buncombe	15	
6	Henderson	6.5	
7	McDowell	<u>4.54</u>	
8	Polk	4	
9	Rutherford	<u>76</u>	
10	Transylvania	4	
11	Cherokee	4	
12	Clay	2	
13	Graham	2	
14	Haywood	<u>6.756</u>	Canton
15	Jackson	<u>54</u>	
16	Macon	3.5	
17	Swain	<u>3.753</u> "	

18 **SECTION 1.(d)** Effective January 1, 2013, G.S. 7A-133(c), as amended by.
 19 subsection (c) of this section, reads as rewritten:

20 "(c) Each county shall have the numbers of magistrates and additional seats of district
 21 court, as set forth in the following table:

22			
23			
24			
25		Magistrates	Additional
26	<u>County</u>	<u>Min.</u>	<u>Seats of</u>
27	Camden	3	<u>Court</u>
28	Chowan	3	
29	Currituck	<u>43</u>	
30	Dare	<u>64</u>	
31	Gates	2	
32	Pasquotank	4	
33	Perquimans	3	
34	Martin	<u>43</u>	
35	Beaufort	<u>54</u>	
36	Tyrrell	3	
37	Hyde	3.5	
38	Washington	3	
39	Pitt	10.5	Farmville
40			Ayden
41	Craven	8	Havelock
42	Pamlico	3	
43	Carteret	<u>76</u>	
44	Sampson	<u>65</u>	
45	Duplin	4	
46	Jones	2	
47	Onslow	11	
48	New Hanover	11	
49	Pender	3.8	
50	Halifax	7	Roanoke
51			Rapids,

1			Scotland Neck
2	Northampton	5.25 <u>3</u>	
3	Bertie	3	
4	Hertford	<u>53</u>	
5	Nash	9	Rocky Mount
6	Edgecombe	7	Rocky Mount
7	Wilson	7	
8	Wayne	9	Mount Olive
9	Greene	<u>43</u>	
10	Lenoir	7	La Grange
11	Granville	6.75 <u>5</u>	
12	Vance	6	
13	Warren	3.5 <u>3</u>	
14	Franklin	<u>74</u>	
15	Person	4	
16	Caswell	3	
17	Wake	18.5	Apex,
18			Wendell,
19			Fuquay-
20			Varina,
21			Wake Forest
22	Harnett	8	Dunn
23	Johnston	10	Benson,
24			Clayton,
25			Selma
26	Lee	5	
27	Cumberland	19	
28	Bladen	<u>43</u>	
29	Brunswick	<u>98</u>	
30	Columbus	7.5 <u>5</u>	Tabor City
31	Durham	13	
32	Alamance	12	Burlington
33	Orange	7	Chapel Hill
34	Chatham	4	Siler City
35	Scotland	5	
36	Hoke	3	
37	Robeson	13 <u>12</u>	Fairmont,
38			Maxton,
39			Pembroke,
40			Red Springs,
41			Rowland,
42			St. Pauls
43	Rockingham	7	Reidsville,
44			Eden,
45			Madison
46	Stokes	<u>53</u>	
47	Surry	<u>96</u>	Mt. Airy
48	Guilford	24.4	High Point
49	Cabarrus	9	Kannapolis
50	Montgomery	<u>43</u>	
51	Randolph	9	Liberty

1	Rowan	9	
2	Stanly	5	
3	Union	7	
4	Anson	<u>43</u>	
5	Richmond	5	Hamlet
6	Moore	5	Southern Pines
7			
8	Forsyth	15	Kernersville
9	Alexander	<u>43</u>	
10	Davidson	8	Thomasville
11	Davie	3	
12	Iredell	9	Mooresville
13	Alleghany	2	
14	Ashe	3	
15	Wilkes	6	
16	Yadkin	3	
17	Avery	<u>43</u>	
18	Madison	<u>43</u>	
19	Mitchell	<u>43</u>	
20	Watauga	4	
21	Yancey	3	
22	Burke	5.6	
23	Caldwell	6	
24	Catawba	10	Hickory
25	Mecklenburg	26.50	
26	Gaston	17	
27	Cleveland	7	
28	Lincoln	<u>65</u>	
29	Buncombe	15	
30	Henderson	6.5	
31	McDowell	<u>43</u>	
32	Polk	<u>43</u>	
33	Rutherford	6	
34	Transylvania	<u>43</u>	
35	Cherokee	<u>43</u>	
36	Clay	2	
37	Graham	2	
38	Haywood	<u>65</u>	Canton
39	Jackson	<u>43</u>	
40	Macon	3.53	
41	Swain	3"	

42 **SECTION 1.(e)** Subsection (d) of this section becomes effective January 1, 2013.
 43 The remainder of this section is effective when it becomes law.

44 **SECTION 2.** G.S. 7B-1112 reads as rewritten:

45 "**§ 7B-1112. Effects of termination order.**

46 An order terminating the parental rights completely and permanently terminates all rights
 47 and obligations of the parent to the juvenile and of the juvenile to the parent arising from the
 48 parental relationship, except that the juvenile's right of inheritance from the juvenile's parent
 49 shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled
 50 to notice of proceedings to adopt the juvenile and may not object thereto or otherwise
 51 participate therein:

- 1 (1) If the juvenile had been placed in the custody of or released for adoption by
 2 one parent to a county department of social services or licensed
 3 child-placing agency and is in the custody of the agency at the time of the
 4 filing of the petition or motion, including a petition or motion filed pursuant
 5 to ~~G.S. 7B-1103(6)~~, G.S. 7B-1103(a)(6), that agency shall, upon entry of the
 6 order terminating parental rights, acquire all of the rights for placement of
 7 the juvenile, except as otherwise provided in G.S. 7B-908(d), as the agency
 8 would have acquired had the parent whose rights are terminated released the
 9 juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of
 10 Chapter 48 of the General Statutes, including the right to consent to the
 11 adoption of the juvenile.

12"

13 SECTION 3. G.S. 7B-4002 reads as rewritten:

14 "**§ 7B-4002. Implementation of the Compact.**

15 (a) The North Carolina State Council for Interstate Juvenile Supervision is hereby
 16 established. The ~~Secretary of the Department of Juvenile Justice and Delinquency~~
 17 ~~Prevention~~, Secretary of Public Safety, or the Secretary's designee, shall serve as the Compact
 18 Administrator for the State of North Carolina and as North Carolina's Commissioner to the
 19 Interstate Commission. The ~~Secretary of the Department of Juvenile Justice and Delinquency~~
 20 ~~Prevention~~, Secretary of Public Safety, or the Secretary's designee, is a member of the State
 21 Council and serves as chairperson of the State Council. In addition to the chairperson, the State
 22 Council shall consist of 10 members as follows:

- 23 (1) One member representing the executive branch, to be appointed by the
 24 Governor;
 25 (2) One member from a victim's assistance group, to be appointed by the
 26 Governor;
 27 (3) One at-large member, to be appointed by the Governor;
 28 (4) One member of the Senate, to be appointed by the President Pro Tempore of
 29 the Senate;
 30 (5) One member of the House of Representatives, to be appointed by the
 31 Speaker of the House of Representatives;
 32 (6) A district court judge, to be appointed by the Chief Justice of the Supreme
 33 Court; and
 34 (7) Four members representing the juvenile court counselors, to be appointed by
 35 the ~~Secretary of the Department of Juvenile Justice and Delinquency~~
 36 ~~Prevention~~, Secretary of Public Safety.

37 (b) The State Council shall meet at least twice a year and may also hold special
 38 meetings at the call of the chairperson. All terms are for three years.

39 (c) The State Council may advise the Compact Administrator on participation in the
 40 Interstate Commission activities and administration of the Compact.

41 (d) The members of the State Council shall serve without compensation but shall be
 42 reimbursed for necessary travel and subsistence expenses in accordance with the policies of the
 43 Office of State Budget and Management.

44 (e) The State Council shall act in an advisory capacity to the ~~Secretary of the~~
 45 ~~Department of Juvenile Justice and Delinquency Prevention~~ Secretary of Public Safety
 46 concerning this State's participation in Interstate Commission activities and other duties as may
 47 be determined by each member state, including recommendations for policy concerning the
 48 operations and procedures of the Compact within this State.

49 (f) The Governor shall by executive order provide for any other matters necessary for
 50 implementation of the Compact at the time that it becomes effective, and, except as otherwise

1 provided for in this section, the State Council may promulgate rules or regulations necessary to
2 implement and administer the Compact."

3 **SECTION 4.(a)** G.S. 14-208.6 reads as rewritten:

4 **"§ 14-208.6. Definitions.**

5 The following definitions apply in this Article:

6 ...
7 (5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree
8 rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second
9 degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex
10 offense with a child; adult offender), G.S. 14-27.5 (second degree sexual
11 offense), G.S. 14-27.5A (sexual battery), former G.S. 14-27.6 (attempted
12 rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with
13 certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person
14 who is 13-, 14-, or 15-years-old where the defendant is at least six years
15 older), G.S. 14-43.13 (subjecting or maintaining a person for sexual
16 servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6
17 (employing or permitting minor to assist in offenses against public morality
18 and decency), G.S. 14-190.9(a1) (felonious indecent exposure),
19 G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17
20 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third
21 degree sexual exploitation of a minor), G.S. 14-190.18 (promoting
22 prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a
23 minor), G.S. 14-202.1 (taking indecent liberties with children),
24 G.S. 14-202.3 (Solicitation of child by computer or certain other electronic
25 devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent
26 liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or
27 permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2)
28 (commission or allowing of sexual act upon a juvenile by parent or
29 guardian). The term also includes the following: a solicitation or conspiracy
30 to commit any of these offenses; aiding and abetting any of these offenses.
31"

32 **SECTION 4.(b)** G.S. 14-208.26(a) reads as rewritten:

33 "(a) When a juvenile is adjudicated delinquent for a violation of G.S. 14-27.2 (first
34 degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense),
35 G.S. 14-27.5 (second degree sexual offense), or former G.S. 14-27.6 (attempted rape or sexual
36 offense), and the juvenile was at least eleven years of age at the time of the commission of the
37 offense, the court shall consider whether the juvenile is a danger to the community. If the court
38 finds that the juvenile is a danger to the community, then the court shall consider whether the
39 juvenile should be required to register with the county sheriff in accordance with this Part. The
40 determination as to whether the juvenile is a danger to the community and whether the juvenile
41 shall be ordered to register shall be made by the presiding judge at the dispositional hearing. If
42 the judge rules that the juvenile is a danger to the community and that the juvenile shall
43 register, then an order shall be entered requiring the juvenile to register. The court's findings
44 regarding whether the juvenile is a danger to the community and whether the juvenile shall
45 register shall be entered into the court record. No juvenile may be required to register under this
46 Part unless the court first finds that the juvenile is a danger to the community."

47 **SECTION 6.** G.S. 15A-101.1 reads as rewritten:

48 **"§ 15A-101.1. Electronic technology in criminal process and procedure.**

49 As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General
50 Statutes, and in all other provisions of the General Statutes that deal with criminal process or
51 procedure:

1
2 (3a) "Electronic monitoring" or "electronically monitor" or "satellite-based
3 monitoring" means monitoring with an electronic monitoring device that is
4 not removed from a person's body, that is utilized by the supervising agency
5 in conjunction with a Web-based computer system that actively monitors,
6 identifies, tracks, and records a person's location at least once every minute
7 24 hours a day, that has a battery life of at least 48 hours without being
8 recharged, that timely records and reports or records the person's presence
9 near or within a crime scene or prohibited area or the person's departure
10 from a specified geographic location, and that has incorporated into the
11 software the ability to automatically compare crime scene data with
12 locations of all ~~person's~~ persons being electronically monitored so as to
13 provide any correlation daily or in real time. In areas of the State where lack
14 of cellular coverage requires the use of an alternative device, the supervising
15 agency shall use an alternative device that works in concert with the
16 software and records location and tracking data for later download and crime
17 scene comparison.

18 "

19 **SECTION 7.** G.S. 15A-1344(d) and (e) read as rewritten:

20 "(d) Extension and Modification; Response to Violations. — At any time prior to the
21 expiration or termination of the probation period or in accordance with subsection (f) of this
22 section, the court may after notice and hearing and for good cause shown extend the period of
23 probation up to the maximum allowed under G.S. 15A-1342(a) and may modify the conditions
24 of probation. A hearing extending or modifying probation may be held in the absence of ~~the~~
25 ~~defendant, if he a~~ defendant who fails to appear for the hearing after a reasonable effort to notify
26 ~~him-the defendant.~~ If a probationer violates a condition of probation at any time prior to the
27 expiration or termination of the period of probation, the court, in accordance with the
28 provisions of G.S. 15A-1345, may continue ~~him-the defendant~~ on probation, with or without
29 modifying the conditions, may place the defendant on special probation as provided in
30 subsection (e), or, if continuation, modification, or special probation is not appropriate, may
31 revoke the probation and activate the suspended sentence imposed at the time of initial
32 sentencing, if any, or may order that charges as to which prosecution has been deferred be
33 brought to trial; provided that probation may not be revoked solely for conviction of a Class 3
34 misdemeanor. The court, before activating a sentence to imprisonment established when the
35 defendant was placed on probation, may reduce the sentence, but the reduction shall be
36 consistent with subsection (d1) of this section. A sentence activated upon revocation of
37 probation commences on the day probation is revoked and runs concurrently with any other
38 period of probation, parole, or imprisonment to which the defendant is subject during that
39 period unless the revoking judge specifies that it is to run consecutively with the other period.

40 (e) Special Probation in Response to Violation. — When a defendant has violated a
41 condition of probation, the court may modify ~~his-the~~ probation to place ~~him-the defendant~~ on
42 special probation as provided in this subsection. In placing ~~him-the defendant~~ on special
43 probation, the court may continue or modify the conditions of ~~his~~-probation and in addition
44 require that ~~he-the defendant~~ submit to a period or periods of imprisonment, either continuous
45 or noncontinuous, at whatever time or intervals within the period of probation the court
46 determines. In addition to any other conditions of probation which the court may impose, the
47 court shall impose, when imposing a period or periods of imprisonment as a condition of
48 special probation, the condition that the defendant obey the ~~Rules and Regulations~~rules and
49 regulations of the Division of Adult Correction of the Department of Public Safety governing
50 conduct of inmates, and this condition shall apply to the defendant whether or not the court
51 imposes it as a part of the written order. If imprisonment is for continuous periods, the

1 confinement may be in either the custody of the Division of Adult Correction of the
2 Department of Public Safety or a local confinement facility. Noncontinuous periods of
3 imprisonment under special probation may only be served in a designated local confinement or
4 treatment facility. Except for probationary sentences for impaired driving under G.S. 20-138.1,
5 the total of all periods of confinement imposed as an incident of special probation, but not
6 including an activated suspended sentence, may not exceed one-fourth the maximum sentence
7 of imprisonment imposed for the offense. For probationary sentences for impaired driving
8 under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special
9 probation, but not including an activated suspended sentence, shall not exceed one-fourth the
10 maximum penalty allowed by law. No confinement other than an activated suspended sentence
11 may be required beyond the period of probation or beyond two years of the time the special
12 probation is imposed, whichever comes first."

13 **SECTION 8.** G.S. 20-9(d) is repealed.

14 **SECTION 9.** G.S. 20-141(j2) reads as rewritten:

15 "(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than
16 the speed limit set and posted under this section shall be required to pay a penalty of two
17 hundred fifty dollars (\$250.00). This penalty shall be imposed in addition to those penalties
18 established in this Chapter. A "highway work zone" is the area between the first sign that
19 informs motorists of the existence of a work zone on a highway and the last sign that informs
20 motorists of the end of the work zone. The additional penalty imposed by this subsection
21 applies only if ~~sign-signs~~ are posted at the beginning and end of any segment of the highway
22 work zone stating the penalty for speeding in that segment of the work zone. The Secretary
23 shall ensure that work zones shall only be posted with penalty signs if the Secretary determines,
24 after engineering review, that the posting is necessary to ensure the safety of the traveling
25 public due to a hazardous condition.

26 A law enforcement officer issuing a citation for a violation of this section while in a
27 highway work zone shall indicate the vehicle speed and speed limit posted in the segment of
28 the work zone, and determine whether the individual committed a violation of G.S. 20-141(j1).
29 Upon an individual's conviction of a violation of this section while in a highway work zone, the
30 clerk of court shall report that the vehicle was in a work zone at the time of the violation, the
31 vehicle speed, and the speed limit of the work zone to the Division of Motor Vehicles."

32 **SECTION 10.** G.S. 20-146.2(a) reads as rewritten:

33 "(a) HOV Lanes. – The Department of Transportation may designate one or more travel
34 lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway
35 System and cities may designate one or more travel lanes as high occupancy vehicle (HOV)
36 lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with
37 a specified number of passengers as determined by the Department of Transportation or the city
38 having jurisdiction over the street or highway. When HOV lanes have been designated, and
39 have been appropriately marked with signs or other markers, they shall be reserved for
40 privately or publicly operated buses, and automobiles or other vehicles containing the specified
41 number of persons. Where access restrictions are applied on HOV lanes through designated
42 signing and pavement markings, vehicles shall only cross into or out of an HOV lane at
43 designated openings. A motor vehicle shall not travel in a designated HOV lane if the motor
44 vehicle has more than three axles, regardless of the number of occupants. HOV lane restrictions
45 shall not apply to any of the following:

- 46 ...
- 47 (6) Fuel cell electric vehicles as defined in ~~G.S. 29-4.01(12a)~~,
48 G.S. 20-4.01(12a), regardless of the number of passengers in the vehicle.
49 These vehicles must be able to travel at the posted speed limit while
50 operating in the HOV lane."

51 **SECTION 11.** Article 11 of Chapter 25 of the General Statutes is repealed.

1 **SECTION 12.** G.S. 28A-2-4(a) reads as rewritten:

2 "(a) The clerks of superior court of this State, as ex officio judges of probate, shall have
3 original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this
4 subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings
5 include, but are not limited to, the following:

6 ...
7 (4) Proceedings to ascertain heirs or devisees, to approve ~~family~~ settlement
8 agreements pursuant to G.S. 28A-2-10, to determine questions of
9 construction of wills, to determine priority among creditors, to determine
10 whether a person is in possession of property belonging to an estate, to order
11 the recovery of property of the estate in possession of third parties, and to
12 determine the existence or nonexistence of any immunity, power, privilege,
13 duty, or right. Any party or the clerk of superior court may file a notice of
14 transfer of a proceeding pursuant to this subdivision to the Superior Court
15 Division of the General Court of Justice as provided in G.S. 28A-2-6(h). In
16 the absence of a transfer to superior court, Article 26 of Chapter 1 of the
17 General Statutes shall apply to a trust proceeding pending before the clerk of
18 superior court to the extent consistent with this Article."

19 **SECTION 13.(a)** G.S. 28A-5-1(b) reads as rewritten:

20 "(b) Implied Renunciation by Executor. – If any person named or designated as executor
21 fails to qualify or to renounce within 30 days after the will had been admitted to probate, (i) the
22 clerk of superior court may issue a notice to that person to qualify or move for an extension of
23 time to qualify within 15 days, or (ii) any other person named or designated as executor in the
24 will or any interested person may file a petition in accordance with Article 2 of this Chapter for
25 an order finding that person named or designated as executor to be deemed to have renounced.
26 If that person does not file a response to the ~~motion-notice~~ or petition within 15 days from the
27 date of service of the ~~motion-notice~~ or petition, the clerk of superior court shall enter an order
28 adjudging that the person has renounced. If the person files a response within 15 days from the
29 date of service of the ~~motion-notice~~ or petition requesting an extension of time within which to
30 qualify or renounce, upon hearing, the clerk of superior court may grant to that person a
31 reasonable extension of time within which to qualify or renounce for cause shown. If that
32 person qualifies within 15 days of the date of service of the ~~motion-notice~~ or petition, the clerk
33 of superior court shall dismiss that ~~motion-notice~~ or petition, without prejudice, summarily and
34 without hearing."

35 **SECTION 13.(b)** G.S. 28A-5-2(b) reads as rewritten:

36 "(b) Implied Renunciation. –

37 (1) If any person entitled to apply for letters of administration fails to apply
38 therefor within 30 days from the date of death of the intestate, (i) the clerk of
39 superior court may issue a notice to the person to qualify or move for an
40 extension of time to qualify within 15 days, or (ii) any interested person may
41 file a petition in accordance with Article 2 of this Chapter for an order
42 finding that person to be deemed to have renounced. If the person does not
43 file a response to the notice or petition within 15 days from the date of
44 service of the ~~motion,notice or petition~~, the clerk of superior court shall enter
45 an order adjudging that the person has renounced. If the person files a
46 response within 15 days from the date of service of the ~~motion-notice or~~
47 ~~petition~~ requesting an extension of time within which to qualify or renounce,
48 upon hearing, the clerk of superior court may grant to that person a
49 reasonable extension of time within which to qualify or renounce for cause
50 shown. If the person qualifies within 15 days of the date of service of the
51 ~~motion,notice or petition~~, the clerk of superior court shall dismiss the

~~motion, notice or petition~~, without prejudice, summarily and without hearing and the clerk of superior court shall issue letters to some other person as provided in G.S. 28A-4-1. No notice shall be required to be given to any interested person, but the clerk may give notice as the clerk in the clerk's discretion may determine.

...."

SECTION 14. The catch line of G.S. 30-30 reads as rewritten:

"§ 30-30. ~~Judgment and order for commissioners.~~ **Judgment.**"

SECTION 15. G.S. 44A-24.2 reads as rewritten:

"§ 44A-24.2. **Definitions.**

The following definitions apply in this Part:

...

(3) Commercial real estate. – Any real property or interest therein, whether freehold or nonfreehold, which at the time the property or interest is made the subject of an agreement for broker services:

- a. Is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial, or mining purposes or for multifamily residential purposes involving five or more dwelling units;
- b. May lawfully be used for any of the purposes listed in ~~subdivision (3)~~sub-subdivision (3)a. of this section by a zoning ordinance adopted pursuant to the provisions of Article 18 of Chapter 153A or Article 19 of Chapter 160A of the General Statutes or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in ~~subdivision (3)~~sub-subdivision (3)a. of this section which is under consideration by the government agency with authority to approve the amendment; or
- c. Is in good faith intended to be immediately used for any of the purposes listed in ~~subdivision (3)~~sub-subdivision (3)a. of this section by the parties to any contract, lease, option, or offer to make any contract, lease, or option.

...."

SECTION 16. G.S. 62-36A is recodified as G.S. 62-36.1.

SECTION 17. G.S. 63A-3(b) reads as rewritten:

"(b) Board of Directors. – The Authority shall be governed by a Board of Directors. The Board shall consist of at least the following 20 members:

- (1) Six members appointed by the Governor. One member shall be representative of the economic development industry, two members shall be representative of the commercial real estate development industry, two members shall be representative of the banking and finance industry, and one member shall be representative of environmental interests. Of the Governor's six appointments, at least one member shall come from each of the State's three regions: Western, Piedmont, and Eastern.

...."

SECTION 18. G.S. 63A-24 reads as rewritten:

"§ 63A-24. **General laws apply to Authority; exceptions.**

(a) Except as provided in this section, the general laws that apply to State agencies apply to the Authority. The following general laws, to the extent provided below, do not apply to the Authority:

...

1 (3) Except for G.S. 146-29.1, 146-79, and 146-80, Chapter 146 of the General
2 Statutes does not apply to the Authority.

3 (b) Notwithstanding ~~this exemption from Chapter 146 of the General~~
4 ~~Statutes, G.S. 126-5(c1)(15)~~, the Secretary of Transportation may designate employees of the
5 Authority as subject to Chapter ~~146~~126 of the General Statutes."

6 SECTION 19. G.S. 101-5(f) reads as rewritten:

7 "(f) If the clerk finds that good and sufficient reasons exist to deny the applicant's
8 request for a name change, it is the clerk's duty not to issue an order changing the name of the
9 applicant from that person's true name to the name sought to be adopted. The order denying the
10 name change shall state the reasons for the denial. If the applicant desires to appeal the clerk's
11 decision, the applicant must petition the chief resident superior court judge within 30 days of
12 the date of the order denying the name change to request a reconsideration of the application.
13 The reconsideration decision of the chief resident superior court judge is final and not subject
14 to appeal. An unsuccessful applicant on reconsideration is subject to a waiting period of 12
15 months from the date of the adverse decision of the chief resident superior court judge before
16 the applicant may submit another name change application. A successful applicant on
17 reconsideration shall be granted the name change by the clerk in like manner as prescribed by
18 subsection (d) of this section."

19 SECTION 21.(a) G.S. 115C-325(p) reads as rewritten:

20 "(p) Section Applicable to Certain Institutions. – Notwithstanding any law or regulation
21 to the contrary, this section shall apply to all persons employed in teaching and related
22 educational classes in the schools and institutions of the Departments of Health and Human
23 ~~Services, Services and Public Instruction, Correction, or Juvenile Justice and Delinquency~~
24 ~~Prevention [the Division of Juvenile Justice of the Department of Public Safety]~~Instruction and
25 the Divisions of Juvenile Justice and Adult Correction of the Department of Public Safety
26 regardless of the age of the students."

27 SECTION 21.(b) Section 40 of S.L. 2012-83 is repealed. If House Bill 969, 2011
28 Regular Session, becomes law and, as enacted, contains the amendment to G.S. 115C-325(p)
29 that appears in Section 42 of the first edition of that bill, that amendment is repealed. If Senate
30 Bill 880, 2011 Regular Session, becomes law and, as enacted, contains the amendment to
31 G.S. 115C-325(p) that appears in Section 41 of the first edition of that bill, that amendment is
32 repealed.

33 SECTION 22.(a) G.S. 120-30.9F reads as rewritten:

34 "§ 120-30.9F. Municipalities; municipal attorney.

35 The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall
36 submit to the Attorney General of the United States within 30 days:

- 37 (1) Of the time they become laws, any local acts of the General Assembly; and
38 (2) Of adoption actions of the municipal governing body or ~~board of elections~~
39 ~~or any other municipal agency or county board of elections~~ which constitutes
40 a "change affecting voting" under Section 5 of the Voting Rights Act of
41 1965 in that municipality; provided that, if required or allowed by
42 regulations or practices of the United States Department of Justice, a
43 municipal attorney may delay submission of any annexation ordinance or
44 group of ordinances until all previously submitted annexation ordinances
45 have been precleared or otherwise received final disposition."

46 SECTION 22.(b) G.S. 163-304 reads as rewritten:

47 "§ 163-304. State Board of Elections to have jurisdiction over municipal elections ~~and~~
48 ~~election officials, elections,~~ and to advise; emergency and ongoing
49 administration by county board.

50 (a) Authority and Duty of State Board. – The State Board of Elections shall have the
51 same authority over municipal elections ~~and election officials~~ as it has over county and State

1 ~~elections and election officials elections.~~ The State Board of Elections shall advise and assist
 2 cities, towns, incorporated villages and special districts, their members and legal officers on the
 3 conduct and administration of their elections and registration procedure.

4 The county boards of elections shall be governed by the same rules for settling
 5 controversies with respect to counting ballots or certification of the returns of the vote in any
 6 municipal or special district election as are in effect for settling such controversies in county
 7 and State elections.

8 (b) through (e) Repealed by Session Laws 2011-31, s. 25, effective April 7, 2011."

9 SECTION 23. G.S. 120-70.94(a) reads as rewritten:

10 "(a) The Joint Legislative Oversight Committee on Justice and Public Safety shall
 11 examine, on a continuing basis, the correctional, law enforcement, and juvenile justice systems
 12 in North Carolina, in order to make ongoing recommendations to the General Assembly on
 13 ways to improve those systems and to assist those systems in realizing their objectives of
 14 protecting the public and of punishing and rehabilitating offenders. In this examination, the
 15 Committee shall:

16 (1) Study the budget, programs, and policies of the ~~Departments of Correction,~~
 17 ~~Crime Control and Public Safety, and Juvenile Justice and Delinquency~~
 18 ~~Prevention Department of Public Safety~~ to determine ways in which the
 19 General Assembly may improve the effectiveness of ~~those Departments the~~
 20 Department.

21 ...

22 (10) Study the needs of juveniles. This study may include, but is not limited to:

23 a. Determining the adequacy and appropriateness of services:

- 24 1. To children and youth receiving child welfare services;
- 25 2. To children and youth in the juvenile court system;
- 26 3. Provided by the Division of Social Services of the
 27 Department of Health and Human Services and the Division
 28 of Juvenile Justice of the Department of Public Safety;
- 29 4. To children and youth served by the Mental Health,
 30 Developmental Disabilities, and Substance Abuse Services
 31 system.

32 b. Developing methods for identifying and providing services to
 33 children and youth not receiving but in need of child welfare
 34 services, children and youth at risk of entering the juvenile court
 35 system, and children and youth exposed to domestic violence
 36 situations.

37 c. Identifying obstacles to ensuring that children who are in secure or
 38 nonsecure custody are placed in safe and permanent homes within a
 39 reasonable period of time and recommending strategies for
 40 overcoming those obstacles. The Commission shall consider what, if
 41 anything, can be done to expedite the adjudication and appeal of
 42 abuse and neglect charges against parents so that decisions may be
 43 made about the safe and permanent placement of their children as
 44 quickly as possible.

45"

46 SECTION 24. G.S. 122A-3 reads as rewritten:

47 "§ 122A-3. Definitions.

48 The following definitions apply in this section: ~~Chapter:~~

49 (1) Agency. – The North Carolina Housing Finance Agency created by this
 50 Chapter.

- 1 (2) Bonds or notes. – The bonds or the bond anticipation notes or construction
2 loan notes authorized to be issued by the Agency under this Chapter.
- 3 (3) Counseling agency. – A nonprofit counseling agency located in North
4 Carolina that is approved by the North Carolina Housing Finance Agency.
- 5 (4) Energy conservation loan. – A loan obtained from a mortgage lender for the
6 purpose of satisfying an existing obligation of a borrower who is the resident
7 owner of a single-family dwelling or of "residential housing." The existing
8 obligation of the owner in an "energy conservation loan" must have been
9 incurred to pay for the purchase of materials or the installation of materials,
10 or both, which results in a significant decrease in the amount of consumption
11 of nonrenewable sources of energy in order to provide or maintain a
12 comfortable level of room temperatures in his residence during the winter.
13 "Energy conservation loan" does not include a loan obtained to refinance an
14 existing loan agreement unless payment or collection of the original loan
15 was guaranteed by the Agency.
- 16 (5) Federally insured securities. – An evidence of indebtedness secured by a first
17 mortgage lien on residential housing for persons of lower income and
18 insured or guaranteed as to repayment of principal and interest by the United
19 States or any agency or instrumentality thereof.
- 20 (6) Governmental agency. – Any department, division, public agency, political
21 subdivision, or other public instrumentality of the State, the federal
22 government, any other State or public agency, or any two or more thereof.
- 23 (7) Mortgage or mortgage loan. – A mortgage loan for residential housing,
24 including, without limitation, a mortgage loan to finance, either temporarily
25 or permanently, the construction, rehabilitation, improvement, or acquisition
26 and rehabilitation or improvement of residential housing and a mortgage
27 loan insured or guaranteed by the United States or an instrumentality thereof
28 or for which there is a commitment by the United States or an
29 instrumentality thereof to insure such a mortgage. A mortgage obligation
30 may be evidenced by a security document and secured by a lien upon real
31 property, including a deed of trust and land sale agreement. Mortgage also
32 means an obligation evidenced by a security lien on real property upon
33 which an owner-occupied mobile home is located.
- 34 (8) Mortgage lenders. – Any bank or trust company, savings bank, national
35 banking association, savings and loan association, or building and loan
36 association, life insurance company, mortgage banking company, the federal
37 government, and any other financial institution authorized to transact
38 business in the State.
- 39 (9) Mortgagee. – The owner of a beneficial interest in a mortgage loan, the
40 servicer for the owner of a beneficial interest in a mortgage loan, or the
41 trustee for a securitized trust that holds title to a beneficial interest in a
42 mortgage loan.
- 43 (10) Obligations. – Any bonds or bond anticipation notes authorized to be issued
44 by the Agency under the provisions of this Chapter.
- 45 (11) Persons and families of lower income. – Persons and families deemed by the
46 Agency to require such assistance as is made available by this Chapter on
47 account of insufficient personal or family income, taking into consideration,
48 without limitation, (i) the amount of the total income of such persons and
49 families available for housing needs, (ii) the size of the family, (iii) the cost
50 and condition of housing facilities available, (iv) the eligibility of such
51 persons and families for federal housing assistance of any type predicated

1 upon a lower-income basis, and (v) the ability of such persons and families
 2 to compete successfully in the normal housing market and to pay the
 3 amounts at which private enterprise is providing decent, safe, and sanitary
 4 housing and deemed by the Agency therefore to be eligible to occupy
 5 residential housing financed wholly or in part, with mortgages, or with other
 6 public or private assistance.

7 (12) Rehabilitation. – The renovation or improvement of residential housing by
 8 the owner of said residential housing.

9 (13) Residential housing. – A specific work or improvement undertaken primarily
 10 to provide dwelling accommodations for persons and families of lower
 11 income, including the rehabilitation of buildings and improvements, and
 12 such other nonhousing facilities as may be incidental or appurtenant thereto.

13 (14) State. – The State of North Carolina."

14 SECTION 25. G.S. 126-3(b) reads as rewritten:

15 "(b) The Office shall be responsible for the following activities, and such other activities
 16 as specified in this Chapter:

17 (1) Providing policy and rule development for the Commission and
 18 implementing and administering all policies, rules, and procedures
 19 established by the ~~Commission;~~ Commission.

20 (2) Providing training in personnel management to agencies, departments, and
 21 institutions including train-the-trainer programs for those agencies,
 22 departments, and institutions who request such training and where sufficient
 23 staff and expertise exist to provide the training within their respective
 24 agencies, departments, and ~~institutions;~~ institutions.

25 (3) Providing technical assistance in the management of personnel programs and
 26 activities to agencies, departments, and ~~institutions;~~ institutions.

27 (4) Negotiating decentralization agreements with all agencies, departments, and
 28 institutions where it is cost-effective to include delegation of authority for
 29 certain classification and corresponding salary administration actions and
 30 other personnel programs to be specified in the ~~agreements;~~ agreements.

31 (5) Administering such centralized programs and providing services as approved
 32 by the Commission which have not been transferred to agencies,
 33 departments, and institutions or where this authority has been rescinded for
 34 ~~noncompliance;~~ noncompliance.

35 (6) Providing approval authority of personnel actions involving classification
 36 and compensation where such approval authority has not been transferred by
 37 the Commission to agencies, departments, and institutions or where such
 38 authority has been rescinded for ~~noncompliance;~~ noncompliance.

39 (7) Maintaining a computer database of all relevant and necessary information
 40 on employees and positions within agencies, departments, and institutions in
 41 the State's personnel ~~system;~~ system.

42 (8) Developing criteria and standards to measure the level of compliance or
 43 noncompliance with established Commission policies, rules, procedures,
 44 criteria, and standards in agencies, departments, and institutions to which
 45 authority has been delegated for classification, salary administration and
 46 other decentralized programs, and determining through routine monitoring
 47 and periodic review process, that agencies, departments, and institutions are
 48 in compliance or noncompliance with established Commission policies,
 49 rules, procedures, criteria, and ~~standards;~~ and standards.

50 (9) Implementing corrective actions in cases of ~~noncompliance;~~
 51 ~~and~~ noncompliance.

1 (10) Administering the State employee suggestion program (NC-Thinks)."

2 **SECTION 26.** G.S. 127A-110(f) reads as rewritten:

3 "(f) (1) Any amount obtained by any person by settlement with, judgment against, or
4 otherwise from the third party by reason of the injury or death shall be
5 disbursed by order of the court for the following purposes and in the
6 following order of priority:

7 a. First to the payment of actual court costs taxed by judgment.

8 b. Second to the payment of the fee of the attorney representing the
9 person making settlement or obtaining judgment, and this fee shall
10 not exceed one third of the amount obtained or recovered of the third
11 party.

12 c. Third to the reimbursement of the State for all benefits by way of
13 compensation or medical treatment expense paid or to be paid by the
14 State pursuant to G.S. 127A-108.

15 d. Fourth to the payment of any amount remaining to the member or
16 personal representative.

17 (2) The attorney fee paid under subdivision (1) of this ~~section~~-subsubsection shall
18 be paid by the member and the State in direct proportion to the amount each
19 shall receive under sub-subdivisions (1)c. and d. of this subsection and shall
20 be deducted from the payments when distribution is made."

21 **SECTION 27.** G.S. 130A-40.1(b) reads as rewritten:

22 "(b) The Secretary of Health and Human Services may approve only one request under
23 subsection (a) of this section, this section being designed as a pilot program concerning
24 alternative qualifications for a local health director. The Secretary of Health and Human
25 Services shall report any approval under this section to the Joint Legislative Oversight
26 Committee on Health and Human Services."

27 **SECTION 28.** G.S. 130A-309.10(e) reads as rewritten:

28 "(e) No person shall distribute, sell, or offer for sale in this State any rigid plastic
29 container, including a plastic beverage ~~container~~-container, unless the container has a molded
30 label indicating the plastic resin used to produce the container. The code shall consist of a
31 number placed within three triangulated arrows and letters placed below the triangulated
32 arrows. The three arrows shall form an equilateral triangle with the common point of each line
33 forming each angle of the triangle at the midpoint of each arrow and rounded with a short
34 radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a
35 short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by
36 the three arrows curved at their midpoints shall depict a clockwise path around the code
37 number. The label shall appear on or near the bottom of the container and be clearly visible. A
38 container having a capacity of less than eight fluid ounces or more than five gallons is exempt
39 from the requirements of this subsection. The numbers and letters shall be as follows:

40 (1) For polyethylene terephthalate, the letters "PETE" and the number 1.

41 (2) For high density polyethylene, the letters "HDPE" and the number 2.

42 (3) For vinyl, the letter "V" and the number 3.

43 (4) For low density polyethylene, the letters "LDPE" and the number 4.

44 (5) For polypropylene, the letters "PP" and the number 5.

45 (6) For polystyrene, the letters "PS" and the number 6.

46 (7) For any other, the letters "OTHER" and the number 7."

47 **SECTION 29.** G.S. 131E-129(a) reads as rewritten:

48 "(a) Violation Classification and Penalties. – The Department of Health and Human
49 Services shall impose an administrative penalty in accordance with provisions of this Article on
50 any facility which is found to be in violation of the requirements of G.S. 131E-117 or

1 applicable State and federal laws and regulations. Citations for violations shall be classified and
 2 penalties assessed according to the nature of the violation as follows:

- 3 ...
- 4 (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the
 5 violation was not previously identified by the Department or its authorized
 6 representative or (ii) the violation was discovered by the facility and was self
 7 reported, but in either case the violation has been corrected. In determining
 8 whether a penalty should be assessed under this section, the Department
 9 shall consider the following factors:
- 10 a. Preventive systems in place prior to the violation.
 - 11 b. Whether the violation or violations were abated immediately. ~~and~~
 - 12 c. Whether the facility implemented corrective measures to achieve and
 13 maintain compliance.
 - 14 d. Whether the facility's system to ensure compliance is maintained and
 15 continues to be implemented.
 - 16 e. Whether the regulatory area remains in compliance.

17"

18 **SECTION 30.** G.S. 135-48.27 reads as rewritten:

19 **"§ 135-48.27. Reports to the General Assembly; General Assembly access to information.**

20 In addition to the reports required by ~~G.S. 135-48.22(d)~~, G.S. 135-48.23(d), the State
 21 Treasurer, the Executive Administrator, and Board of Trustees shall report to the General
 22 Assembly at such times and in such forms as shall be designated by the President Pro Tempore
 23 of the Senate and the Speaker of the House of Representatives. Employees of the Legislative
 24 Services Commission designated by the Legislative Services Officer (i) shall have access to all
 25 records related to the Plan of the State Treasurer, the Board of Trustees, the Executive
 26 Administrator, the Claims Processor, and the Plan and (ii) shall be entitled to attend all
 27 meetings, including executive sessions, of the Board of Trustees."

28 **SECTION 31.** G.S. 135-48.44 reads as rewritten:

29 **"§ 135-48.44. Cessation of coverage.**

30 (a) Coverage under this Plan of an employee and his or her surviving spouse or eligible
 31 dependent children or of a retired employee and his or her surviving spouse or eligible
 32 dependent children shall cease on the earliest of the following dates:

- 33 ...
- 34 (2) The last day of the month in which an employee's employment with the State
 35 is terminated as provided in ~~subsection (e)~~ subsection (d) of this section.

36 ...

37 (c) Coverage under the Plan as a surviving dependent child whether covered as a
 38 dependent of a surviving spouse, or as an individual member (no living parent), ceases when
 39 the child ceases to be a dependent child as defined by G.S. 135-48.1, except coverage may
 40 continue under the Plan on a fully contributory basis for a period of not more than 36 months
 41 after loss of dependent status.

42 (d) Termination of employment shall mean termination for any reason, including layoff
 43 and leave of absence, except as provided in subdivisions (a)(1) and (2) of this section, but shall
 44 not, for purposes of this Plan, include retirement upon which the employee is granted an
 45 immediate service or disability pension under and pursuant to a State-supported Retirement
 46 System.

- 47 (1) In the event of termination for any reason other than death, coverage under
 48 the Plan for an employee and his or her eligible spouse or dependent
 49 children, provided the eligible spouse or dependent children were covered
 50 under the Plan at termination of employment may be continued for a period
 51 of not more than 18 months following termination of employment on a fully

1 contributory basis. Employees who were covered under the Plan at
 2 termination of employment may be continued for a period of not more than
 3 18 months or 29 months if determined to be disabled under the Social
 4 Security Act, Title II, OASDI or Title XVI, SSI.

5 (2) In the event of approved leave of absence without pay, other than for active
 6 duty in the Armed Forces of the United States, coverage under this Plan for
 7 an employee and his or her dependents may be continued during the period
 8 of such leave of absence by the employee's paying one hundred percent
 9 (100%) of the cost.

10 (3) If employment is terminated in the second half of a calendar month and the
 11 covered individual has made the required contribution for any coverage in
 12 the following month, that coverage will be continued to the end of the
 13 calendar month following the month in which employment was terminated.

14 (4) Employees paid for less than 12 months in a year, who are terminated at the
 15 end of the work year and who have made contributions for the non-work
 16 months, will continue to be covered to the end of the period for which they
 17 have made contributions, with the understanding that if they are not
 18 employed by another State-covered employer under this Plan at the
 19 beginning of the next work year, the employee will refund to the
 20 ex-employer the amount of the employer's cost paid for them during the
 21 non-paycheck months.

22 (5) Any employee receiving benefits pursuant to Article 6 of this Chapter when
 23 the employee has less than five years of retirement membership service, or
 24 an employee on leave of absence without pay due to illness or injury for up
 25 to 12 months, is entitled to continued coverage under the Plan for the
 26 employee and any eligible dependents by the employee's paying one hundred
 27 percent (100%) of the cost.

28"

29 **SECTION 32.** G.S. 135-48.50(1) and (5) read as rewritten:

30 **"§ 135-48.50. Coverage mandates.**

31 The Plan shall provide coverage subject to the following coverage mandates:

32 (1) Abortion coverage. – The Plan shall not provide coverage for abortions for
 33 which State funds could not be used under G.S. 143C-6-5.5. The Plan shall,
 34 however, provide coverage for subsequent complications or related charges
 35 arising from an abortion not covered under this subdivision. ~~Reserved.~~

36 ...

37 (5) ~~Reserved.~~"

38 **SECTION 33.** G.S. 143-215.1(a6) reads as rewritten:

39 "(a6) No permit shall be required to enter into a contract for the construction, installation,
 40 or alteration of any treatment works or disposal system or to construct, install, or alter any
 41 treatment works or disposal system within the State when the system's or work's
 42 ~~principle~~principal function is to conduct, treat, equalize, neutralize, stabilize, recycle, or
 43 dispose of industrial waste or sewage from an industrial facility and the discharge of the
 44 industrial waste or sewage is authorized under a permit issued for the discharge of the industrial
 45 waste or sewage into the waters of the State. Notwithstanding the above, the permit issued for
 46 the discharge may be modified if required by federal regulation."

47 **SECTION 34.** G.S. 143C-3-5 reads as rewritten:

48 **"§ 143C-3-5. Budget recommendations and budget message.**

49 ...

50 (b) Odd-Numbered Fiscal Years. – In odd-numbered years the budget recommendations
 51 shall include the following components:

1 ...
2 (3) A Current Operations ~~Appropriation~~ Appropriations Act that makes
3 appropriations for each fiscal year of the upcoming biennium for the
4 operating expenses of all State agencies as contained in the Recommended
5 State Budget, together with a Capital Improvements Appropriations Act that
6 authorizes any capital improvements projects.

7 (4) The biennial State Information Technology Plan as outlined in
8 ~~G.S. 147-33-72B~~ G.S. 147-33.72B to be consistent in facilitating the goals
9 outlined in the Recommended State Budget.

10 ...
11 (d) Funds Included in Budget. – Consistent with requirements of the North Carolina
12 Constitution, Article 5, ~~Section 7(a)~~, Section 7(1), the Governor's Recommended State Budget,
13 together with the Budget Support Document, shall include recommended expenditures of State
14 funds from all Governmental and Proprietary Funds, as those funds are described in
15 G.S. 143C-1-3. Except where provided otherwise by federal law, funds received from the
16 federal government become State funds when deposited in the State treasury and shall be
17 classified and accounted for in the Governor's budget recommendations no differently than
18 funds from other sources.

19"

20 **SECTION 35.** G.S. 153A-155(g) reads as rewritten:

21 "(g) Applicability. – Subsection (c) of this section applies to all counties and county
22 districts that levy an occupancy tax. To the extent subsection (c) conflicts with any provision of
23 a local act, subsection (c) supersedes that provision. The remainder of this section applies only
24 to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell,
25 Chatham, Cherokee, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin,
26 Durham, Forsyth, Franklin, Granville, Halifax, Haywood, Jackson, Madison, Martin,
27 McDowell, Montgomery, Moore, Nash, New Hanover, ~~New Hanover County District~~
28 ~~U~~, Northampton, Pasquotank, Pender, Perquimans, Person, Randolph, Richmond, Rockingham,
29 Rowan, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Tyrrell, Vance,
30 Washington, and Wilson Counties, to New Hanover County District U, to Surry County
31 District S, to Watauga County District U, to Wilkes County District K, to Yadkin County
32 District Y, and to the Township of Averagesboro in Harnett County and the Ocracoke Township
33 Taxing District."

34 **SECTION 36.** G.S. 159-175.10 reads as rewritten:

35 "**§ 159-175.10. Additional requirements for review of city financing application;**
36 **communications service.**

37 The Commission shall apply additional requirements to an application for financing by a
38 city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes for the
39 construction, operation, expansion, or repair of a communications system or other infrastructure
40 for the purpose of offering communications service, as that term is defined in
41 ~~G.S. 160A-340(2)~~, G.S. 160A-340(3), that is or will be competitive with communications
42 service offered by a private communications service provider. This section does not apply to
43 the repair, rebuilding, replacement, or improvement of an existing communications network, or
44 equipment relating thereto, but does apply to the expansion of such existing network. The
45 additional requirements are the following:

46 (1) Prior to submitting an application to the Commission, a city or joint agency
47 shall comply with the provisions of G.S. 160A-340.3 requiring at least two
48 public hearings on the proposed communications service project and notice
49 of the hearings to private communications service providers who have
50 requested notice.

- 1 (2) At the same time the application is submitted to the Commission, the city or
 2 joint agency shall serve a copy of the application on each person that
 3 provides competitive communications service within the city's jurisdictional
 4 boundaries or in areas adjacent to the city. No hearing on the application
 5 shall be heard by the Commission until at least 60 days after the application
 6 is submitted to the Commission.
- 7 (3) Upon the request of a communications service provider, the Commission
 8 shall accept written and oral comments from competitive private
 9 communications service providers in connection with any hearing or other
 10 review of the application.
- 11 (4) In considering the probable net revenues of the proposed communications
 12 service project, the Commission shall consider and make written findings on
 13 the reasonableness of the city or joint agency's revenue projections in light of
 14 the current and projected competitive environment for the services to be
 15 provided, taking into consideration the potential impact of technological
 16 innovation and change on the proposed service offerings and the level of
 17 demonstrated community support for the project.
- 18 (5) The city or joint agency making the application to the Commission shall bear
 19 the burden of persuasion with respect to subdivisions (1) through (4) of this
 20 section."

21 **SECTION 37.** G.S. 163-258.30(a) reads as rewritten:

22 "(a) The State Board of Elections shall adopt rules and regulations to carry out the intent
 23 and purpose of ~~G.S. 163-278.23 and G.S. 163-278.24~~ G.S. 163-258.28 and G.S. 163-258.29 and
 24 to ensure that a proper list of persons voting under said sections shall be maintained by the
 25 boards of elections, and to ensure proper registration records, and such rules and regulations
 26 shall not be subject to the provisions of Article 2A of Chapter 150B of the General Statutes."

27 **SECTION 38.** Section 6(c) of S.L. 2011-96 reads as rewritten:

28 "**SECTION 6.(c)** Notwithstanding the two-year term limitation in G.S. 135-48.20(m), as
 29 enacted by Senate Bill 323 of the 2011 Regular Session, the terms of initial appointees under
 30 G.S. 135-48.20 shall be as follows and shall begin January 1, 2012:

31 (1) Two and one-half years. – Appointees under G.S. 135-48.20(i).

32 (2) Three and one-half years. – Appointees not under G.S. 135-48.20(i)."

33 **SECTION 39.** Section 19.1(g) of S.L. 2011-145, as amended by Section 43(c) of
 34 S.L. 2011-391, reads as rewritten:

35 "**SECTION 19.1.(g)** The following statutes are amended by deleting the language "Crime
 36 Control and Public Safety" wherever it appears and substituting "Public Safety":
 37 G.S. 7A-343.1, 8-50.2, 14-86.1, 14-309.7, 14-309.11, 15B-3, 15B-6, 17C-3, 17C-6, 18B-101,
 38 18B-110, 19-2.1, 20-17.7, 20-39.1, 20-49, 20-79.5, 20-81.12, 20-116, 20-118, 20-119, 20-125,
 39 20-178.1, 20-183.9, 20-183.10, 20-184, 20-185, 20-187, 20-187.1, 20-187.3, 20-188, 20-189,
 40 20-190, 20-191, 20-192, 20-195, 20-196, 20-196.3, 20-196.4, 20-377, 20-379, 20-380, 20-381,
 41 20-382.2, 20-383, 20-387, 20-389, 20-390, 20-391, 20-392, 20-393, 20-396, 20-397, 58-32-1,
 42 58-78-1, 66-165, 66-168, 104E-8, 105-259, 105-269.3, 105-449.44, 120-12.1, 120-70.94,
 43 122C-408, 122C-409, 122C-411, 122C-414, 126-5, 127A-17.1, 127A-19, 127A-20, 127A-21,
 44 127A-22, 127A-35, 127A-40, 127A-42, 127A-43, 127A-54, 127A-57, 127A-80, 127A-81,
 45 127A-107, 127A-139, 127A-161, 127A-162, 127A-163, 127A-164, 127C-2, 130A-475,
 46 143-166.13, 143-215.52, 143-215.56, 143-215.93A, 143-215.94GG, 143-215.94HH, 143-341,
 47 143-355.1, 143-651, 143-652.1, 143-652.2, 143-654, 143-655, 143-658, 143-661, 143-664,
 48 ~~143-726, 143A-79.2, 143A-239, 143A-240, 143A-241, 143A-242, 143A-243, 143A-244,~~
 49 ~~143A-245,~~ 143B-2, 143B-6, 143B-181, 143B-394.15, 143B-417, 143B-426.22, 143B-477,
 50 143B-478, 143B-479, 143B-480, 143B-480.1, 143B-480.2, 143B-480.3, 143B-490, 143B-491,

1 143B-492, 143B-495, 143B-496, 143B-497, 143B-498, 143B-499, 143B-499.2, 143B-499.4,
 2 143B-499.7, 143B-508, 143B-508.1, Parts 8 and 9 of Article 11 of Chapter 143B of the
 3 General Statutes, 143B-510, 146-30, 147-12, 150B-1, 161-11.4, 166A-5, 166A-6, 166A-6.03,
 4 166A-6.1, 166A-14, 166A-18, 166A-21, 166A-26, 166A-28, 166A-60, 166A-61, and 166A-62.
 5 In all other instances in which the term "Crime Control and Public Safety" appears in the
 6 General Statutes, the Revisor of Statutes shall replace that term with "Public Safety".

7 **SECTION 40.** Section 25 of S.L. 2011-284 is repealed.

8 **SECTION 41.** The introductory language of Section 12(b) of S.L. 2011-326 reads
 9 as rewritten:

10 "SECTION 12.(b) ~~G.S. 7B-1110.1(a)~~G.S. 7B-1101.1(a) reads as rewritten:"

11 **SECTION 42.(a)** The prefatory language of Section 30 of S.L. 2011-391 reads as
 12 rewritten:

13 "SECTION 30. Section 13.22(b) of Session Law 2011-145 ~~reads as rewritten:is rewritten~~
 14 to read:".

15 **SECTION 42.(b)** This section is retroactively effective July 1, 2011.

16 **SECTION 43.** The Revisor of Statutes may cause to be printed all explanatory
 17 comments of the drafters of S.L. 2011-339 and S.L. 2011-344 as the Revisor deems
 18 appropriate.

19 **SECTION 44.** The Revisor of Statutes may cause to be printed all explanatory
 20 comments of the drafters of S.L. 2011-341 as the Revisor deems appropriate.

21 22 PART II. OTHER AMENDMENTS

23 24 A. TECHNICAL CHANGES

25 **SECTION 44.5.** Any act of the 2011 Regular Session that refers to a bill of the
 26 "2012 Regular Session" shall be deemed to be a reference to a bill of the 2011 Regular Session.

27 **SECTION 45.(a)** G.S. 15A-1331A is recodified as G.S. 15A-1331.1.

28 **SECTION 45.(b)** G.S. 20-15.1 reads as rewritten:

29 "**§ 20-15.1. Revocations when licensing privileges forfeited.**

30 The Division shall revoke the license of a person whose licensing privileges have been
 31 forfeited under ~~G.S. 15A-1331A~~, G.S. 15A-1331.1, 50-13.12, and 110-142.2. If a revocation
 32 period set by this Chapter is longer than the revocation period resulting from the forfeiture of
 33 licensing privileges, the revocation period in this Chapter applies."

34 **SECTION 45.(c)** G.S. 20-179.3(b)(2) reads as rewritten:

35 "(b) Eligibility. –

36 ...
 37 (2) Any person whose licensing privileges are forfeited pursuant to
 38 ~~G.S. 15A-1331A~~ G.S. 15A-1331.1 is eligible for a limited driving privilege
 39 if the court finds that at the time of the forfeiture, the person held either a
 40 valid drivers license or a drivers license that had been expired for less than
 41 one year and

42 a. The person is supporting existing dependents or must have a drivers
 43 license to be gainfully employed; or

44 b. The person has an existing dependent who requires serious medical
 45 treatment and the defendant is the only person able to provide
 46 transportation to the dependent to the health care facility where the
 47 dependent can receive the needed medical treatment.

48 The limited driving privilege granted under this subdivision must restrict the
 49 person to essential driving related to the purposes listed above, and any
 50 driving that is not related to those purposes is unlawful even though done at
 51 times and upon routes that may be authorized by the privilege."

1 **SECTION 45.(d)** G.S. 113-277(a4) reads as rewritten:

2 "(a4) The Wildlife Resources Commission shall order the surrender of any license or
3 permit issued under this Article to a person whose licensing privileges have been forfeited
4 under ~~G.S. 15A-1331A~~-G.S. 15A-1331.1 for the period specified by the court."

5 **SECTION 45.(e)** If Senate Bill 707, 2011 Regular Session, becomes law,
6 G.S. 15A-1331B, as enacted by that act, is recodified as G.S. 15A-1331.2.

7 **SECTION 45.5.** G.S. 18B-1305(a1), as enacted by Section 1 of S.L. 2012-4, reads
8 as rewritten:

9 "(a1) Termination by a Small Brewery. – A brewery's authorization to distribute its own
10 malt beverage products pursuant to ~~G.S. 18B-1104(7)~~G.S. 18B-1104(8) shall revert back to the
11 brewery, in the absence of good cause, following the fifth business day after confirmed receipt
12 of written notice of such reversion by the brewery to the wholesaler. The brewery shall pay the
13 wholesaler fair market value for the distribution rights for the affected brand. For purposes of
14 this subsection, "fair market value" means the highest dollar amount at which a seller would be
15 willing to sell and a buyer willing to buy at the time the self-distribution rights revert back to
16 the brewery, after each party has been provided all information relevant to the transaction."

17 **SECTION 45.7.** G.S. 20-79.4(b)(170) reads as rewritten:

18 "(170) Purple Heart Recipient. – Issuable to a recipient of the Purple Heart award.
19 The plate shall bear the phrase "Purple Heart Veteran, Combat ~~Wounded~~
20 ~~and the letters "PH".Wounded.~~" A person may obtain from the Division a
21 special registration plate under this subdivision for the registered owner of a
22 motor vehicle or a motorcycle. A motorcycle plate issued under this
23 subdivision shall bear a depiction of the Purple Heart Medal and the phrase
24 "Purple Heart Veteran, Combat Wounded.""

25 **SECTION 46.(a)** G.S. 66-421(a) reads as rewritten:

26 "(a) Issuance of Permits. – The sheriff of each county shall issue a nonferrous metals
27 purchase permit to an applicant if the applicant (i) has a fixed site in the sheriff's county; (ii)
28 declares on a form provided by the sheriff that the applicant is informed of and will comply
29 with the provisions of this Part; (iii) does not have a permit that has been revoked pursuant to
30 ~~G.S. 66-324(b)~~-G.S. 66-424(b) at the time of the application; and (iv) has not been convicted of
31 more than three violations of this Part. A permit shall be valid for 12 months and shall be valid
32 only for fixed sites in the county of issuance. A permit shall be obtained for each fixed site at
33 which nonferrous metals are purchased."

34 **SECTION 46.(b)** This section becomes effective October 1, 2012.

35 **SECTION 47.(a)** If House Bill 614, 2011 Regular Session, becomes law,
36 G.S. 90-21.102, as enacted by that act, reads as rewritten:

37 "**§ 90-21.102. Definitions.**

38 The following definitions apply in this Article:

39 ...
40 (3) Health care provider. – Any person who:

41 ...
42 m. Is licensed to practice as a physician, physician assistant, dentist,
43 pharmacist, optometrist, registered nurse, licensed practical nurse,
44 dental hygienist, or optician under provisions of law of another state
45 of the United States comparable to the provisions referenced in
46 sub-subdivisions a. through ~~n.~~ of this subdivision.

47 ...
48 (5) Voluntary provision of health care services. – The provision of health care
49 services by a health care provider in association with a sponsoring
50 organization in which both of the following circumstances exist:

- 1 a. The health care services are provided without charge to the recipient
2 of the services or to a third party on behalf of the recipient.
3 b. The health care provider receives no compensation or other
4 consideration in exchange for the health care services provided.

5 For the purposes of this Article, the provision of health care services in
6 ~~non-profit-nonprofit~~ community health centers, local health department
7 facilities, free clinic facilities, or at a ~~providers-provider's~~ place of
8 employment when the patient is referred by a ~~non-profit-nonprofit~~
9 community health referral service shall not be considered the voluntary
10 provision of health care."

11 **SECTION 47.(b)** If House Bill 614, 2011 Regular Session, becomes law,
12 G.S. 90-21.104(d)(1), as enacted by that act, reads as rewritten:

13 "(d) Each registered sponsoring organization has the duty and responsibility to do all of
14 the following:

- 15 (1) Except as provided in this subdivision, by no later than 14 days before a
16 sponsoring organization initiates voluntary health care services in this State,
17 the sponsoring organization shall submit to the Department a list containing
18 the following information regarding each health care provider who is to
19 provide voluntary health care services on behalf of the sponsoring
20 organization during any part of the time period in which the sponsoring
21 organization is authorized to provide voluntary health care services in the
22 State:

- 23 a. Name.
24 b. Date of birth.
25 c. State of licensure.
26 d. License number.
27 e. Area of practice.
28 f. Practice address.

29 By no later than 3 days prior to voluntary health care services being rendered, a sponsoring
30 organization may amend the list to add health care providers defined in G.S. 90-21.102(3)a.
31 through ~~G.S. 90-21.102(3)m.~~ G.S. 90-21.102(3)l."

32 **SECTION 47.(c)** This section is effective January 1, 2013.

33 **SECTION 48.** G.S. 115C-107.7(a1) reads as rewritten:

34 "(a1) Any corporal punishment administered on students with disabilities shall be
35 consistent with the requirements of ~~G.S. 115C-391(a)(5).~~ G.S. 115C-390.4."

36 **SECTION 49.** G.S. 115C-309(a) reads as rewritten:

37 "(a) Student Teacher and Student Teaching Defined. – A "student teacher" is any student
38 enrolled in an institution of higher education approved by the State Board of Education for the
39 preparation of teachers who is jointly assigned by that institution and a local board of education
40 to student teach under the direction and supervision of a regularly employed certified teacher.

41 "Student teaching" may include those duties granted to a teacher by G.S. 115C-307 and
42 ~~115C-390~~ and any other part of the school program for which either the supervising teacher or
43 the principal is responsible."

44 **SECTION 50.** The title of S.L. 2012-92 reads as rewritten:

45 "AN ACT PROVIDING THAT AFTER DECEMBER 31, 2012, LANDLORDS SHALL,
46 WHEN INSTALLING A NEW SMOKE ALARM OR REPLACING AN EXISTING SMOKE
47 ALARM, INSTALL A TAMPER RESISTANT, TEN YEAR LITHIUM BATTERY SMOKE
48 ALARM EXCEPT IN CERTAIN CASES, AND ~~PROVIDING THAT LANDLORDS MAY~~
49 ~~DEDUCT FROM THE TENANT SECURITY DEPOSIT DAMAGE TO A SMOKE ALARM~~
50 ~~OR CARBON MONOXIDE ALARM,~~ AS RECOMMENDED BY THE NORTH CAROLINA
51 CHILD FATALITY TASK FORCE."

1 **SECTION 51.** If Senate Bill 229, 2011 Regular Session, becomes law, then Part
2 XXIV of that act reads as rewritten:

3 **"PART XXIV. USE OF TVA SETTLEMENT FUNDS**

4 **"SECTION 30.** Funds received by the State pursuant to the provisions of the Consent
5 Decree entered into by the State in State of Alabama et al. v. Tennessee Valley Authority, Civil
6 Action 3:11-cv-00170 in the United States District Court for the Eastern District of Tennessee
7 shall be used exclusively to award grants for "Environmental Mitigation Projects" of the types
8 specified in paragraph 128 of the Consent Decree in the following counties: Avery, Buncombe,
9 Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell,
10 Mitchell, Swain, Transylvania, Watauga, Yancey."

11 **SECTION 52.** Section 5 of S.L. 2012-77 is rewritten to read:

12 **"SECTION 5.** Section 5 of S.L. 2008-90, as amended by Section 1 of S.L. 2010-36, reads
13 as rewritten:"

14 **SECTION 53.** Sections 49 and 50 of S.L. 2012-56 are repealed.

15 **SECTION 54.** Section 2.2 of S.L. 2012-18 reads as rewritten:

16 **"SECTION 2.2.** ~~G.S. 161-10(8a)~~ G.S. 161-10(a)(8a) is repealed."

17 **SECTION 55.(a)** G.S. 115C-12(38) and G.S. 115C-47(60) are repealed.

18 **SECTION 55.(b)** To ensure that the unique needs of students with immediate
19 family members in the military are met, local boards of education shall collect and report to the
20 State Board of Education by November 30, 2012, the following information for each school in
21 the local school administrative unit:

22 (1) The number of students who have an immediate family member who has
23 served in the reserve or active components of the Armed Forces of the
24 United States since September 1, 2001.

25 (2) Whether during the relevant period the local school administrative unit
26 employed at least one employee trained in the unique needs of children who
27 have immediate family members in the military. An employee satisfies this
28 requirement if the employee has received training on all of the following:

29 a. The number of children of members of the active or reserve
30 components of the Armed Forces of the United States who live in the
31 local school administrative unit.

32 b. Available curricula on military families.

33 c. The impact of deployments on the emotional and psychological
34 well-being of the children and families.

35 d. Potential warning signs of emotional and mental health disorders,
36 substance use disorders, suicide risks, child maltreatment, or
37 domestic violence.

38 e. Appropriate resources to which students and their families may be
39 referred as needed.

40 f. Scholarships for after-school and enrichment activities available
41 through the United States Department of Defense, the National
42 Guard, or the reserve components of the Armed Forces of the United
43 States for the children of parents who are actively deployed.

44 (3) The frequency with which the employee described in subdivision (2) of this
45 subsection provided training to school administrators, nurses, nurses aides,
46 counselors, social workers, and other personnel in the local school
47 administrative unit during the relevant period, and the number of staff
48 trained.

49 The State Board of Education shall report no later than December 15, 2012, to the Joint
50 Legislative Education Oversight Committee and to the House of Representatives and Senate

1 Appropriations Subcommittees on Education on information submitted to it pursuant to this
2 section relating to the needs of students with immediate family members in the military.

3 **SECTION 55.(c)** G.S. 115C-288 is amended by adding a new subsection to read:

4 "(m) To Address the Unique Needs of Students With Immediate Family Members in the
5 Military. – The principal shall develop a means for identifying and serving the unique needs of
6 students who have immediate family members in the active or reserve components of the
7 Armed Forces of the United States."

8 **SECTION 56.** If House Bill 237, 2011 Regular Session, becomes law, Section 8(f)
9 of that act reads as rewritten:

10 "SECTION 8.(f) Reports to Committee. – Whenever a State agency is required by law to
11 report to the General Assembly or to any of its permanent, study, or oversight committees or
12 subcommittees on matters affecting the ~~workforce development~~ workers' compensation system,
13 the Department shall transmit a copy of the report to the cochairs of the Committee."
14

15 B. CLARIFYING/CONFORMING CHANGES

16 **SECTION 57.** G.S. 20-79.4(b)(11) reads as rewritten:

17 "(11) American Red Cross. – Issuable to the registered owner of a motor vehicle in
18 accordance with G.S. 20-81.12. The plate shall bear the ~~phrase "American~~
19 ~~Red Cross Saving Lives" and a red cross~~ phrases "Proud Supporter,"
20 "American Red Cross," and the official American Red Cross logo."

21 **SECTION 59.(a)** G.S. 42-51(a)(3) reads as rewritten:

22 "§ 42-51. Permitted uses of the deposit.

23 (a) Security deposits for residential dwelling units shall be permitted only for the
24 following:

25 ...

26 (3) Damages as the result of the nonfulfillment of the rental period, except
27 where the tenant terminated the rental agreement under G.S. 42-45,
28 G.S. 42-45.1, or because the tenant was forced to leave the property because
29 of the landlord's violation of Article 2A of Chapter 42 of the General
30 Statutes or was constructively evicted by the landlord's violation of
31 G.S. 42-42(a)."

32 **SECTION 59.(b).** G.S. 42-51(a)(2) reads as rewritten:

33 "§ 42-51. Permitted uses of the deposit.

34 (a) Security deposits for residential dwelling units shall be permitted only for the
35 following:

36 ...

37 (2) Damage to the premises, including damage to or destruction of smoke
38 ~~detectors-alarms~~ or carbon monoxide ~~detectors-alarms.~~"

39 **SECTION 59.(c)** Subsection (a) of this section becomes effective October 1, 2012.
40 Subsection (b) of this section becomes effective December 1, 2012.

41 **SECTION 60.** G.S. 66-58(b) is amended by adding a new subdivision to read:

42 "§ 66-58. Sale of merchandise or services by governmental units.

43 ...

44 (b) The provisions of subsection (a) of this section shall not apply to:

45 ...

46 (9a) The North Carolina Forest Service."

47 **SECTION 60.5.** G.S. 90-113.54 reads as rewritten:

48 "§ 90-113.54. Posting of signs.

49 (a) A retailer shall post a sign or placard in a clear and conspicuous manner in the area
50 of the premises where the pseudoephedrine products are offered for sale substantially similar to
51 the following: "North Carolina law strictly prohibits the purchase of more than ~~two~~ packages

1 (~~3.6 grams total~~)3.6 grams total of certain products containing pseudoephedrine per day, and
2 more than ~~three packages (9 grams total)~~9 grams total of certain products containing
3 pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these
4 products which may be accessible to law enforcement officers.

5"

6 **SECTION 61.** If Senate Bill 521, 2011 Regular Session, becomes law,
7 G.S. 93A-83(c) reads as rewritten:

8 "(c) Required Contents of a Broker Price Opinion or Comparative Market Analysis. – A
9 broker price opinion or comparative market analysis shall be in writing and conform to the
10 standards provided in this Article that ~~may~~shall include, but are not limited to, the following:

- 11 (1) A statement of the intended purpose of the broker price opinion or
12 comparative market analysis.
- 13 (2) A brief description of the subject property and property interest to be priced.
- 14 (3) The basis of reasoning used to reach the conclusion of the price, including
15 the applicable market data or capitalization computation.
- 16 (4) Any assumptions or limiting conditions.
- 17 (5) A disclosure of any existing or contemplated interest of the broker issuing
18 the broker price opinion, including the possibility of representing the
19 landlord/tenant or seller/buyer.
- 20 (6) The effective date of the broker price opinion.
- 21 (7) The name and signature of the broker issuing the broker price opinion and
22 broker license number.
- 23 (8) The name of the real estate brokerage firm for which the broker is acting.
- 24 (9) The signature date.
- 25 (10) A disclaimer stating that "This opinion is not an appraisal of the market
26 value of the property, and may not be used in lieu of an appraisal. If an
27 appraisal is desired, the services of a licensed or certified appraiser shall be
28 obtained. This opinion may not be used by any party as the primary basis to
29 determine the value of a parcel of or interest in real property for a mortgage
30 loan origination, including first and second mortgages, refinances, or equity
31 lines of credit."
- 32 (11) A copy of the assignment request for the broker price opinion or
33 comparative market analysis."

34 **SECTION 61.2.** If House Bill 950, 2011 Regular Session, becomes law, then
35 Section 24.11 of that act reads as rewritten:

36 "**SECTION 24.11.** Notwithstanding G.S. 105-449.80(a), for the period July 1, 2012,
37 through June 30, 2013, the motor fuel excise tax rate may not exceed thirty-seven and one-half
38 cents (37 1/2¢) a gallon. For the period beginning July 1, 2012, and ending August 1, 2012, a
39 taxpayer is not liable for an over-collection or under-collection of the excise tax on motor fuel
40 if the taxpayer made a good faith effort to comply with the law and collect the proper amount
41 of tax and has, due to the change made under this section in the rate of tax imposed under
42 G.S. 105-449.80(a), over-collected or under-collected the amount of excise tax that is due."

43 **SECTION 61.5(a)** If House Bill 462, 2011 Regular Session, becomes law,
44 G.S. 116B-8, as enacted in Section 3 of the act, reads as rewritten:

45 "**§ 116B-8. Employment of persons with specialized skills or knowledge.**

46 The Treasurer may employ the services of such independent consultants, real estate
47 managers and other persons possessing specialized skills or knowledge as the Treasurer deems
48 necessary or appropriate for the administration of this Chapter, including valuation,
49 maintenance, upkeep, management, sale and conveyance of property and determination of
50 sources of unreported abandoned property. The Treasurer may also employ the services of an
51 attorney to perform a title search or to provide an accurate legal description of real property

1 which the Treasurer has reason to believe may have escheated. Persons whose services are
2 employed by the Treasurer pursuant to this section to determine sources and amounts of
3 unreported property are subject to the same policies, including confidentiality and ethics, as
4 employees of the Department of State Treasurer assigned to determine sources and amounts of
5 unreported property. If the Treasurer contracts with any other person to conduct an audit under
6 this Chapter, the audit shall not be performed on a contingent fee basis or any other similar
7 method that may impair an auditor's independence or the perception of the auditor's
8 independence by the public. Notwithstanding the preceding sentence, the Treasurer may
9 contract with any other person on a contingent fee basis to conduct audits of life insurance
10 companies where the audit is being conducted for the purpose of identifying unclaimed death
11 benefits or to conduct audits of holders of unredeemed bond funds. Compensation of persons
12 whose services may be employed pursuant to this section on a contingent fee basis shall be
13 limited to twelve percent (12%) of the final assessment."

14 **SECTION 61.5.(b)** If House Bill 462, 2011 Regular Session, becomes law, Section
15 6 of the act reads as rewritten:

16 "~~SECTION 6. This act becomes effective July 1, 2012, and applies to audits,~~
17 ~~determinations of liability, and assessments contracted for on or after that date. Units of local~~
18 ~~government and the Treasurer shall not renew contingency fee based contracts for these~~
19 ~~services after July 1, 2012. Sections 1, 3, and 3.1 of this act become effective October 1, 2012.~~
20 The Treasurer shall not renew any contingency fee-based contracts for these services after
21 October 1, 2012. The Treasurer shall not assign further audits on a contingency fee basis to an
22 auditing firm under a contract that meets all the following conditions: (i) the contract would
23 have been prohibited under this act had the contract been entered into after October 1, 2012,
24 and (ii) the contract allows the assignment of audits on a discretionary basis by the Treasurer.
25 Sections 2, 4, and 5 become effective July 1, 2013, and expire July 1, 2015. From July 1, 2013,
26 until July 1, 2015, cities and counties shall not renew any contingency fee-based contracts for
27 these services. From July 1, 2013, until July 1, 2015, cities and counties shall not assign further
28 audits on a contingency fee basis to an auditing firm under a contract that meets all the
29 following conditions: (i) the contract would have been prohibited under this act had the contract
30 been entered into after July 1, 2013, and (ii) the contract allows the assignment of audits on a
31 discretionary basis. The remainder of the act is effective when the act becomes law."

32 **SECTION 62.** If House Bill 438, 2011 Regular Session, becomes law,
33 G.S. 130A-1.1(b) reads as rewritten:

34 "(b) A local health department shall ensure that the following 10 essential public health
35 services are available and accessible to the population in each county served by the local health
36 department:

- 37 (1) Monitoring health status to identify community health problems.
- 38 (2) Diagnosing and investigating health hazards in the community.
- 39 (3) Informing, educating, and empowering people about health issues.
- 40 (4) Mobilizing community partnerships to identify and solve health problems.
- 41 (5) Developing policies and plans that support individual and community health
42 efforts.
- 43 (6) Enforcing laws and regulations that protect health and ensure safety.
- 44 (7) Linking people to needed personal health care services and ~~assuring~~ ensuring
45 the provision of health care when otherwise unavailable.
- 46 (8) ~~Assuring~~ Ensuring a competent public health workforce and personal health
47 care workforce.
- 48 (9) Evaluating effectiveness, accessibility, and quality of personal and
49 population-based health services.
- 50 (10) Conducting research."

51 **SECTION 62.1.** G.S. 150B-43 reads as rewritten:

1 **"§ 150B-43. Right to judicial review.**

2 Any party or person aggrieved by the final decision in a contested case, and who has
3 exhausted all administrative remedies made available to the party or person aggrieved by
4 statute or agency rule, is entitled to judicial review of the decision under this Article, unless
5 adequate procedure for judicial review is provided by another statute, in which case the review
6 shall be under such other statute. Nothing in this Chapter shall prevent any party or person
7 aggrieved from invoking any judicial remedy available to the party or person aggrieved under
8 the law to test the validity of any administrative action not made reviewable under this Article.
9 Absent a specific statutory requirement, nothing in this Chapter shall require a party or person
10 aggrieved to petition an agency for rule making or to seek or obtain a declaratory ruling before
11 obtaining judicial review of a final decision or order made pursuant to G.S. 150B-34."

12 **SECTION 62.5.** G.S. 153A-316.1(a), as enacted by S.L. 2012-73, reads as
13 rewritten:

14 **"§ 153A-316.1. Urban research service district (URSD).**

15 (a) Standards. – The board of commissioners of a county may establish one or more
16 urban research service districts ("URSD" as used in this Part) that meets the following
17 standards:

- 18 (1) The URSD is wholly within a county research and production service district
19 located partly within that county.
- 20 (2) The URSD is located wholly within that county.
- 21 (3) The URSD is not contained within another URSD.
- 22 (4) A petition requesting creation of the URSD signed by at least fifty percent
23 (50%) of the owners of real property in the URSD who own at least fifty
24 (50%) of total area of the real property in the URSD has been presented to
25 the board of commissioners."

26 **SECTION 63.** Section 5 of S.L. 2011-236 reads as rewritten:

27 **"SECTION 5.** This act becomes effective October 1, 2011, and applies to agreements
28 executed on or after that date. Agreements executed prior to October 1, 2011, remain subject to
29 the laws in effect at the time the parties executed the ~~agreement-agreement; differences in~~
30 wording between procedures authorized to establish agreements under the laws repealed by this
31 act and under the superseding laws enacted by this act clarify the permitted procedures under
32 the repealed laws."

33
34 **C. SUBSTANTIVE CHANGES**

35 **SECTION 63.3.(a)** G.S. 7A-38.5 is amended by adding new subsections to read:

36 **"(e)** Except as provided in this subsection and subsection (f) of this section, each chief
37 district court judge and district attorney shall refer any misdemeanor criminal action in district
38 court that is generated by a citizen-initiated arrest warrant to the local mediation center for
39 resolution, except for (i) any case involving domestic violence; (ii) any case in which the judge
40 or the district attorney determine that mediation would be inappropriate; or (iii) any case being
41 tried in a county in which mediation services are not available. The mediation center shall have
42 30 days to resolve each case and report back to the court with a resolution. The district attorney
43 shall delay prosecution in order for the mediation to occur. If the case is not resolved through
44 mediation within 30 days of referral, the court may proceed with the case as a criminal action.
45 For purposes of this section, the term "citizen-initiated arrest warrant" means a warrant issued
46 pursuant to G.S. 15A-304 by a magistrate or other judicial official based upon information
47 supplied through the oath or affirmation of a private citizen.

48 **(f)** Any prosecutorial district may opt out of the mandatory mediation under subsection
49 (e) of this section if the district attorney files a statement with the chief district court judge
50 declaring that subsection shall not apply within the prosecutorial district."

51 **SECTION 63.3.(b)** G.S. 7A-38.3D(m) reads as rewritten:

1 "(m) Dismissal Fee. – Where an agreement has been reached in mediation and the case
2 will be dismissed, the defendant shall pay to the clerk the dismissal fee of court set forth in
3 G.S. 7A-38.7. By agreement, all or any portion of the fee may be paid by a person other than
4 the defendant. ~~The judge may in the judge's discretion waive the fee for good cause shown."~~

5 **SECTION 63.3.(c)** This section becomes effective December 1, 2012, and applies
6 to offenses committed on or after that date.

7 **SECTION 63.5.** G.S. 7A-41.1(b) reads as rewritten:

8 "(b) There shall be one and only one senior resident superior court judge for each district
9 or set of districts as defined in subsection (a) of this section, who shall be:

10 (1) Where there is only one regular resident superior court judge for the district,
11 that judge; and

12 (2) Where there are two or more regular resident superior court judges for the
13 district or set of districts, ~~the Chief Justice of the Supreme Court shall~~
14 ~~designate one of the judges as senior resident superior court judge to serve in~~
15 ~~that capacity at the pleasure of the Chief Justice. In exercising the authority~~
16 ~~to appoint senior resident superior court judges pursuant to this subdivision,~~
17 ~~the Chief Judge shall consider the seniority, experience, and management~~
18 ~~competence of the regular resident superior court judges. In addition, the~~
19 ~~Chief Justice shall consult with the regular resident superior court judges, the~~
20 ~~chief district court judges, the members of the district bar, the clerks of~~
21 ~~court, district attorneys, and public defenders within the district.~~ the judge
22 who, from among all the regular resident superior court judges of the district
23 or set of districts, has the most continuous service as a regular resident
24 superior court judge; provided if two or more judges are of equal seniority,
25 the oldest of those judges shall be the senior regular resident superior court
26 judge.

27 (3) Where there is a set of districts, the Chief Justice of the Supreme Court shall
28 designate one of the judges as senior resident superior court judge to serve in
29 that capacity at the pleasure of the Chief Justice, if that set of districts are
30 wholly contained in one county that is specified in law as the sole proper
31 venue for certain actions."

32 **SECTION 64.** G.S. 18C-151(c) reads as rewritten:

33 "(c) Before a contract is awarded, the Director shall conduct a thorough background
34 investigation of all of the following:

35 (1) The potential contractor to whom the contract is to be awarded.

36 (2) Any parent or subsidiary corporation of the potential contractor to whom the
37 contract is to be awarded.

38 (3) All shareholders with a five percent (5%) or more interest in the potential
39 contractor or parent or subsidiary corporation of the potential contractor to
40 whom the contract is to be awarded. For purposes of this subdivision,
41 "shareholders" means any natural person or those individuals with
42 capabilities to make operating decisions for the potential contractor or parent
43 or subsidiary corporation of the potential contractor to whom the contract is
44 to be awarded.

45 (4) All officers and directors of the potential contractor or parent or subsidiary
46 corporation of the potential contractor to whom the contract is to be
47 awarded."

48 **SECTION 65.** Part 9 of Article 1 of Chapter 10B of the General Statutes is
49 amended by adding a new section to read:

50 "§ 10B-72. Certain notarial acts validated when recommissioned notary failed to again
51 take oath.

1 Any acknowledgment taken and any instrument notarized by a person who after
2 recommissioning failed to again take the oath as a notary public is hereby validated. The
3 acknowledgment and instrument shall have the same legal effect as if the person qualified as a
4 notary public at the time the person performed the act. This section shall apply to notarial acts
5 performed on or after August 28, 2010, and before January 12, 2012."

6 SECTION 65.3.(a) If Senate Bill 42, 2011 Regular Session, becomes law, the
7 lead-in language of Section 6.1 of Senate Bill 42 reads as rewritten:

8 "~~SECTION 6.1. G.S. 44A-23 is amended to read as follows:~~reads as rewritten:".

9 SECTION 65.3.(b) If both House Bill 1052, 2011 Regular Session, and Senate Bill
10 42, 2011 Regular Session, become law, G.S. 44A-23(c) reads as rewritten:

11 "**§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of**
12 **subcontractor.**

13 ...

14 (c) A lien waiver signed by the contractor ~~prior to the commencement of an action to~~
15 ~~enforce a perfected claim of lien on real property granted under this section before the~~
16 ~~occurrence of all of the actions specified in subsection (a1) and subdivision (5) of subsection~~
17 ~~(b) of this section waives the subcontractor's right to enforce the contractor's claim of lien on~~
18 ~~real property, but does not affect the subcontractor's right to a claim of lien on funds or the~~
19 ~~subcontractor's right to a claim of lien on real property allowed under G.S. 44A-20(d)."~~

20 SECTION 65.3.(c) Subsection (b) of this section becomes effective April 1, 2013,
21 and applies to improvements to real property for which the first furnishing of labor or materials
22 at the site of the improvements is on or after that date.

23 SECTION 65.5. If House Bill 237, 2011 Regular Session, becomes law, then
24 G.S. 58-36-17, as enacted by House Bill 237, reads as rewritten:

25 "**§ 58-36-17. Bureau to share information with the North Carolina Industrial**
26 **Commission.**

27 The Bureau shall provide to the North Carolina Industrial Commission information
28 contained in the Bureau's records indicating the status of workers' compensation insurance
29 coverage on North Carolina employers as reported to the Bureau by the Bureau's member
30 companies. The North Carolina Industrial Commission shall take such steps, including
31 obtaining software or software licenses, as are necessary to be able to receive and process such
32 information from the Bureau. The records provided to the North Carolina Industrial
33 Commission under this section shall be confidential and shall not be public records as that term
34 is defined in ~~G.S. 132-1. G.S. 132-1. Notwithstanding the previous sentence and with respect to~~
35 ~~policies becoming effective on and after January 1, 2012, the North Carolina Industrial~~
36 ~~Commission may release data showing workers compensation insurance policy information~~
37 ~~that includes only policy effective dates, policy cancellation dates, and policy reinstatement~~
38 ~~dates. This data shall not be confidential data and shall be a public record as that term is~~
39 ~~defined in G.S. 132-1. The North Carolina Industrial Commission shall use the information~~
40 ~~provided pursuant to this section only to carry out its statutory duties and obligations under The~~
41 ~~North Carolina Workers' Compensation Act. The Bureau shall be immune from civil liability~~
42 ~~for releasing information pursuant to this section, even if the information is erroneous, provided~~
43 ~~the Bureau acted in good faith and without malicious or willful intent to harm in releasing the~~
44 ~~information."~~

45 SECTION 65.8.(a) G.S. 89G-3 is amended by adding a new subdivision to read:

46 "(17) Any person who can document 10 years in business as an irrigation
47 contractor as of January 1, 2009, can document competency in the practice
48 of irrigation construction or irrigation contracting, as determined by the
49 North Carolina Irrigation Contractors' Licensing Board, and meets all other
50 requirements and qualifications for licensure may be issued an irrigation
51 contractor's license under Chapter 89G of the General Statutes, without the

1 requirement of examination, provided that the person submits an application
 2 for licensure to the Board prior to October 1, 2012."

3 **SECTION 65.8.(b)** The North Carolina Irrigation Contractors' Licensing Board
 4 shall notify the North Carolina Cooperative Extension of the provision for licensure of
 5 experienced irrigation contractors without the requirement of an examination as provided in
 6 G.S. 89G-3(17) as quickly as practicable upon the effective date of this section.

7 **SECTION 66.** G.S. 93D-5(c) reads as rewritten:

8 "(c) No license shall be issued to any person until the person has served as an apprentice
 9 as set forth in G.S. 93D-9 for a period of at least one year; provided, that the one-year
 10 apprenticeship requirement shall ~~not be waived for persons for the following:~~

11 (1) Persons qualified under G.S. 93D-6; persons G.S. 93D-6.

12 (2) Persons holding a permanent license as an audiologist under Article 22 of
 13 Chapter 90 of the General Statutes-Statutes.

14 (3) Persons holding a temporary license as an audiologist under Article 22 of
 15 Chapter 90 of the General Statutes who have undergone 250 hours of
 16 supervised activity fitting or selling hearing aids under the direct supervision
 17 of a Registered Sponsor.

18 (4) Persons continuously licensed to fit or sell hearing aids in another state or
 19 jurisdiction for the preceding three years; and persons years.

20 (5) Persons who have worked full-time for one year in the office of and under
 21 the direct supervision of an otolaryngologist fitting or selling hearing aids."

22 **SECTION 66.5.(a)** G.S. 120-11.1 reads as rewritten:

23 **"§ 120-11.1. Time of meeting.**

24 The regular session of the Senate and House of Representatives shall be held biennially
 25 beginning at 9:00 A.M. on the second Wednesday in January next after their election, and on
 26 that day they shall meet solely to elect officers, adopt rules, and otherwise organize the session.
 27 When they adjourn that day, they stand adjourned until 12:00 noon on the third Wednesday
 28 after the second Monday in January next after their election."

29 **SECTION 66.5.(b)** G.S. 150B-21.3(d) reads as rewritten:

30 "(d) Legislative Day and Day of Adjournment. – As used in this section:

31 (1) A "legislative day" is a day on which either house of the General Assembly
 32 convenes in regular session.

33 (2) The "day of adjournment" of a regular session held in an odd-numbered year
 34 is the day the General Assembly adjourns by joint resolution for more than
 35 ~~10~~ 30 days.

36 (3) The "day of adjournment" of a regular session held in an even-numbered
 37 year is the day the General Assembly adjourns sine die."

38 **SECTION 66.7.(a)** G.S. 120-30.10 reads as rewritten:

39 **"§ 120-30.10. Creation; appointment of members; members ex officio.**

40 (a) There is hereby created a Legislative Research Commission to consist of five
 41 Senators to be appointed by the President pro tempore of the Senate and five Representatives to
 42 be appointed by the Speaker of the House. The President pro tempore of the Senate and the
 43 Speaker of the House-House, or their designees, shall be ex officio members of the Legislative
 44 Research Commission. Provided, that when the President of the Senate has been elected by the
 45 Senate from its own membership, then the President of the Senate shall make the appointments
 46 of the Senate members of the Legislative Research Commission, shall serve ex officio as a
 47 member of the Commission and shall perform the duties otherwise vested in the President pro
 48 tempore by G.S. 120-30.13 and 120-30.14.

49 (b) ~~The cochairmen of the Legislative Research Commission-President Pro Tempore of~~
 50 the Senate and the Speaker of the House may appoint additional members of the General
 51 Assembly to work with the regular members of the Research Commission on study committees.

1 The terms of the additional study committee members shall be limited by the same provisions
2 as apply to regular commission members, and they may be further limited by the appointing
3 authorities.

4 ~~(c) The cochairmen of the Legislative Research Commission~~ President Pro Tempore of
5 the Senate and the Speaker of the House may appoint persons who are not members of the
6 General Assembly to advisory subcommittees. The terms of advisory subcommittee members
7 shall be limited by the same provisions as apply to regular Commission members, and they may
8 be further limited by the appointing authorities."

9 **SECTION 66.7.(b)** G.S. 120-30.13 reads as rewritten:

10 **"§ 120-30.13. Cochairmen; rules of procedure; quorum.**

11 The President pro tempore of the Senate and the Speaker of the ~~House~~ House, or their
12 designees, shall serve as cochairmen of the Legislative Research Commission. The
13 Commission shall adopt rules of procedure governing its meetings. Eight members, including
14 ex officio members, shall constitute a quorum of the Commission."

15 **SECTION 67.** G.S. 146-30(c) reads as rewritten:

16 "(c) The amount or rate of such service charge shall be fixed by rules and regulations
17 adopted by the Governor and approved by the Council of State, but as to any particular sale,
18 lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount
19 received from such sale, lease, rental, or other disposition. Notwithstanding any other provision
20 of this Subchapter, the net proceeds derived from the sale of land or products of land owned by
21 or under the supervision and control of the Wildlife Resources Commission, or acquired or
22 purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund.
23 Provided, however, the net proceeds derived from the sale of land or timber from land owned
24 by or under the supervision and control of the Department of Agriculture and Consumer
25 Services shall be deposited with the State Treasurer in a capital improvement account to the
26 credit of the Department of Agriculture and Consumer Services, to be used for such specific
27 capital improvement projects or other purposes as are provided by transfer of funds from those
28 accounts in the Capital Improvement Appropriations Act. Provided further, the net proceeds
29 derived from the sale of park land owned by or under the supervision and control of the
30 Department of Environment and Natural Resources shall be deposited with the State Treasurer
31 in a capital improvement account to the credit of the Department of Administration to be used
32 for the purpose of park land acquisition as provided by transfer of funds from those accounts in
33 the Capital Improvement Appropriations Act. In the Capital Improvement Appropriations Act,
34 line items for purchase of park and agricultural lands will be established for use by the
35 Departments of Administration and Agriculture. The use of such funds for any specific capital
36 improvement project or land acquisition is subject to approval by the Director of the Budget.
37 No other use may be made of funds in these line items without approval by the General
38 Assembly except for incidental expenses related to the project or land acquisition. Additionally
39 with the approval of the Director of the Budget, either Department may request funds from the
40 Contingency and Emergency Fund when the necessity of prompt purchase of available land can
41 be demonstrated and funds in the capital improvement accounts are insufficient. Provided
42 further, the net proceeds derived from the sale of any portion of the land owned by the State in
43 or around the Butner Reservation on or after July 1, 1980, shall be deposited with the State
44 Treasurer in a capital improvement account to the credit of the Department of Health and
45 Human Services to make capital improvements on or to property owned by the State in the
46 Butner Reservation subject to approval by the Office of State Budget and Management, and
47 may be used to build industrial access roads to industries located or to be located on the Butner
48 Reservation, to construct new city streets in the Butner Reservation, extend water and sewer
49 service on the Butner Reservation, repair storm drains on the Butner Reservation, and for other
50 capital uses on the Reservation as determined by the Secretary. Provided further,
51 notwithstanding any other provision of this Subchapter, the proceeds derived from the lease

1 dispositions of land or facilities owned or under the supervision and control of East Carolina
2 University's Division of Health Sciences for the delivery of health care services shall be
3 deposited in clinical accounts at East Carolina University to be used to improve access to
4 patient care."

5 SECTION 67.5.(a) G.S. 143-59 reads as rewritten:

6 "§ 143-59. Preference given to North Carolina products and citizens, and articles
7 manufactured by State agencies; reciprocal preferences.

8 (a) Preference. – The Secretary of Administration and any State agency authorized to
9 purchase foodstuff or other products, shall, in the purchase of or in the contracting for foods,
10 supplies, materials, equipment, printing or services give preference as far as may be practicable
11 to such products or services manufactured or produced in North Carolina or furnished by or
12 through citizens of North Carolina: Provided, however, that in giving such preference no
13 sacrifice or loss in price or quality shall be permitted; and provided further, that preference in
14 all cases shall be given to surplus products or articles produced and manufactured by other
15 State departments, institutions, or agencies which are available for distribution.

16 (b) Reciprocal Preference. – For the purpose only of determining the low bidder on all
17 contracts for equipment, materials, supplies, and services valued over twenty-five thousand
18 dollars (\$25,000), a percent of increase shall be added to a bid of a nonresident bidder that is
19 equal to the percent of increase, if any, that the state in which the bidder is a resident adds to
20 bids from bidders who do not reside in that state. Any amount due under a contract awarded to
21 a nonresident bidder shall not be increased by the amount of the increase added by this
22 subsection. On or before January 1 of each year, the Secretary of Administration shall
23 electronically publish a list of states that give preference to in-State bidders and the amount of
24 the percent increase added to out-of-state bids. All departments, institutions, and agencies of
25 the State shall use this list when evaluating bids. If the reciprocal preference causes the
26 nonresident bidder to no longer be the lowest bidder, the Secretary of Administration may, after
27 consultation with the Board of Awards, waive the reciprocal preference. In determining
28 whether to waive the reciprocal preference, the Secretary of Administration and the Board of
29 Awards shall consider factors that include competition, price, product origination, and available
30 resources.

31 (b1) Price Preference. – For any contract for equipment, materials, supplies, and services
32 a resident bidder shall be given time, not to exceed three business days, to match or lower the
33 bid of the lowest responsible nonresident bidder only if the resident bidder's bid was within five
34 percent (5%) or ten thousand dollars (\$10,000) of the lowest responsible nonresident bidder's
35 bid, whichever is less.

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

37 (1) Resident bidder. – A bidder that has paid unemployment taxes or income
38 taxes in this State ~~and~~ or whose principal place of business is located in this
39 State.

40 (2) Nonresident bidder. – A bidder that is not a resident bidder as defined in
41 subdivision (1) of this subsection.

42 (3) Principal place of business. – The principal place from which the trade or
43 business of the bidder is directed or managed.

44 (d) Exemptions. – Subsection (b) of this section shall not apply to contracts entered into
45 under G.S. 143-53(a)(5) or G.S. 143-57.

46 (e) When a contract is awarded by the Secretary using the provisions of subsection (b)
47 of this section, a report of the nature of the contract, the bids received, and the award to the
48 successful bidder shall be posted on the Internet as soon as practicable.

49 (f) Resident Bidder Notification. – When the Secretary puts a contract up for
50 competitive bidding, the Secretary shall endeavor to provide notice to all resident bidders who

1 have expressed an interest in bidding on contracts of that nature. The Secretary may opt to
2 provide notice under this section by electronic means only."

3 **SECTION 67.5.(b)** This section becomes effective October 1, 2012, and applies to
4 contracts entered into or renewed on or after that date.

5 **SECTION 68.(a)** G.S. 143-553(a) reads as rewritten:

6 "(a) All persons employed by an employing entity as defined by this Part who owe
7 money to the State and whose salaries are paid in whole or in part by State funds must make
8 full restitution of the amount owed as a condition of continuing employment; provided,
9 however, that no employing entity shall terminate for failure to make full restitution the
10 employment of such an employee who owes money to the University of North Carolina Health
11 Care System or to East Carolina University's Division of Health Sciences for health care
12 services."

13 **SECTION 68.(b)** G.S. 147-86.11(e) reads as rewritten:

14 "(e) Elements of Plan. – For moneys received or to be received, the statewide cash
15 management plan shall provide at a minimum that:

16 (1) Except as otherwise provided by law, moneys received by employees of
17 State agencies in the normal course of their employment shall be deposited
18 as follows:

19 a. Moneys received in trust for specific beneficiaries for which the
20 employee-custodian has a duty to invest shall be deposited with the
21 State Treasurer under the provisions of G.S. 147-69.3.

22 b. All other moneys received shall be deposited with the State Treasurer
23 pursuant to G.S. 147-77 and G.S. 147-69.1.

24 (2) Moneys received shall be deposited daily in the form and amounts received,
25 except as otherwise provided by statute.

26 (3) Moneys due to a State agency by another governmental agency or by private
27 persons shall be promptly billed, collected and deposited.

28 (4) Unpaid billings due to a State agency other than amounts owed by patients
29 to the University of North Carolina Health Care System or East Carolina
30 University's Division of Health Sciences shall be turned over to the Attorney
31 General for collection no more than 90 days after the due date of the billing,
32 except that a State agency need not turn over to the Attorney General unpaid
33 billings of less than five hundred dollars (\$500.00), or (for institutions where
34 applicable) amounts owed by all patients which are less than the federally
35 established deductible applicable to Part A of the Medicare program, and
36 instead may handle these unpaid bills pursuant to agency debt collection
37 procedures.

38 (4a) The University of North Carolina Health Care System and East Carolina
39 University's Division of Health Sciences may turn over to the Attorney
40 General for collection accounts owed by patients.

41 (5) Moneys received in the form of warrants drawn on the State Treasurer shall
42 be deposited by the State agency directly with the State Treasurer and not
43 through the banking system, unless otherwise approved by the State
44 Treasurer.

45 (6) State agencies shall accept payment by electronic payment in accordance
46 with G.S. 147-86.22 to the maximum extent possible consistent with sound
47 business practices."

48 **SECTION 68.(c)** G.S. 147-86.23, as amended by Section 14 of S.L. 2012-78, reads
49 as rewritten:

50 "§ 147-86.23. Interest and penalties.

1 A State agency shall charge interest at the rate established pursuant to G.S. 105-241.21 on a
 2 past-due account receivable from the date the account receivable was due until it is paid. A
 3 State agency shall add to a past-due account receivable a late payment penalty of no more than
 4 ten percent (10%) of the account receivable. A State agency may waive a late-payment penalty
 5 for good cause shown. If another statute requires the payment of interest or a penalty on a
 6 past-due account receivable, this section does not apply to that past-due account receivable.
 7 This section does not apply to money owed to the University of North Carolina Health Care
 8 System or to East Carolina University's Division of Health Sciences for health care services or
 9 to the North Carolina Turnpike Authority for money owed to the Authority for tolls."

10 **SECTION 69.** Section 9(a) of Part IV of Chapter 908 of the 1983 Session Laws, as
 11 amended by Chapters 821 and 922 of the 1989 Session Laws, Section 2 of S.L. 2001-402, and
 12 Section 1 of S.L. 2011-160, reads as rewritten:

13 "Sec. 9.(a) Distribution and Use of Proceeds. – The local administrative authority, acting
 14 on its own behalf or as agent for each taxing entity, shall distribute the proceeds of the taxes
 15 levied in this Part as provided in this subsection. The distribution shall be made by the 20th day
 16 of each month following the month in which the tax is collected.

17 ...

18 (4) Distribution to Charlotte for Convention and Visitor Promotion and Other
 19 Tourism-Related Purposes. –

20 ...

21 d. The Towns of Cornelius, Davidson, and Huntersville shall distribute
 22 on a quarterly basis to the Lake Norman Convention and Visitors
 23 Bureau from the portion of prepared food and beverage taxes
 24 received from the City of Charlotte for the purpose of
 25 tourism-marketing promotions an amount not less than the sum of the
 26 following:

- 27 1. Twenty-eight percent (28%) of the portion of occupancy tax
 28 net proceeds received from the local administrative authority.
- 29 2. Twenty-five percent (25%) of the portion of prepared food
 30 and beverage taxes received from the City of Charlotte."

31 **SECTION 69.1.** S.L. 2012-121 is amended by rewriting Section 1.4(a1) to read:

32 "**SECTION 1.4.(a1)** Notwithstanding subsection (c) of this section, no person holding any
 33 elected public office may be a member of the Authority."

34 **SECTION 70.** If House Bill 950, 2011 Regular Session, becomes law, then Section
 35 10.9F(c)(2) reads as rewritten:

36 "(2) The recipient (i) resides either in a private living arrangement, a residential
 37 facility licensed by the State of North Carolina as an adult care home, or a
 38 combination home as defined in ~~G.S. 131E-101(1a)~~-G.S. 131E-101(1a); or
 39 (ii) resides in a group home licensed under Chapter 122C of the General
 40 Statutes and under 10A NCAC 27G .5601 as a supervised living facility for
 41 two or more adults whose primary diagnosis is mental illness, a
 42 developmental disability, or substance abuse dependency, and is eligible to
 43 receive personal care services under the Medicaid State Plan."

44 **SECTION 70.5.(a)** G.S. 132-1.12 reads as rewritten:

45 "**§ 132-1.12. Limited access to identifying information of minors participating in local**
 46 **government ~~parks and recreation programs.~~**

47 (a) A public record, as defined by G.S. 132-1, does not include, as to any minor
 48 participating in a ~~park or recreation program~~ sponsored by a local government or combination
 49 of local governments, any of the following information as to that minor participant: (i) name,
 50 (ii) address, (iii) age, (iv) date of birth, (v) telephone number, (vi) the name or address of that
 51 minor participant's parent or legal guardian, (vii) e-mail address, or ~~(vii) (viii)~~ any other

1 identifying information on an application to participate in such program or other records related
2 to that program. Notwithstanding this subsection, the name of a minor who has received a
3 scholarship or other local government-funded award of a financial nature from a local
4 government is a public record.

5 (b) The county, municipality, and zip code of residence of each participating minor
6 covered by subsection (a) of this section is a public record, with the information listed in
7 subsection (a) of this section redacted.

8 (c) Nothing in this section makes the information listed in subsection (a) of this section
9 confidential information."

10 **SECTION 70.5.(b)** G.S. 153A-345(a) reads as rewritten:

11 "(a) The board of commissioners may provide for the appointment and compensation, if
12 any, of a board of adjustment consisting of at least five members, each to be appointed for three
13 years. In appointing the original members of the board, or in filling vacancies caused by the
14 expiration of the terms of existing members, the board of commissioners may appoint some
15 members for less than three years to the end that thereafter the terms of all members do not
16 expire at the same time. The board of commissioners may provide for the appointment and
17 compensation, if any, of alternate members to serve on the board in the absence or temporary
18 disqualification of any regular member or to fill a vacancy pending appointment of a member.
19 Alternate members shall be appointed for the same term, at the same time, and in the same
20 manner as regular members. Each alternate member, while attending any regular or special
21 meeting of the board and serving on behalf of a regular member, has and may exercise all the
22 powers and duties of a regular member. ~~If the board of commissioners does not zone the entire~~
23 ~~territorial jurisdiction of the county, each designated zoning area shall have at least one resident~~
24 ~~as a member of the board of adjustment.~~

25 A county may designate a planning board or the board of county commissioners to perform
26 any or all of the duties of a board of adjustment in addition to its other duties."

27 **SECTION 70.5.(c)** This section applies to the County of Chatham only.

28 **SECTION 71.** Article 13A of Chapter 90 of the General Statutes is amended by
29 adding a new section to read:

30 **§ 90-210.25B. Persons who shall not be licensed under this Article.**

31 (a) The board shall not issue or renew any licensure, permit, or registration to any
32 person or entity who has been convicted of a sexual offense against a minor.

33 (b) For purposes of this Article, the term "sexual offense against a minor" means a
34 conviction of any of the following offenses: G.S. 14-27.4A(a) (sex offense with a child; adult
35 offender), G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years
36 old where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual
37 exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor),
38 G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting
39 prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1
40 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or
41 certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking
42 indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act
43 of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual
44 act upon a juvenile by parent or guardian). The term shall also include a conviction of the
45 following: any attempt, solicitation, or conspiracy to commit any of these offenses or any
46 aiding and abetting any of these offenses. The term shall also include a conviction in another
47 jurisdiction for an offense which if committed in this State has the same or substantially similar
48 elements to an offense against a minor as defined by this section.

49 (c) If a person or entity holding a license, permit, or registration in another jurisdiction
50 has the license revoked, suspended, or placed on probation because of a felony conviction other

1 than those enumerated above, the board shall impose a sanction equal to or greater than to the
2 sanction imposed by the other jurisdiction.

3 (d) If a person or entity holding a license, permit, or registration in another jurisdiction
4 has the license revoked, suspended, or placed on probation because of conduct related to fitness
5 to practice as described in G.S. 90-210.25(e), the board shall impose a sanction equal to or
6 greater than the sanction imposed by the other jurisdiction."

7 SECTION 71.5.(a) If House Bill 950, 2011 Regular Session, becomes law, Section
8 24.20 is repealed.

9 SECTION 71.5.(b) Section 52 of S.L. 2011-391 reads as rewritten:

10 "SECTION 28.12A. The Program Evaluation Division of the General Assembly shall
11 conduct a comprehensive evaluation of the North Carolina Railroad Company, a North
12 Carolina corporation of which the State is the sole shareholder and which is a discretely
13 reported component unit of the State as defined by the Governmental Accounting Standards
14 Board. The evaluation shall address, at a minimum, the following issues:

- 15 (1) Whether the corporation is adhering to its stated corporate mission of
16 maximizing the value of the corporation for the people of the State.
- 17 (2) What economic development benefits have been provided by the corporation
18 and for what costs.
- 19 (3) An evaluation of the use of available cash by the corporation, including the
20 purchase of real property used for investment purposes rather than paying
21 dividends to the State.
- 22 (4) The approximate value of the corporation's assets, based on a market
23 valuation rather than historic or book value of assets.
- 24 (5) The approximate value of the entire corporation as a going concern.
- 25 (6) The effectiveness of the provisions of Chapter 124 of the General Statutes to
26 allow the State to exercise its shareholder rights and to provide effective
27 shareholder oversight of the corporation.
- 28 (7) Whether the ownership of the corporation provides the State a reasonable
29 return on its investment, attempting to consider both the tangible and
30 intangible value provided by the corporation.
- 31 (8) Whether the corporation should be sold, transferred under the jurisdiction of
32 the Department of Transportation or another State agency, or maintain its
33 corporate structure.
- 34 (9) Whether the General Assembly should consider the possibility of repealing
35 the corporate charter of the corporation by a special act, as allowed under
36 Section 1 of Article VIII of the North Carolina Constitution.

37 For the purposes of this evaluation, the terms "State agency" or "agency" as used under
38 Article 7C of Chapter 120 of the General Statutes shall include the North Carolina Railroad
39 Company.

40 For the purposes of this evaluation, the Program Evaluation Division is hereby granted
41 authority to exercise the State's shareholder right to inspect the corporate books and records of
42 the North Carolina Railroad Company on behalf of the State.

43 ~~From funds available to the Joint Legislative Transportation Oversight Committee, the~~
44 ~~Program Evaluation Division may hire consultants to aid it in its evaluation, including experts~~
45 ~~in appraisal and valuation.~~

46 The Program Evaluation Division shall report the results of its study to the Joint Legislative
47 Program Evaluation Oversight Committee and the Joint Legislative Transportation Oversight
48 Committee no later than November 1, 2012."

49 SECTION 71.5.(c) The Program Evaluation Division of the General Assembly
50 shall study, in conjunction with the Department of Administration, the inventory of all

1 State-owned lands and the issue of public ownership of lands submerged under navigable rivers
2 in the State.

3 SECTION 71.5.(d) The Program Evaluation Division shall submit its findings and
4 recommendations to the Joint Legislative Program Evaluation Oversight Committee no later
5 than January 15, 2013.

6 SECTION 71.6. Section 13 of S.L. 2009-521, as amended by Section 24 of S.L.
7 2011-326, reads as rewritten:

8 "SECTION 13. Any natural hair care specialist who submits proof to the Board that the
9 natural hair care specialist is actively engaged in the practice of a natural hair care specialist on
10 the effective date of this act, passes an examination conducted by the Board and pays the
11 required fee under G.S. 88B-20 shall be licensed without having to satisfy the requirements of
12 G.S. 88B-10.1, enacted by Section 2 of this act. A cosmetic art shop that practices natural hair
13 care only and that submits proof to the Board that the shop is actively engaged in the practice of
14 natural hair care on the effective date of this act shall have ~~two years~~ five years from the date
15 of this act to comply with the requirements of G.S. 88B-14. All persons who do not make
16 application to the Board within ~~two years~~ five years of the effective date of this act shall be
17 required to complete all training and examination requirements prescribed by the Board and to
18 otherwise comply with the provisions of Chapter 88B of the General Statutes."

19 SECTION 71.7. If House Bill 177, 2011 Regular Session, becomes law, then
20 Section 2 is repealed.

21 SECTION 71.8. If House Bill 837, 2011 Regular Session, becomes law, then
22 Section 2 of that act reads as rewritten:

23 "SECTION 2. The State Board of Education shall work in cooperation with the American
24 Heart Association, the American Red Cross, and other nationally recognized programs to
25 develop a strategic plan to phase in successful completion of cardiopulmonary resuscitation
26 instruction as a requirement for high school graduation by the 2014-2015 school year. The plan
27 shall include costs of, and details regarding, procedures for:

- 28 ...
29 (3) Requiring successful completion of cardiopulmonary resuscitation
30 instruction as a requirement for high school graduation by the ~~2013-2014~~
31 2014-2015 school year.

32"

33 SECTION 71.9.(a) If House Bill 950, 2011 Regular Session, becomes law, then
34 Section 24.21(a) reads as rewritten:

35 "SECTION 24.21.(a) Prior to establishing or collecting any tolls on Interstate 95, the
36 Department of Transportation shall conduct a comprehensive study of the impact of tolling
37 Interstate 95 on the corridor and surrounding areas ~~the transportation corridor containing~~
38 ~~Interstate 95~~, including, but not limited to, the following:

- 39 (1) The economic impact of ~~tolling the present road~~ on the residents and
40 businesses along the Interstate 95 corridor.
41 (2) The impact of ~~tolling the present road~~ on the alternative routes to Interstate
42 95, including expected increased traffic on those routes, any safety issues
43 created by any increased traffic on those routes, and expected travel time
44 delays for drivers using the alternative routes.
45 (3) New or existing alternative routes for Interstate 95.
46 (4) Options for funding to make critical repairs and lane mile expansions to
47 Interstate 95 without the use of tolls.

48 The Department shall conduct a campaign and solicit feedback on its various tolling
49 proposals from the local governments and residents along the Interstate 95 corridor."

50 SECTION 71.9.(b) If House Bill 950, 2011 Regular Session, becomes law, then
51 Section 24.21(b) is repealed.

1 **SECTION 71.9.(c)** If House Bill 950, 2011 Regular Session, becomes law, then
2 Section 24.21(c) reads as rewritten:

3 "**SECTION 24.21.(c)** Notwithstanding G.S. 136-89.198, the Department of Transportation
4 shall not ~~establish or collect toll~~ toll Interstate 95 prior to ~~July 1, 2014~~ approval by the General
5 Assembly."

6 **SECTION 71.9.(d)** If House Bill 950, 2011 Regular Session, does not become law,
7 then prior to establishing or collecting any tolls on Interstate 95, the Department of
8 Transportation shall conduct a comprehensive study of the impact of tolling Interstate 95 on the
9 corridor and surrounding areas, including, but not limited to, the following:

10 (1) The economic impact on residents and businesses along the Interstate 95
11 corridor.

12 (2) The impact on the alternative routes to Interstate 95, including expected
13 increased traffic on those routes, any safety issues created by any increased
14 traffic on those routes, and expected travel time delays for drivers using the
15 alternative routes.

16 (3) New or existing alternative routes for Interstate 95.

17 (4) Options for funding to make critical repairs and lane mile expansions to
18 Interstate 95 without the use of tolls.

19 The Department shall conduct a campaign to solicit feedback on its various tolling proposals
20 from the local governments and residents along the Interstate 95 corridor.

21 **SECTION 71.9.(e)** If House Bill 950, 2011 Regular Session, does not become law,
22 then, notwithstanding G.S. 136-89.198, the Department of Transportation shall not toll
23 Interstate 95 prior to approval by the General Assembly.

24 **SECTION 72.** Except where otherwise provided, this act is effective when it
25 becomes law. G.S. 7A-41.1(b)(2), as amended in Section 63.5 of this act, applies to vacancies
26 occurring on or after the date this act becomes effective.



SENATE BILL 847: GSC Technical Corrections/Other Changes

2011-2012 General Assembly

Committee:	Rules, Calendar, and Operations of the House	Date:	June 29, 2012
Introduced by:	Sen. Hartsell	Prepared by:	Barbara Riley*
Analysis of:	PCS to Third Edition S847-CSMN-3		Staff Attorney

BILL ANALYSIS:

Sections 1-44, pp. 1-23, are technical changes recommended by the General Statutes Commission.

Sections 44.5-56, pp. 23-27, make technical changes as follows:

Section 44.5 provides that any references in an act of the 2011 Regular Session to a bill of the "2012 Regular Session" shall be deemed to be a reference to a bill of the 2011 Regular Session.

Section 45.(a) recodifies G.S. 15A-1331A as G.S. 15A-1331.1.

Section 45.(b), (c) and (d) correct citations in the statutes to reflect the recodification.

Section 45.(e) recodifies G.S. 15A-1331B as G.S. 15A-1331.2 if Senate Bill 707 becomes law.

Section 45.5 amends G.S. 18B-1305(a1) to correct an error in the cross-reference to G.S. 18B-1104(8).

Section 45.7 amends G.S. 20-79.4(b)(170) to remove the requirement that special plates issued to a recipient of the Purple Heart must bear the letters "PH."

Section 46 corrects a statutory reference in G.S. 66-421(a), as enacted by S.L. 2012-46, effective October 1, 2012.

Section 47 corrects statutory references and grammatical errors in House Bill 614, if it becomes law. This section is effective January 1, 2013.

Section 48 corrects a statutory reference in G.S. 115C-107.7(a1).

Section 49 deletes an incorrect statutory reference from G.S. 115C-309(a).

Section 50 fixes the long title of S.L. 2012-92 by removing non-relevant language.

Section 51 adds Swain County to the list of counties that can be awarded grants for "Environmental Mitigation Projects" under the Consent Decree entered into by the State.

Section 52 corrects the Session Law citation in Section 5 of S.L. 2012-77.

Section 53 repeals two sections of S.L. 2012-56 that made unnecessary conforming changes to the statutes.

Section 54 corrects a citation in the prefatory language of Section 2.2 of S.L. 2012-18.

Section 55(a), (b) and (c) repeals annual requirement that local boards of education and the State Board of Education report on certain information concerning students with family members in the military. Section 55 creates requirement for a one-time report by November 30, 2012 on students with family members in the military and services and resources provided to them, and requires principals to develop means for identifying and serving the needs of students with family members in the military.

Section 56 corrects the term "workforce development system" to "workers' compensation system," if HB 237 becomes law.

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Sections 57-63, pp. 27-32, make clarifying and conforming changes as follows:

Section 57 corrects the phrasing on a special license plate from "American Red Cross Saving Lives" to "Proud Supporter" and "American Red Cross."

Section 59.(a), (b) and (c) correct a statutory citation and changes "detectors" to "alarms" for consistency. Subsection (a) is effective October 1, 2012, and subsection (b) is effective December 1, 2012.

Section 60 adds The North Carolina Forest Service to the Umstead Act. This conforms to the Type I transfer of the entity made last year.

Section 60.5 clarifies the language on signs that must be posted where pseudoephedrine products are sold to reflect the limit on total grams that may be sold per day, rather than number of packages and grams.

Section 61 changes "may" to "shall" regarding proposed standards which must be included in a broker price opinion or comparative market analysis.

Section 61.2 amends Section 24.11 of House Bill 950, 2011 Regular Session, if it becomes law, to provide a 30-day window of relief from liability for a taxpayer who over- or under-collects the excise tax on motor fuel if the taxpayer made a good faith effort to comply with the law. The effective date of the rate change in House Bill 950 was July 1, 2012.

Section 61.5.(a) amends G.S. 116B-8 to limit the compensation paid to any persons permitted to be employed by the Treasurer on a contingent fee basis to 12% of the final assessment.

Section 61.5.(b) provides that the restrictions on the use of contingency fee audit contracts by the Secretary of Revenue and the State Treasurer imposed by House Bill 462, if enacted, have an effective date of October 1, 2012, and that the Treasurer shall not renew a contingency fee contract giving the Treasurer discretion to assign the audits after October 1, 2012, if the contract would have been prohibited if entered into after October 1, 2012. This section also provides that House Bill 462's restrictions on the use of contingent fee audit contracts by cities and counties become effective July 1, 2013, and expire July 1, 2015.

Section 62 corrects a grammatical error.

Section 62.1 amends G.S. 150B-43 to clarify that an aggrieved party does not need to file a petition for rulemaking or seek a declaratory judgment before appealing an adverse decision in a contested case.

Section 62.5 clarifies a provision in House Bill 391 which would authorize additional permitted uses in county research and production districts including mixed-use development that combines residential, retail, and business use (USRD). This section clarifies that each USRD must be completely contained within a county research and production service district.

Section 63 clarifies that changes to "payable on death accounts" legislation did not alter the process for creating the accounts.

Sections 63.3-71.9, pp. 32-43, make substantive changes as follows:

Section 63.3(a) requires the referral of all misdemeanors generated by a citizen-initiated arrest warrant to the local mediation center for resolution, except those cases involving domestic violence, cases that the judge finds inappropriate for mediation, and cases in counties where mediation is not available; the mediation center has 30 days to resolve the case, after which the court may proceed with the case as a criminal action. Citizen-initiated arrest warrants are those warrants issued when a private citizen provides sufficient information, based upon oath or affirmation, to a judicial official, usually a

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magistrate, for that official to make an independent judgment that there is probable cause to believe that a crime has been committed and that the person to be arrested committed it.

Section 63.3(b) eliminates the authorization for a judge to exercise discretion to waive the dismissal fee of \$60 required in all criminal cases resolved through referral to a community mediation center.

Section 63.3(c) make this section effective December 1, 2012, and applicable to offenses committed on or after that date.

Section 63.5 amends G.S. 7A-41.1(b) to revise the process for selecting the senior resident superior court judge for each district or set of districts. If the district or set of districts has two or more regular resident superior court judges, the senior resident superior court judge will be the judge having the most continuous service in that office. Between two or more judges having equal seniority, the eldest will be selected. If a set of districts is wholly contained in one county and is the sole proper venue for certain actions, the senior resident superior court judge will be chosen by and serve at the pleasure of the Chief Justice of the Supreme Court.

Section 64 amends the Lottery Commission statutes to limit the scope of the definition of "shareholders" who are to be investigated before contracts can be awarded. Shareholders are any natural persons or individuals with capabilities to make operating decisions for potential contractors.

Section 65 cures notarial acts performed on or after August 28, 2010, and before January 12, 2012, by a person who failed to take the oath of office again after recommissioning as required by G.S. 10B-9.

Section 65.3(a), (b) and (c) amends G.S. 44A-23(c), as enacted in House Bill 1052, 2011 Regular Session, to conform to the changes made to G.S. 44A-23 (a) and (b) in Senate Bill 42, 2011 Regular Session, effective April 1, 2013.

Section 65.5 amends G.S. 58-36-17, as enacted by House Bill 237, 2011 Regular Session (if that bill should become law), to permit the Industrial Commission to release limited policy data to include only policy effective dates, cancellation dates, and reinstatement dates, and provides that this data shall not be confidential and shall be a public record under Chapter 132.

Section 65.8(a) exempts from the examination requirement of Chapter 89G any otherwise qualified irrigation contractor in business for ten years as of January 1, 2009, who applies for licensure prior to October 1, 2012, and who can document competency in the practice of irrigation construction or irrigation contracting as determined by the Irrigation Contractors' Licensing Board.

Section 65.8(b) directs the Irrigation Contractors' Licensing Board to notify the North Carolina Cooperative Extension of the provision for exemption from the examination requirement under subsection (a) of this section as soon as practicable after the effective date of this section.

Section 66 corrects drafting errors in G.S. 93D-5(c) as amended by S.L. 2011-311 (S670), which incorrectly stated that the one-year apprenticeship requirement "shall not be waived" rather than "shall be waived," and incorrectly set out the specific circumstances under which the applicant would be eligible for a waiver of the apprenticeship requirement.

Section 66.5(a) amends G.S. 120-11.1 to provide a one-day organizational session of the General Assembly to be convened at 9:00 a.m. on the second Wednesday in January next after their election, for the sole purpose of electing officers, adopting rules, and otherwise organizing the session. Upon adjournment that day, the General Assembly would stand adjourned until 12:00 noon on the third Wednesday after the second Monday in January next after their election.

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Section 66.5.(b) amends G.S. 150B-21.3(d) to define "day of adjournment" for regular sessions of the General Assembly in odd-numbered year as the day when the General Assembly adjourns by joint resolution for more than 30 days.

Section 66.7.(a) permits designees of the President pro tempore of the Senate and the Speaker of the House to serve as ex officio members of the Legislative Research Commission and transfers to the President pro tem and the Speaker the authority currently vested in the LRC cochairs to appoint additional members of the General Assembly to serve on LRC study committees and to appoint non-members of the General Assembly to serve on LRC subcommittees.

Section 66.7.(b) permits designees of the President pro tem and the Speaker to serve as LRC cochairs.

Section 67 allows ECU to retain rental receipts from healthcare service providers co-located on the campus facilities.

Section 67.5(a) and (b) allows for a price match on contracts for equipment, materials, supplies and services for resident bidders whose bid was within 5% or \$10,000 of the lowest responsible non-resident bidder. Resident bidder is a bidder who has paid unemployment or income taxes in North Carolina or whose principle place of business is in this State. Effective for contracts entered into on or after October 1, 2012.

Section 68(a), (b) and (c) creates exceptions to the accounts receivable process for East Carolina University's Division of Health Sciences (ECU DHS) similar to those of the University of North Carolina Health Care System.

Section 69 clarifies distribution of occupancy and food and beverage taxes proceeds on a quarterly basis to the Lake Norman Convention and Visitors' Bureau.

Section 69.1 deletes a provision in S.L. 2012-121 permitting a person serving as a member of the Authority who was an elected official when the act became effective to continue serving until completion of the term of the elective office and until a successor member is appointed and qualified.

Section 70 allows residents of a group home licensed under Chapter 122C and who meet current criteria to be eligible for personal care services under the State's Medicaid Plan.

Section 70.5(a) amends G.S. 132-1.12 to further limit the identifiable information for any minor participating in a local-government sponsored program, including email addresses. A minor who has received local government funding is public record.

Section 70.5(b) redacts a portion of G.S. 153A-345(a) and removes the requirement that if the board of commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall have a least one resident as a member of the board of adjustment.

Section 70.5.(c) provides that this section applies only to Chatham County.

Section 71 amends Article 13A of Chapter 90 of the General Statutes to prohibit the Board of Funeral Service from issuing or renewing any license, permit or registration of a person convicted of a sexual offense against a minor under enumerated sections of the General Statutes, or convicted in another jurisdiction for an offense having substantially similar elements. In addition, the Board would be required to impose a sanction equal to or more severe than that imposed by another jurisdiction upon any licensee whose license, permit or registration has been revoked or suspended in another jurisdiction, or who has been placed on probation in that jurisdiction, because of a felony conviction other than for a sexual offense against a minor. This would apply to convictions occurring on or after January 1, 1997.

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Section 71.5.(a) repeals a provision in S.L. 2011-391 repealing the Program Evaluation Division's mandate to study the State Railroad.

Section 71.5.(b) repeals the authority of PED to hire outside consultants to aid in its evaluation of the State Railroad.

Section 71.5.(c) directs PED to study the inventory of all State-owned lands and the issue of public ownership of lands submerged under navigable rivers, in conjunction with the Department of Administration.

Section 71.5.(d) requires PED to submit its findings and recommendations in regard to the study of public ownership of submerged lands to the Joint Legislative Program Evaluation Oversight Committee by January 15, 2013.

Section 71.6 amends Section 13 of S.L. 2009-521, as amended by Section 24 of S.L. 2011-326, to extend by three years the deadline for individuals practicing nature hair care to be licensed, from the current deadline of July 1, 2012, to the new deadline of July 1, 2015.

Section 71.7 repeals Section 2 of House Bill 177, if that bill becomes law. Section 2 established criteria for operation of electric vehicle charging stations at state owned rest stops.

Section 71.8 changes the implementation date for requirement of CPR instruction as a high school graduation requirement to 2014-2015 from 2013-2014, if House Bill 837, Regular Session, becomes law.

Section 71.9 directs the Department of Transportation (DOT) to conduct a study of the impact of tolling on Interstate 95 on residents, businesses, increased traffic or safety issues, alternative and new routes, and options for repairs and lane expansions.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law. Section 63.5 applies to vacancies in the position of senior resident superior court judge occurring on or after the effective date of this act.

** Staff Attorneys Kara McCraw and Bill Patterson and Legislative Analyst Patsy Pierce substantially contributed to this summary.*

S847-SMRF-160(CSMN-3) v11



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 847*

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

S847-ASU-28 [v.3]

Page 1 of 1

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

Date _____, 2012

Representative Setzer

1 moves to amend the bill on page 32, lines 22-23, by inserting the following between the lines:

2
3 "SECTION 65.4.(a) G.S. 51-1 reads as rewritten:

4 '§ 51-1. Requisites of marriage; solemnization.

5 A valid and sufficient marriage is created by the consent of a male and female person who
6 may lawfully marry, presently to take each other as husband and wife, freely, seriously and
7 plainly expressed by each in the presence of the other, either:

8 (1) a. In the presence of an ordained minister of any religious
9 denomination, a minister authorized by a church, judge of the
10 superior court, or a magistrate; and

11 b. With the consequent declaration by the ~~minister~~ minister, judge of
12 the superior court, or magistrate that the persons are husband and
13 wife; or

14 (2) In accordance with any mode of solemnization recognized by any religious
15 denomination, or federally or State recognized Indian Nation or Tribe.

16 Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not
17 ordained, are validated from their consummation.'

18 "SECTION 65.4.(b) This section becomes effective July 26, 2012, and expires July
19 30, 2012."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



Box #	Year	Chamber	Committee
6	2011-2012	House	Government
6	2011-2012	House	Health & Human Services
6	2011	House	Health & Human Services Sub on Mental Health
6	2011	House	Homeland Security, Military & Veterans Affairs
6	2011-2012	House	Insurance